

Gaps in the Guardrails: A Review of Laws on Private Sector Corruption in Sri Lanka

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Executive Summary

Corruption has been a key factor in Sri Lanka's ongoing economic crisis, with the International Monetary Fund (IMF) Governance Diagnostic Assessment (GDA) identifying widespread corruption across both public and private sectors, as a macro-critical problem. While anti-corruption efforts often focus on public sector corruption, private sector corruption remains under-addressed, despite its significant impact on market integrity, competition, and economic stability.

Private sector corruption can be categorised into three broad forms:

1. **Private-to-Public Corruption** – Bribing public officials for contracts, permits, or regulatory advantages.
2. **Private-to-Private Corruption** – Engaging in corrupt practices with other private sector actors, such as bid-rigging or commercial bribery.
3. **Private Sector as Enablers** – Facilitating corruption through financial secrecy, tax evasion, or failure to report suspicious transactions.

In response to the ongoing crisis, Sri Lanka has made progress on reforming its regulatory framework. This report conducts a review of laws for private sector corruption mainly in the first two categories, benchmarking it against the United Nations Convention Against Corruption (UNCAC) – the most widely accepted international convention on corruption with global applicability. These key areas of relevance to private sector corruption include preventive measures, bribery, liability of legal entities, whistleblower protection, trading in influence, embezzlement, campaign financing, and asset declarations.

The report does not provide a detailed review of areas where Sri Lanka is already compliant with UNCAC. Additionally, it does not assess implementation or enforcement challenges, though enforcement weaknesses remain a significant concern. This gap analysis also does not cover two important areas of private sector corruption: public procurement and anti-money laundering, for reasons detailed in later sections of this report. While the report primarily focuses on UNCAC compliance, it acknowledges some global best practices that go beyond UNCAC standards.

The report identifies nine major gaps in Sri Lanka's legal and regulatory framework for addressing private sector corruption against UNCAC requirements. These gaps fall into two broad categories: overarching gaps and specific gaps.

Overarching gaps

These gaps affect all critical areas of private sector corruption. Three gaps are identified in relation to Sri Lanka's obligations under UNCAC Article 26, which mandates that legal persons must be held accountable

for corruption offences. These gaps also undermine areas that might otherwise be considered UNCAC compliant. They include:

- **Narrow Definition of “Private Sector Entity”** – The Anti-Corruption Act (ACA), No. 23 of 2023 excludes a large portion of the private sector.
- **Weak Corporate Criminal Liability** – Sri Lanka relies on the common law identification doctrine, making it difficult to hold corporations accountable.
- **Insufficient Penalties** – Existing fines and sanctions fail to deter corruption effectively.

Specific gaps in three key thematic areas

1. Gaps in 'Preventive Measures:

- No legal requirement for companies to disclose ultimate beneficial ownership to the Registrar of Companies .
- Limited public access to beneficial ownership information, as the Company Registrar is currently not required to collect such data.
- Lack of laws preventing conflicts of interest when public officials transition into the private sector.

2. Gaps in Bribery in the Private Sector:

- Corporate entities are not held liable for soliciting or accepting bribes.
- No positive legal obligation for companies to implement anti-bribery compliance measures.

3. Gap in Trading in Influence:

- The ACA fails to effectively criminalise the offence of trading in influence.

Finally, the report proposes **eight key recommendations** to address the identified legal gaps, divided into two categories:

1. Amend existing laws to close loopholes:

- Expand the definition of "private sector entity" in the ACA to include SMEs and all companies required to pay EPF/ETF.
- Amend the ACA to impose liability on legal persons for soliciting or accepting bribes.
- Amend the ACA to incorporate distinct elements of trading in influence.

2. Introduce new legal provisions to enhance corporate accountability:

- Establish a publicly accessible beneficial ownership register.
- Introduce laws to prevent conflicts of interest for public officials joining the private sector.
- Impose proportionate penalties on legal persons.
- Implement non-monetary sanctions for corporate offenders.
- Introduce a “failure to prevent bribery” offence and corresponding defence requiring companies to implement internal compliance programmes.

Strengthening Sri Lanka's legal framework to combat private sector corruption is essential for economic recovery, international credibility, and investor confidence. addressing these gaps in the law will not only enhance compliance with UNCAC but also foster a more transparent and accountable business environment. This report provides a clear roadmap for reform, urging policymakers to take decisive steps in closing loopholes, strengthening enforcement, and ensuring that corporate actors can operate in a conducive business environment.

1. Introduction

In Sri Lanka, poor governance and corruption have been identified as key factors contributing to the country's ongoing economic crisis—the worst since its independence in 1948.¹ Addressing corruption is therefore critical to resolving the crisis, and is a key focus of the country's current programme with the International Monetary Fund (IMF).² While corruption in governance is widely recognised, it is often associated primarily with the public sector. As a result, corruption in the private sector and its impact tend to be overlooked and underrepresented in debates and discussions on the issue.³

Corruption is generally understood as 'the abuse of entrusted power for private gain'—in accordance with the definition proposed by Transparency International (TI).⁴ This general definition does not restrict corruption to the public sector, acknowledging that it can occur both in the public and private sectors. Public officials are entrusted with power to serve the public interest, while private sector employees are entrusted with power to serve legitimate interests of a privately owned organisation.⁵ Corruption in the private sector can also have public impact – such as distorting competition, reducing access to the market, and inflating prices.⁶

Private sector corruption falls into three broad categories. The first, is when the private sector engages in corruption in its interactions with the public sector.⁷ Examples include giving kickbacks in return for a public contract or bribing a public official to authorise a license. The second, is when the private sector engages in corruption in its dealings with other private sector entities, such as when a company bribes

- 1 World Bank Blogs, Martin Raiser, *Sri Lanka's crisis offers an opportunity to reset its development model* (2023), at <https://blogs.worldbank.org/endpovertyinsouthasia/sri-lankas-crisis-offers-opportunity-reset-its-development-model> [last accessed 22 December 2023]; United States Institute of Peace, *Five Things to Know About Sri Lanka's Crisis* (2022), at <https://www.usip.org/publications/2022/07/five-things-know-about-sri-lankas-crisis> [last accessed 22 December 2023].
- 2 International Monetary Fund, *IMF Country Report No. 23/116, Sri Lanka, Request for an Extended Arrangement Under the Extended Fund Facility—Press Release; Staff Report; and Statement by the Executive Director for Sri Lanka* (2023), p. 27.
- 3 Krista Lee-Jones, Transparency International, *Anti-Corruption Helpdesk: Regulating Private Sector Corruption* (2018), at https://knowledgehub.transparency.org/assets/uploads/helpdesk/Regulating-private-to-private-corruption_2018.pdf [last accessed 31 July 2024].
- 4 Robert Barrington, Elizabeth David-Barrett, Rebecca Dobson Phillips, and Georgia Garrod, *Dictionary of Corruption* (2024), p. 88.
- 5 United Nations Office on Drugs and Crime, *Module 5: Private Sector Corruption*, at https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_5_Private_Sector_Corruption.pdf [last accessed 30 December 2024], p. 8.
- 6 Website of the Anti-Corruption Resource Centre, 'Corruption in the Private Sector,' at <https://www.u4.no/topics/private-sector/basics> [last accessed 27 January 2025].
- 7 D. O. Sotola and P. Pillay, *Private Sector and Public Sector Corruption Nexus: A Synthesis and Typology*, (2020) 28(1) *Administratio Publica*, p.127.

another company for a contract.⁸ The third, is when the private sector acts as ‘enablers’ for other corrupt actors, such as by providing financial advice to evade taxes, facilitating illicit financial flows, or failing to report suspicious transactions.⁹

The 2023 Sri Lanka Governance Diagnostic Assessment (GDA) Technical Assistance Report, No.23/340 by the IMF – the first of its kind in Asia – highlighted the prevalence of private sector corruption in Sri Lanka. It revealed the deep nexus between public institutions and private firms, particularly in high-value corruption cases, including those within the financial sector.¹⁰ The report observed that corruption in Sri Lanka is often rooted in ‘long-established relationships’ between ‘private and public elites’, rather than specific, isolated transactions.¹¹ It identified key areas where private and public sector corruption intersect – such as public procurement, state contracting, and the granting of concessions for strategic investments—creating significant vulnerabilities to corruption.¹²

The recommendations from the IMF’s GDA that focus on combatting private sector corruption align closely with those of the Civil Society Governance Diagnostic Report (GDR) on Sri Lanka – released by a collective of Sri Lankan Civil Society Organisations in parallel to the IMF’s GDA – in two key areas.¹³ First, both reports emphasise the importance of legislative compliance with international conventions and the implementation of the newly enacted Anti-Corruption Act, No. 09 of 2023 (ACA).¹⁴ Second, they stress the need for stronger anti-money laundering mechanisms and improved oversight of illicit financial flows, particularly through monitoring Politically Exposed Persons (PEPs), and establishing a publicly accessible Beneficial Ownership Register. Both reports underscore the need to combat corruption across private-to-private, private-to-public, and enabler categories, highlighting the importance of comprehensive reforms to address the systemic nature of corruption in Sri Lanka.

Several other studies have also confirmed the presence of private sector corruption in Sri Lanka. For example, in 2020, GAN Integrity, a platform that compiles overviews of countries using domestic and international sources, has pegged Sri Lanka as having a ‘moderately high risk of corruption’ for businesses, especially where private sector activities intersect with public sector activities.¹⁵

A 2019 poll on public perception of private sector corruption in Sri Lanka revealed a divided opinion on the existence and severity of private sector corruption.¹⁶ Among the 1,300 respondents aged 18 to 80 from both urban and rural areas across the nine provinces, 27% viewed it as a significant issue, while 17% saw it as a major concern. Conversely, 13% believed private sector corruption was not an issue, and 34% considered it a relatively minor problem.¹⁷ Meanwhile, 9% were unsure or not adequately aware to take a view.¹⁸ These findings suggest that public awareness of the significance and impact of private sector corruption in Sri

8 Ibid.

9 Transparency International, *How Enablers Facilitate Illicit Financial Flows: Evidence from Africa*, December 2023, at <https://www.transparency.org/en/news/how-enablers-facilitate-illicit-financial-flows-from-africa> [last accessed 3 June 2024].

10 International Monetary Fund, *IMF Country Report No. 23/340, Sri Lanka* (2023), p.19.

11 Ibid.

12 Ibid.

13 Transparency International Sri Lanka, *Assessment on IMF Governance Diagnostic Technical Report and Civil Society Governance Diagnostic Report on Sri Lanka* (2023), at <https://us.transparency.org/app/uploads/2023/11/TISL-assessment-of-Civil-Society-IMF-diagnostic-reports20.pdf> [last accessed 30 December 2024].

14 Website of the Parliament of Sri Lanka, *Anti-Corruption Act, No. 9 of 2023*, at <https://parliament.lk/uploads/acts/gbills/english/6296.pdf> [last accessed 27 January 2025].

15 GAN Integrity, *Sri Lanka Risk Report* (Thursday, 5 November 2020), at <https://www.ganintegrity.com/country-profiles/sri-lanka/> [last accessed 30 December 2024]; See also Transparency International Sri Lanka, *Corruption Risk Mapping Research: A Study on Sri Lanka’s Private Sector*, (2024), at <https://www.tisrilanka.org/wp-content/uploads/2024/12/CRMR2024.pdf> [last accessed 30 December 2024], p. 14-28.

16 Transparency International Sri Lanka, *Global Corruption Barometer 2019: Sri Lanka*, at <https://www.tisrilanka.org/wp-content/uploads/2019/12/GCB2019.pdf> [last accessed 29 December 2024], p. 11.

17 Ibid, p. 3.

18 Ibid.

Lanka may be limited, especially when compared with the more rigorous assessments reflected in the governance diagnostics mentioned above.

Private sector corruption has far-reaching consequences that distort markets, reduce competition, and increase business costs throughout the supply chain. It undermines fair and efficient market operations, compromises product and service quality, and causes businesses to lose valuable opportunities.¹⁹

At an industry level, private sector corruption can create anti-competitive conditions that harm industry competitors, forcing some out of the market and disrupting both domestic and international trade.²⁰ This, in turn, impacts consumers through higher prices and lower-quality goods and services.²¹ For instance, a company that pays bribes to sell its products may neglect investing in innovation, technology, and employee training, thereby reducing overall productivity and product quality.²²

For individual businesses, corruption reduces productivity, damages reputations, and incurs significant costs in investigating and addressing the corruption.²³ Companies that bribe to gain contracts or business deals gain an unfair advantage over competitors whose superior products or services are overlooked. This practice undermines competition, as businesses that refuse or are unable to pay bribes are often excluded from the market.²⁴

Engaging in corruption can also be disadvantageous to the entities that seem to benefit from it. Companies that do engage in corruption can be targeted for further demands, incur losses, and experience unpredictability in their business transactions. If the terms of a corrupt deal are not met by the other party, the private sector entity is left without any legal recourse.²⁵

Systemic, widespread corruption often compels individuals and businesses within an industry to adopt corrupt practices as a means of survival. Over time, in such environments, corruption becomes normalised as a strategy to remain competitive.²⁶ Therefore, preventing the harmful effects of private sector corruption deserves as much attention as tackling corruption in the public sector.

These concerns have prompted international organisations, the private sector, and governments, including Sri Lanka's, to recognise the harmful effects of private sector corruption and the urgent need for preventative and accountability measures. In response, several international organisations have developed standards for anti-corruption ethics and compliance within the private sector.²⁷ Moreover, nearly 30 countries have enacted laws requiring private sector entities to implement anti-bribery and corruption programmes.²⁸

19 Module 5: Private Sector Corruption, op. cit., p.8.

20 Transparency International (2018), op. cit. p.4.

21 Ibid.

22 Module 5: Private Sector Corruption, op. cit., p.8.

23 Ibid.

24 Ibid.

25 Alexandra Wrage, *Bribery Is Bad... For Business*, 2017, at <https://www.forbes.com/sites/alexandrawrage/2017/01/25/bribery-is-bad-for-business/> [last accessed 27 January 2025].

26 Douglas Matorera, *Corruption: Drivers, Modes and Consequences*, 22 November 2022, at <https://www.intechopen.com/chapters/84293> [last accessed 2 January 2023].

27 OECD, UNODC and World Bank, *Anticorruption Ethics and Compliance Handbook for Business*, (2013); International Standards Organization, *ISO 37001: Antibribery Management Systems - Requirements with Guidance for Use*, (Geneva, 2016).

28 Richard Messick, *Nations with Anticorruption Compliance Programs*, 21 November 2023; Sankhitha Gunaratne, *Should Measures Be Taken to Heighten Private Sector Anti-Bribery and Corruption Compliance in Sri Lanka? A Study of the Legislative and Internal Company Controls Landscape*, (unpublished), p.4; GAN Integrity (2020), op.cit., p.3.

However, addressing the problem of private sector corruption in Sri Lanka – and globally – cannot be solved by legislation alone. The lack of law enforcement remains a significant weakness in Sri Lanka’s anti-corruption landscape. Yet, improved legislation that is in keeping with international obligations and best practice, and is informed by contextual factors, can form the basis for strengthening law enforcement. Therefore, more comprehensive and contextualised legislation remains a necessary component of effectively addressing and combatting private sector corruption in Sri Lanka.

This report aims to conduct a gap analysis of Sri Lanka’s legal and regulatory framework for addressing private sector corruption, benchmarking it against the United Nations Convention Against Corruption (UNCAC).

2. Research Approach

The UNCAC is used as the primary framework for this research due to its status as the most widely accepted international convention on corruption with global applicability. Additionally, Sri Lanka's recent efforts under the IMF programme to align its domestic laws including the Anti-Corruption Act, No. 09 of 2023 with the UNCAC, further underscore the relevance of this instrument.

The research approach began with an analysis of all UNCAC articles specifically addressing the private sector. Key areas of relevance to private sector corruption were then identified, including preventive measures, bribery, liability of legal entities, whistleblower protection, trading in influence, embezzlement, campaign financing, and asset declarations (see Table 2).²⁹ Sri Lanka ratified the UNCAC in 2004, and as such has participated in two reviews of its compliance with the UNCAC.³⁰ The study incorporated insights from Sri Lanka's 2013 and 2017 UNCAC country reviews, evaluating whether previously identified gaps have been addressed.

While the focus of this report is on identifying gaps, the report also provides limited recommendations based on the UNCAC and relevant best practices tailored to Sri Lanka's context, using available data.

This analytical study involves doctrinal research, drawing on legislation, books, official documents, papers, and other sources relevant to the analysis of the legal framework. The research was further informed by Key Informant Interviews (KIIs) and roundtable discussions. Between May and June 2024, 10 KIIs were conducted with participants from diverse backgrounds, including representatives from local independent regulatory bodies, private sector professionals, and international experts in private sector dealings. Additionally, two roundtable discussions were held in June 2024, involving 13 participants in the first session and 10 in the second. These engagements enriched the study by providing structure, practical perspectives and expert insights.

Limitations

The objective of this report is limited to setting out a gap analysis between Sri Lanka's current law and the UNCAC. It does not provide a detailed account of areas where existing laws are already in compliance with the UNCAC. The analysis focuses specifically on sections of the law that are either applicable to or impose obligations on the private sector. Consequently, while a law may be identified in this report as compliant with UNCAC in relation to the private sector, it may still fall short of compliance in other areas of applicability.

29 It must be noted that the area of procurement is not dealt with in this review, as new procurement regulations, a manual and a law are currently being drafted.

30 UNCAC's provisions do not automatically form part of Sri Lanka's law as Sri Lanka is a dualist country. International conventions must be 'enabled' by enacting domestic legislation that incorporates provisions that Sri Lanka wishes to accept.

Due to the focus on the comparison with the UNCAC, the report does not cover all international standards or global best practices, even though certain best practices in Sri Lanka and elsewhere have moved far beyond UNCAC's own standards in the global conversation on anti-corruption.³¹ In assessing Sri Lanka's domestic legal framework against UNCAC, the report also does not distinguish between mandatory and non-mandatory provisions of UNCAC, as Sri Lanka's own commitments under the IMF programme attempt to align the domestic laws with the UNCAC as a whole.³²

Being a legal gap analysis, the report also does not attempt to assess the weaknesses in the implementation or enforcement of the legal and regulatory framework – issues highlighted as concerns in both the IMF's Governance Diagnostic Assessment (GDA) and the Civil Society Governance Diagnostic Report (GDR) on private sector corruption.

Two important areas of private sector corruption are not covered in this legal gap analysis: procurement, and anti-money laundering.

Procurement was not covered due to the current transitional state of Sri Lanka's procurement laws. A new guideline was gazetted and a procurement manual published—both coming into effect on January 1, 2025.³³ Further guidelines are expected, and a new procurement law is anticipated by May 2025. Given these ongoing changes, procurement was left out of the scope of this report.

Anti-money laundering, which is another significant area relating to the private sector acting as enablers of corruption, was not included in the scope of this report, recognising that the IMF's GDA and Civil Society GDR have already made several valuable recommendations on improving anti-money laundering mechanisms. This topic may be addressed in greater detail in a subsequent publication.

Structure

This study is presented in three main sections. **The first section outlines the current legal framework governing private sector corruption in Sri Lanka**, providing the necessary context for the analysis that follows.

The second section evaluates Sri Lanka's legal framework against international standards, particularly the UNCAC, and identifies **nine key gaps related to private sector corruption**. This section is divided into two parts. The first part examines three broad, **overarching gaps** that cut across major areas critical to combatting corruption in the private sector. The **second part** focuses on **six specific gaps** within **three specific thematic areas**, offering a more detailed analysis of issues related to private-sector corruption. The first thematic area analysed is Sri Lanka's preventive legal framework for private-sector corruption which has three specific gaps. The second, distinct thematic area explored is in relation to private-sector bribery with two specific gaps identified. The final thematic area is on trading in influence with one identified specific gap.

The third and final section presents actionable recommendations, and highlights opportunities for improving the legal and regulatory framework to combat private sector corruption in Sri Lanka.

31 See for example, United Nations General Assembly 2021, Political Declaration *Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation*, at <https://documents.un.org/doc/undoc/gen/n21/138/82/pdf/n2113882.pdf> [last accessed 27 January 2025].

32 For instance, the priority recommendations outlined in the Assessment on IMF Governance Diagnostic Technical Report and Civil Society Governance Diagnostic Report on Sri Lanka requires all enactments within the anti-corruption framework to fully aligned with UNCAC standards.

33 Website of the National Procurement Commission of Sri Lanka, *Guidelines*, at <https://nprocom.gov.lk/guidelines/> [last accessed 27 January 2025].

3. International and Domestic Legal Framework Governing Private Sector Corruption

This section provides an overview of the international instruments referenced for the legal gap analysis, including the UNCAC, as well as best practices adopted by other countries to combat private sector corruption. It then briefly outlines the structures, laws, regulations, and entities that constitute Sri Lanka's private sector anti-corruption ecosystem, as it relates to private-to-public and private-to-private corruption.

3.1. INTERNATIONAL LEGAL FRAMEWORK

Private sector corruption is governed by a range of international legal instruments, including the UNCAC, the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Global Compact, ISO 37001, Antibribery Management Systems, and the Jakarta Principles, among others. These standards address various aspects such as the criminalisation of corruption offences, accounting and auditing standards, institutional practices, taxation, business integrity, transparency, and accountability—all of which are critical to combating corruption in the private sector. These instruments can apply globally, regionally, or to certain countries, and some can be acceded to by private sector entities directly, and of their own volition. While this report references multiple instruments, its primary focus is on the UNCAC and the adoption of its provisions in Sri Lanka.

The UNCAC has been described as the 'most ambitious international legal tool' in the fight against corruption, due to its broad scope and three fundamental pillars: preventive measures, criminalisation and law enforcement, and international cooperation.³⁴ It addresses both private-to-public and private-to-private corruption, placing obligations on States Parties (governments) while also directly influencing behaviours of private actors.³⁵ Notably, the UNCAC does not provide a specific definition of corruption, allowing it to cover various forms of corruption without being limited by predefined government-negotiated definitions.³⁶

34 Website of the Anti-Corruption Resource Centre, op. cit.

35 UNCAC Civil Society Coalition, *9th Regional Meeting for Europe, the US and Canada: Engaging the Private Sector in the Fight against Corruption and the UNCAC*, (2023), at <https://uncaccoalition.org/9th-regional-meeting-for-europe-the-us-and-canada/> [last accessed 3 January 2025].

36 Transparency International, *Using the UN Convention against Corruption to advance anti-corruption efforts: A guide*, at <https://uncaccoalition.org/resources/uncac-guide/uncac-advance-anti-corruption-efforts-guide-en.pdf> [last accessed 3 January 2024], p. 8.

The UNCAC requires States Parties to prevent private sector corruption, including mandatory preventive measures and measures that States Parties are encouraged to adopt.³⁷ Although this report centres on compliance with the UNCAC, it also incorporates relevant best practices that have emerged since the convention's adoption, to provide a wider perspective on addressing private sector corruption.³⁸

Sri Lanka became a signatory to the UNCAC on March 31, 2004, and it entered into force on 14 December 2005.³⁹ However, as Sri Lanka follows a dualist system – where international law is not automatically enforceable domestically⁴⁰ – domestic legislation must be enacted for the UNCAC to have legal effect in the country. Article 156A (1)(c) of Constitution of Sri Lanka allows for measures to implement UNCAC, and any other international convention relating to the prevention of corruption, to which Sri Lanka is a party. Subsequently, in September 2023, the Sri Lankan Parliament enacted the Anti-Corruption Act, No. 09 of 2023. The preamble of the ACA specifies that the Act is to give effect to certain provisions of the UNCAC and other internationally recognised norms, standards, and best practices.

Many of UNCAC's provisions are mandatory whilst others are either 'strongly encouraged' or optional.⁴¹ As such, the language of the UNCAC requires careful interpretation, particularly regarding its regulatory impact. For instance, the use of the terms 'shall' and 'may' reflects different levels of obligation: 'shall' denotes a mandatory action, while 'may' indicates discretionary or optional actions.⁴² This study compares the existing domestic framework for combating private sector corruption with the UNCAC, in order to identify legislative gaps, regardless of whether it is a mandatory or optional provision.

Table 1 below provides a summary of selected UNCAC articles relevant to private sector corruption, which were analysed for this report. The table is divided into two sections: the first focuses on articles related to the prevention framework, while the second highlights articles addressing specific offences within the private sector.

Table 1: Areas Related to Private Sector Corruption in the UNCAC

	Areas related to Private Sector Corruption	UNCAC Article(s)
Prevention Framework	Preventive measures in the private sector	Article 12 – Private sector
	Cooperation between national authorities and the private sector	Article 39(1) – Cooperation between national authorities and the private sector

37 Ibid.

38 U4 Anti-Corruption Resource Centre, *How to make the UN Convention against Corruption's Implementation review mechanism more effective*, 2024, at <https://www.cmi.no/publications/file/9366-how-to-make-the-un-convention-against-corruption-s-implementation-review-mechanism-more-effective.pdf> [last accessed 30 December 2024], p. 7.

39 Website of the CIABOC, *International Relations, United Nations Convention against Corruption*, 2015, at <https://ciaboc.gov.lk/media-centre/international-relations/517-united-nations-convention-against-corruption#:~:text=Sri%20Lanka%20signed%20the%20Convention,Lanka%20on%2014%20December%202005> [last accessed 3 January 2024].

40 Oxford Bibliographies, *Monism and Dualism in International Law* (2018), at <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0168.xml> [last accessed 28 June 2024].

41 U4 Anti-Corruption Resource Centre, *UNCAC in a Nutshell*, May 2017, at <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf> [last accessed 2 January 2025].

42 Cornell Law School, Legal Information Institute, *Shall* (2021), at <https://www.law.cornell.edu/wex/shall#:~:text=Shall%20is%20an%20imperative%20command,implying%20some%20degree%20of%20discretion> [last accessed 28 June 2024].

	Areas related to Private Sector Corruption	UNCAC Article(s)
	Protection of whistleblowers, witnesses, experts, and victims	Article 32 – Protection of witnesses, experts and victims Article 33 – Protection of reporting persons
	Liability of legal persons	Article 26 – Liability of legal persons
	Campaign finance	Article 7 – Public sector
	Asset declarations	Article 8 – Codes of conduct for public officials
Private Sector Corruption Offences (i.e., Private-to-Private Sector or Private-to-Public Sector)	Bribery	Article 15 – Bribery of national public officials Article 16 – Bribery of foreign public officials and officials of public international organizations Article 21 – Bribery in the private sector
	Trading in influence	Article 18 – Trading in influence
	Trading in influence	Article 22 – Embezzlement of property in the private sector

3.2. DOMESTIC LEGAL FRAMEWORK

Sri Lanka's domestic legal framework governing private sector corruption in Sri Lanka spans several laws. In conducting this research, the following laws were analysed:

- Monetary Law Act, No. 58 of 1949
- Banking Act, No. 30 of 1988
- Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995
- Finance Leasing Act, No. 56 of 2000
- Regulation of Insurance Industry Act, No. 23 of 2000
- Companies Act, No. 07 of 2007
- Finance Business Act, No. 42 of 2011
- Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021
- Anti-Corruption Act, No. 09 of 2023
- Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023
- Regulation of Election Expenditure Act, No. 03 of 2023

The primary legislation governing anti-corruption in Sri Lanka, including private sector bribery and corruption, is the recently enacted Anti-Corruption Act, No. 09 of 2023. The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) holds the authority to investigate and prosecute corruption,

including offences within the private sector under this new law. The Act introduces several salient provisions. For the first time in Sri Lanka, it introduces an offence of private sector bribery and expands the scope of gratification to include sexual bribery going beyond the scope of UNCAC. It also strengthens whistleblower protections and permits CIABOC to issue codes of conduct for the private sector, providing a significant step forward in the legal framework to combat private sector corruption in Sri Lanka.

Outside of the ACA, Sri Lanka's broader legal framework also addresses private sector corruption through various laws regulating financial record-keeping, auditing, and transparency. Key legislation includes the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995, The Companies Act, No. 07 of 2007, Securities and Exchange Commission of Sri Lanka Act, No. 19 of 2021, Monetary Law Act, No. 58 of 1949, Banking Act, No. 30 of 1988, Regulation of Insurance Industry Act, No. 23 of 2000, Finance Business Act, No. 42 of 2011, and Finance Leasing Act, No. 56 of 2000. For instance, Section 154 of the Companies Act, No. 07 of 2007 mandates all private sector companies to appoint an auditor to examine its financial statements. Section 148 of the Companies Act imposes a duty on companies to maintain accurate accounting records, while Sections 511 and 512 impose penalties for falsification of records and providing false statements. Additionally, the Accounting and Auditing Standards Act, No. 15 of 1995 (AASA) grants the Chartered Institute of Accountants authority to set standards for Specified Business Enterprises, with oversight provided by the Sri Lankan Accounting and Auditing Standards Monitoring Board.⁴³

Complementing these laws, recent regulatory updates further emphasise private sector accountability and integrity. The 2023 Colombo Stock Exchange (CSE) Listing Rules⁴⁴ for Public Listed Companies and the 2021 Central Bank of Sri Lanka Finance Business Act Directions⁴⁵ for Finance Businesses, establish internal control procedures to prevent corruption in listed entities by promoting integrity standards. For instance, Section 9 of the CSE Listing Rules mandates public listed companies to implement whistleblowing and anti-bribery policies, as well as adopt a Code of Business Conduct and Ethics for directors and employees. Entities must also disclose these policies on their websites. Similarly, the Code of Best Practice on Corporate Governance issued by the Institute of Chartered Accountants of Sri Lanka provides voluntary guidance for public listed companies and small and medium enterprises to adopt codes addressing conflict of interest, bribery, and corruption, among other areas.⁴⁶ Further reinforcing these efforts, voluntary codes such as those promoted by the Ceylon Chamber of Commerce, help reinforce integrity standards.

Despite the existence of several laws governing the private sector, including industry/sector-specific rules and regulations, gaps remain in the legal framework when assessed against Sri Lanka's obligations under the UNCAC. These gaps, along with recommendations for addressing them, are explored in subsequent sections of this report.

43 Website of the Institute of Chartered Accountants of Sri Lanka, *Accounting and Auditing Standards*, at [https://www.casrilanka.com/casl/index.php?option=com_content&id=1186#:~:text=15%20of%201995%20has%20empowered,\(SBEs\)%20in%20Sri%20Lanka](https://www.casrilanka.com/casl/index.php?option=com_content&id=1186#:~:text=15%20of%201995%20has%20empowered,(SBEs)%20in%20Sri%20Lanka) [last accessed 27 January 2025].

44 Colombo Stock Exchange, *Circular No 04/2023, Amendments to Rule 7.10 and Section 9 of the Listing Rules of the Colombo Stock Exchange*, 2023, at https://cdn.cse.lk/cmt/upload_report_file/hPLxglBoBHB0ZRNs_11Sep2023051530G-MT_1694409330850.pdf [last accessed 29 January 2025].

45 Monetary Board Central Bank of Sri Lanka, *Finance Business Act Directions, No.05 of 2021*, at https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/snbfi_finance_business_act_directions_no_5_of_2021_e.pdf [last accessed 29 January 2025].

46 Website of the Institute of Chartered Accountants of Sri Lanka, *Code of Best Practice on Corporate Governance*, 2023, at https://casrilanka-my.sharepoint.com/:b:/g/personal/educationpilotpapers_casrilanka_org/EVlgCBCZV1IMr9SfjIU-600gBWcxJqI7synXN3Zh4JBhm6Q?e=DjPp2V [last accessed 29 January 2025].; Website of the Institute of Chartered Accountants of Sri Lanka, *A Guide to Corporate Governance in Small and Medium Enterprises*, at https://www.casrilanka.com/casl/images/stories/2019/pdfs/guide_to_corporate_governance_in_smes.pdf [last accessed 29 January 2025].

4. Nine Key Gaps in the Domestic Legal Framework in Comparison to the UNCAC

This section of the report analyses **nine key gaps in Sri Lanka's domestic legal framework for addressing private sector corruption**, as measured against the country's obligations under the UNCAC. These gaps are divided into two parts. The first part highlights three broad, overarching gaps in the key anti-corruption legislation in Sri Lanka which affect all thematic areas critical to combatting private sector corruption (see Table 2). The second part examines six specific gaps in three distinct thematic areas, providing a detailed analysis of the issues. The first thematic area analysed is 'preventive measures' under which three specific gaps are identified. The second thematic area examines private sector bribery which has two identified specific gaps. The final thematic area deals with trading in influence which has one specific gap identified.

Table 2 provides a summary of select areas related to private sector corruption analysed for this report, aligning relevant UNCAC articles with corresponding domestic laws in Sri Lanka. It also identifies gaps in the legal framework that hinder effective efforts to address private sector corruption and indicates areas where the domestic legal framework seems to comply with UNCAC (marked as 'none identified' under the column titled 'Gap'). All assessments in relation to UNCAC were limited to provisions within the specific laws listed below that apply to the private sector.

Table 2: Nine Key Gaps in the Domestic Legal Framework

Areas related to Private Sector Corruption	Relevant UNCAC Article	Relevant Domestic Law	Type of Gap	Gap
Liability of Legal Persons	Article 26 - Liability of Legal Persons	Anti-Corruption Act, No. 09 of 2023	Overarching gap	1. Narrow ACA definition of private sector entity
		Common Law – Identification Doctrine		2. Insufficient penalties for legal persons
				3. Limitations in establishing corporate criminal liability

Areas related to Private Sector Corruption	Relevant UNCAC Article	Relevant Domestic Law	Type of Gap	Gap
Preventive Measures in the Private Sector	Article 12 – Private Sector	Companies Act, No. 07 of 2007	Specific gap	4. No identifiable law governing beneficial ownership 5. No public access to beneficial ownership information
		No law		6. No identifiable law preventing conflicts of interest restricting the professional activities of former public officials
Bribery	Article 15 – Bribery of National Public Officials Article 16 – Bribery of Foreign Public Officials and Officials of Public International Organisations Article 21 – Bribery in the Private Sector	Anti-Corruption Act, No. 09 of 2023	Specific gap	7. Failure to prohibit corporates from soliciting or accepting a bribe 8. Absence of positive obligation to prevent bribery
Trading in Influence	Article 18 – Trading in Influence	Anti-Corruption Act, No. 09 of 2023	Specific gap	9. Does not criminalise the offence of trading in influence
Embezzlement	Article 22 – Embezzlement of Property in the Private Sector	Penal Code of Sri Lanka 1883		None identified*
Cooperation between National Authorities and the Private Sector	Article 39(1) – Cooperation between National Authorities and the Private Sector	Financial Transactions Reporting Act, No. 06 of 2006 Anti-Corruption Act, No. 09 of 2023		None identified*

Areas related to Private Sector Corruption	Relevant UNCAC Article	Relevant Domestic Law	Type of Gap	Gap
Protection of Whistleblowers, Witnesses, Experts, and Victims	Article 32 – Protection of Witnesses, Experts and Victims Article 33 – Protection of Reporting Persons	Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023		None identified*
Campaign Finance	Article 7 – Public Sector	Regulation of Election Expenditure Act, No. 3 of 2023		None identified*
Asset Declarations	Article 8 – Codes of Conduct for Public Officials	Anti-Corruption Act, No. 09 of 2023		None identified*

**Thematic areas where the gap is evaluated as “none identified”, indicate that those specific sections of the laws relevant to the private sector seem to be in compliance with UNCAC. However, this does not mean that there are no gaps in the particular piece/s of legislation. The analysis focused exclusively on (a) the application of these laws to the private sector, and (b) against Sri Lanka’s UNCAC obligations. As a result, the identified laws may still fail to comply with the UNCAC in other areas of applicability and may not fully align with international best practices, which could reveal weaknesses.*

5. Part I: Three Overarching Gaps - Limitations in Imposing Liability for Legal Persons

This section examines Sri Lanka's ACA in the context of its obligations under Article 26 and identifies **three overarching gaps**: (1) **narrow definition of “private sector entity” in the ACA**, which excludes a significant portion of the private sector from anti-corruption measures, (2) **limitations in determining criminal liability for legal persons**, constrained by the common law ‘identification doctrine’, and (3) **inadequate penalties for legal persons**, both in severity and scope.

Article 26 of the UNCAC mandates that States Parties impose sanctions not only on natural persons in the public and private sectors who engage in or facilitate corruption, but also on legal persons, as outlined in Table 3.⁴⁷ This article is based on the premise that legal entities, including commercial companies or charitable organisations, as well as complex legal arrangements, can be exploited to conceal true ownership, clients, or transactions related to corrupt activities.⁴⁸

Serious and sophisticated crimes are often committed through or under the guise of legal personhood. To address this, Article 26 of UNCAC requires States Parties to establish measures that ensure corporate liability for corruption offences. By holding both legal and natural persons accountable, States can dismantle the protective shields that facilitate corrupt practices.⁴⁹

The gaps identified above undermine the enforcement of anti-corruption measures, and hinder Sri Lanka's compliance with Article 26. They are overarching because they affect all legal persons in the private sector and apply to all provisions of the ACA. As a result, even in areas where this report identifies no specific gaps, these broader issues persist, leaving the legal framework short of the comprehensive coverage required under the UNCAC, which does not take a segmented approach to the private sector.

47 UNDOC, *The Liability of Legal Persons; Implementation under the United Nations on Convention on Corruption with a focus on Malaysia*, at https://www.unodc.org/roseap/uploads/documents/Publications/2024/Liability_of_Legal_Persons_-_Implementation_under_UNCAC_with_a_focus_on_Malaysia_Sep_2024.pdf [last accessed 30 December 2024], p.3.

48 UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption (Second revised edition)* (2012), p. 88.

49 Ibid.

Table 3: UNCAC Article 26 – Liability of Legal Persons

International Convention/Standards	Description
UNCAC Article 26 – Liability of Legal Persons	<ol style="list-style-type: none"> Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Section 162 of the ACA explicitly defines ‘person’ to include both natural and legal persons, thereby imposing liability on companies alongside individuals for corruption and bribery-related offences. This provision resolved an uncertainty of interpretation that had been queried under the previous framework.⁵⁰ However, a closer examination of Sri Lanka’s legal framework reveals three gaps in the liability imposed on legal persons, which are outlined below.

5.1. THE ACA DEFINES “PRIVATE SECTOR ENTITY” NARROWLY

The ACA defines a “private sector entity” narrowly, restricting it to ‘specified business enterprises’ (SBEs).⁵¹ Therefore, all offences identified in the ACA only apply to a fraction of the private sector entities in Sri Lanka.

This definition adopted by the ACA effectively excludes many private sector companies. As per the last Annual Report of the Sri Lanka Accounting and Auditing Standards Board, only 1,707 companies in Sri Lanka were identified SBEs.⁵² An SBE is identified in Section 5 of the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995. The regulations under this Act define an SBE as follows:

- “Companies licensed under the Banking Act, No. 30 of 1988.
- Companies authorised under the Control of Insurance Act, No. 25 of 1962, to carry on insurance business.
- Companies carrying on leasing business.

⁵⁰ Past reviews of Sri Lanka’s compliance with Article 26 of the UNCAC primarily highlighted two key issues with the now-repealed Bribery Act: (a) whether the definition of a ‘person’ included both natural and legal persons, as is the case in the Penal Code, and (b) whether legal persons could be held criminally liable.

⁵¹ Section 162, Anti-Corruption Act, No. 9 of 2023.

⁵² Sri Lanka Accounting and Audit Standards Monitoring Board, *2023 Annual Report*, at <https://slaasmb.gov.lk/wp-content/uploads/2024/10/SLAASMB-Annual-Report-2023-English.pdf> [last accessed 30 December 2024], p.12.

- Factoring companies.
- Companies registered under the Finance Companies Act, No. 78 of 1988.
- Companies licensed under the Securities and Exchange Commission Act, No. 36 of 1987, to operate unit trust.
- Fund Management Companies.
- Companies licensed under the Securities and Exchange Commission Act, No. 36 of 1987, to carry on business as stockbrokers or stock dealers.
- Companies licensed under the Securities and Exchange Commission Act, No. 36 of 1987, to operate a Stock exchange.
- Companies listed in a Stock Exchange licensed under the Securities and Exchange Commission Act, No. 36 of 1987.
- Other Companies:
 1. Which have a turnover in excess of LKR 500 million;
 2. Which at the end of the previous financial year, had shareholders equity in excess of LKR 100 million;
 3. Which at the end of the previous financial year, had gross assets in excess of LKR 300 million;
 4. Which at the end of the previous year had liabilities to banks and other financial institutions in excess of LKR 100 million;
 5. Which have a staff in excess of 1,000 employees.
- Public corporations engaged in the sale of goods or the provision of services.
- A group of companies, any one of which fall within any of the above categories. For this purpose, “a group of companies” means a holding company and its subsidiaries, the accounts of which have to be consolidated under Section 147 of the Companies Act, No.17 of 1982”.⁵³

Due to this restrictive definition, the majority of Small and Medium Enterprises (SMEs) are excluded from the ACA's scope. SMEs, as defined by the Ministry of Industry and Commerce, are businesses with fewer than 300 employees, and annual revenue below LKR 750 million. Notably, Sri Lanka's definition of SMEs also includes micro enterprises, which are businesses with fewer than 10 employees, and annual revenue below LKR 15 million.⁵⁴ SMEs collectively account for nearly (or more than) 75% of all enterprises in Sri Lanka.⁵⁵ As the SBE definition excludes most SMEs, a significant portion of the private sector falls outside the ACA's regulatory framework, leaving these businesses largely unregulated in terms of anti-corruption measures.

This gap is also problematic from an economic perspective. The exclusion of certain entities within the private sector from the application of the ACA creates an unequal playing field for other private sector entities, and can distort market competition. The non-sanctioning of corruption for a part of the private

⁵³ The Website of the Sri Lanka Accounting and Auditing Standards Monitoring Board, *Specified Business Enterprises*, at <https://slaasmb.gov.lk/specified-business-enterprises/> [last accessed 30 December 2024].

⁵⁴ Ministry of Industry and Commerce, National Policy Framework for Small Medium Enterprise (SME) Development (2017), at http://www.sed.gov.lk/sedweb/en/wp-content/uploads/2017/03/SME-fram-work_eng.pdf [last accessed 27 January 2025]. It must be noted that Sri Lanka does not have a single universally accepted definition for SMEs and MSMEs.

⁵⁵ Ibid, p.1/4.; Asian Development Blog, *Five Ways to Connect Sri Lanka's Small Businesses to Global Value Chains*, at <https://blogs.adb.org/blog/five-ways-connect-sri-lanka-s-small-businesses-global-value-chains> [last accessed 30 December 2024].

sector distorts competition as it gives companies that use corrupt methods an unfair advantage over their competitors.⁵⁶

5.2. LIMITATIONS IN DETERMINING CRIMINAL LIABILITY FOR LEGAL PERSONS

Sri Lanka's legal framework remains unsettled regarding how the mental element (*mens rea*)⁵⁷ of crimes is attributed to legal persons (such as companies), creating practical difficulties in prosecuting such entities. Establishing the mental element for a legal person is particularly complex, as it requires determining how intent can be attributed to an entity. Under common law, this issue is addressed through the 'identification doctrine,' but this approach has well-documented limitations.

Under the identification doctrine established in *Tesco Supermarkets Ltd. v. Natrass*⁵⁸ by the House of Lords, a legal person would be criminally liable only if the mental element of the offence could be attributed to someone who is the company's "directing mind and will." Essentially, the intent of a person in a senior decision-making role, such as a director, is imputed to the company. This would require establishing a link between the act of corruption, and the mental element of that senior decision-maker.

The identification doctrine has significant limitations that make it ineffective and unsatisfactory, particularly for bribery offences. First, criminal liability requires the guilty intent to be attributed to a very senior person in the company who can be considered the 'directing mind and will' of the company. Second, the guilty intent must be found in a single person with the directing mind and will. The collective intent of several persons in the company will not suffice. Third, there is no liability imposed on the company, even if "the lack of supervision or control by senior management made the commission of the crime possible."⁵⁹ This fails to account for the realities of modern companies which have complex and collective decision-making structures.⁶⁰ Therefore, an effective regime which imposes liability upon legal persons for bribery, would have to address the limitations of the identification doctrine set out above.⁶¹

In Sri Lanka, the approach to attributing the mental element to a legal person in cases related to private sector corruption remains unsettled. In *Central Bank of Sri Lanka v. Lankem Tea and Rubber Plantations (Pvt) Ltd*, the Supreme Court indicated that the 'identification doctrine' would be adopted to establish the mental element of a legal person.⁶² It held that where a specific state of mind is required the doctrine of 'identification,' would be relied on to attribute the mental state of the 'directing mind and will' to the company.⁶³

This gap would apply to all offences in the ACA which can be committed by a 'person' including legal persons. As no prosecutions of companies under the ACA have occurred to date, the limitations of the identification doctrine could persist leaving significant gaps in the liability of legal persons for corruption offences.

56 Module 5: Private Sector Corruption, op. cit., p.10.

57 The *mens rea* or mental element of an offence is the intention or knowledge of wrongdoing with which the offence is committed. The mental element constitutes a part of the offence and is distinct from the offensive act that is committed.

58 *Tesco Supermarkets Ltd. v. Natrass* [1972] AC 153.; *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* (1915) AC 705 HL.

59 ADB and OECD, *The Criminalisation of Bribery in Asia and the Pacific* (2011), p. 475/476.

60 U.K. Law Commission, *Reforming Bribery* (2008), para. 6.27.

61 ADB and OECD (2011), op. cit. p. 476.

62 *Central Bank of Sri Lanka v. Lankem Tea and Rubber Plantations (Pvt.) Ltd* [2009] 2 SLR 75; *The Officer in Charge Police Station, Wellawatte v. Royal Hospitals Pvt Ltd* (SC Appeal No: 12/2019); ADB and OECD (2011), p. 475.

63 Ibid.

5.3. INSUFFICIENT PENALTIES FOR LEGAL PERSONS

The ACA falls short in addressing penalties for legal persons on two critical fronts: (a) inadequate severity of punishments, and (b) insufficient scope of sanctions.

First, the ACA imposes insufficient monetary penalties for legal persons. For instance, Section 106(1) that covers an aspect of private sector bribery and is applicable to legal persons,⁶⁴ states that the offence is punishable by imprisonment of up to seven years and/or a fine not exceeding one million rupees. For legal persons, who can only be fined and not imprisoned, this maximum fine is highly inadequate.⁶⁵

Second, the ACA **does not explicitly provide for any non-monetary sanctions**. Although the Procurement Guidelines 2006 (PG 2006) which governed Sri Lanka's public procurement process until recently provided for non-monetary sanctions such as blacklisting and disqualification of companies, it is only to a limited extent. For example, contractors could be blacklisted for defaulting or failing to meet contractual obligations, but not explicitly for engaging in corrupt practices.⁶⁶ Firms could also be disqualified from a bid for offering gifts or inducement during the bidding stage, yet this was not explicitly identified as valid grounds for blacklisting.⁶⁷

The new Procurement Guidelines of 2024 (gazetted on November 25, 2024 and effective from January 1, 2025) introduces similar provisions.⁶⁸ The corresponding provisions in the Procurement Manual that accompanies the Guidelines stipulate that entities may be blacklisted for trying to 'unduly influence the outcome of the procurement'.⁶⁹ However, this provision does not explicitly address corruption as a ground for blacklisting and limits the scope to influencing the procurement outcome, leaving other stages of the procurement process uncovered. As such the gaps identified in the PG 2006 persist, leaving a significant portion of corrupt practices unaddressed.

The gaps identified above cut across all major areas relating to combatting private sector corruption that are dealt with in this report. Importantly, they undermine areas where compliance gaps were not identified, such as whistleblower protection, cooperation between companies and authorities, embezzlement, campaign financing, and asset declarations, as well as adding on to areas with identified gaps, including preventive measures in the private sector, bribery, and trading in influence. These gaps in the ACA are inconsistent with Article 26 of the UNCAC, which mandates that all legal persons must be legally liable for corruption offences.

64 See interpretation of a 'person' in Section 162, Anti-Corruption Act, No. 09 of 2023.

65 Transparency International Sri Lanka, *Legislative Brief*, at <https://www.tisrilanka.org/wp-content/uploads/2022/09/Comments-submitted-by-TISL-to-Ministry-of-Justice.pdf> [last accessed 2 January 2024].

66 Verite Research, *Backwards in Blacklisting: Gaps in Sri Lanka's Procurement Framework Enable Corruption* (November 2023), at https://www.veriteresearch.org/wp-content/uploads/2024/01/BackwardsinBlacklisting_ResearchBrief_Nov2023.pdf [last accessed 30 December 2024], p. 2.

67 Ibid.

68 Guideline 10.1, Procurement Guidelines 2024.

69 Chapter 10, Procurement Manual 2024.

6. Part II: Six Specific Gaps in Domestic Legal Framework Across Three UNCAC Themes

This section examines **six specific gaps** within Sri Lanka's anti-corruption framework, spanning **three distinct thematic areas** of the UNCAC: (i) preventative measures in the private sector, (ii) bribery in the private sector, and (iii) trading in influence. The six specific gaps are set out below:

Thematic Area 1 – Gaps in 'Preventive Measures:

- No legal requirement for companies to disclose ultimate beneficial ownership to the Registrar of Companies.
- Limited public access to beneficial ownership information.
- Lack of laws preventing conflict of interest involving the ability of public officials to transition into the private sector.

Thematic Area 2 – Gaps in Bribery in the Private Sector:

- Corporate entities are not held liable for soliciting or accepting bribes.
- No positive legal obligation for companies to implement anti-bribery compliance measures.

Thematic Area 3 – Gap in Trading in Influence:

- Fails to effectively criminalise the offence of trading in influence.

6.1. THEMATIC AREA ONE – BENEFICIAL OWNERSHIP AND CONFLICT OF INTEREST: WEAK LINKS

This thematic area explores three specific gaps in relation to Sri Lanka's preventive framework for private sector corruption. It examines Sri Lanka's compliance with Article 12, focusing on three critical gaps in the domestic legal framework: **(1) the absence of a legal requirement to disclose ultimate beneficial ownership information to the authorities, (2) limited public access to beneficial ownership information, and (3) lack of laws preventing conflict of interest involving the ability of public officials to transition into the private sector.**

The UNCAC mandates that States Parties establish a legal framework to prevent corruption in the private sector.⁷⁰ Article 12, a mandatory provision, outlines several measures for this purpose, including the implementation of accounting and auditing standards and the imposition of penalties for non-compliance. These measures are detailed in Table 4. The identified gaps in Sri Lanka's anti-corruption framework are significant because they undermine essential safeguards against private sector corruption.

State authorities responsible for company registration and oversight must have the authority to collect, verify, and act on detailed information about legal and natural persons involved in companies, particularly when illicit activity is suspected.⁷¹ This is crucial for ensuring transparency and accountability. Additionally, clear and enforceable rules are needed to prevent conflicts of interest when public officials transition to private sector roles.⁷² Without such measures, there is a risk of misuse of confidential information, favouritism, and undue influence, all of which compromise the integrity of governance and distort fair competition in the private sector. These gaps weaken Sri Lanka's compliance with UNCAC and create vulnerabilities that facilitate corruption.

Table 4: UNCAC Article 12 – Private Sector

International Convention/ Standards	Description
UNCAC Article 12 – Private Sector	1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, 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. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

⁷⁰ Macedonian Center for International Cooperation, *Guide: Importance of the Private Sector in the Implementation of UNCAC in Southeast Europe* (2023), at https://www.unodc.org/documents/NGO/PS-Guide-on-UNCAC-for-SEE/PS_Guide_on_UNCAC_for_SEE.pdf [last accessed 30 December 2024], p. 3.

⁷¹ UNODC, *Technical Guide for the Implementation of the United Nations Convention against* (2009), p. 58.

⁷² Ibid, p. 59.

International Convention/ Standards	Description
	<p>2. Measures to achieve these ends may include, inter alia:</p> <ul style="list-style-type: none"> (a) Promoting cooperation between law enforcement agencies and relevant private entities; (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State; (c) Promoting transparency among private entities, including, where appropriate, <u>measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;</u> (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities; (e) <u>Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;</u> (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

International Convention/ Standards	Description
	<p>3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:</p> <p>(a) The establishment of off-the-books accounts;</p> <p>(b) The making of off-the-books or inadequately identified transactions;</p> <p>(c) The recording of non-existent expenditure;</p> <p>(d) The entry of liabilities with incorrect identification of their objects;</p> <p>(e) The use of false documents;</p> <p>(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.</p>
	<p>4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.</p>

6.1.1. No Legal Requirement To File Ultimate Beneficial Ownership Information

Sri Lanka's domestic legal framework requires the disclosure of limited ownership information for private entities to the Registrar of Companies⁷³ but **does not mandate the disclosure of ultimate beneficial ownership information**. Beneficial owners are the human beings who ultimately own or control a legal person⁷⁴ or legal arrangement.⁷⁵ The Companies Act, No. 07 of 2007, the Societies Ordinance, No. 16 of 1891 and the Cooperative Societies Law, No. 05 of 1972 do not include provisions requiring such disclosure.

Instead, the responsibility to **maintain** beneficial ownership information of their customers is limited only to financial institutions, designated non-financial businesses, and insurers, with no corresponding requirement placed on the Registrar of Companies, which is the relevant authority.⁷⁶ This gap has also been acknowledged in the IMF GDA.⁷⁷

According to UNCAC Article 12 (c), States Parties are required to promote transparency by identifying legal and natural persons involved in the establishment and management of corporate entities. This is important,

⁷³ Section 131 and Section 120(1), Companies Act, No. 07 of 2007 require the disclosure of shareholder information to the Registrar of Companies.

⁷⁴ 'Legal persons' refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities.

⁷⁵ 'Legal arrangements' refer to express trusts and other similar legal arrangements.

⁷⁶ Rule 30, Financial Institutions (Customer Due Diligence) Rules No. 1 of 2016.; Rule 26, Insurers (Customer Due Diligence) Rules, No. 1 of 2019.; Rule 10, Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018.

⁷⁷ IMF (2023) op. cit., p. 16.

as evidence shows that organisational structures are often abused to facilitate corruption and conceal the proceeds of bribery and other corruption offenses.⁷⁸

6.1.2. Limited Public Access to Beneficial Ownership Information

A proposed amendment to the Companies Act, No. 07 of 2007 (the Bill), published in the Government Gazette in September 2024, sought to introduce a beneficial ownership register maintained by the Registrar of Companies.⁷⁹ Even in the Bill, public access to beneficial ownership information is limited in two ways: the scope of accessible information, and the range of entities required to disclose such information.

Clause 130D of the Bill limits public access to only the name, extent, and nature of beneficial ownership. Information such as national identity card number, date and place of birth are gathered, but not made available to the public. Without access to these details, the public will not be able to verify the identity of the beneficial owner or validate the disclosed ownership information.

Second, the scope of the register is further limited by Clause 130A(10) of the Bill, which excludes offshore and overseas companies from its purview. This exclusion is contrary to UNCAC Article 12, which requires transparency measures to apply across the entire private sector. At the time of this report's publication, the Bill had not yet been enacted into law, and as such there is currently no need to disclose beneficial ownership information and no public access to beneficial ownership information. If the Bill is passed in its current form, the gaps identified above will remain unaddressed.

6.1.3. Laws Preventing Conflict of Interest Limited in Scope

Sri Lanka's ACA addresses the issue of conflict of interest but in a limited manner.⁸⁰ There is **no legislation to prevent conflicts of interests by imposing appropriate restrictions** for a reasonable period of time on the professional activities of public sector officials after they leave office or on the private sector employing such officials.

UNCAC requires States Parties to have formal procedures governing the move of public officials on their resignation or retirement to private sector entities with whom they have had dealings while in public service or where they may be employed to influence their former employers or colleagues.⁸¹

The gap in the law creates a significant risk regarding conflicts of interest, particularly during the transition period when public officials, who are about to leave public service, may act in the interests of their prospective private employers rather than in the interests of the public. This risk has been recognised by some public institutions in Sri Lanka that have placed restrictions on the professional activities of their officials.⁸² However, there are no uniform rules that impose such restrictions on officials in the public sector in an appropriate manner.

78 Financial Action Task Force, *Report On The State Of Effectiveness And Compliance With The FATF Standards*, (April 2022), at <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Report-on-the-State-of-Effectiveness-Compliance-with-FATF-Standards.pdf.coredownload.pdf> [last accessed 29 January 2025].

79 A Bill to Amend the Companies Act, No. 7 of 2007, Bill No. 295 (2024).

80 Section 107, Anti-Corruption Act, No. 9 of 2023.

81 UNODC (2009), *op. cit.*, p. 59,60.

82 Section 6 (7), The Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 prohibits members of the commission from being employed for a period of three years of ceasing to hold office, where they may be called upon to use or disclose information acquired during their pendency in office.

6.2. THEMATIC AREA TWO – PRIVATE SECTOR BRIBERY: PROGRESS BUT NOT PERFECTION

This thematic area analyses two specific gaps in relation to private sector bribery. They include: (1) the **lack of liability for corporate entities soliciting or accepting bribes**, and (2) **the absence of a positive obligation on private sector entities to implement anti-bribery measures**.

This thematic area explores bribery in both private-to-private and private-to-public contexts, reflecting the broader definition adopted for this report. Academics typically define private bribery (or commercial bribery) as bribery from a business operator to an entity or individual of a private counterparty – typically without the involvement of the government or public sector.⁸³ However, for this report, commercial bribery is also considered where the private sector intersects with the public sector. Table 5 lists the relevant UNCAC articles and select non-binding international standards pertaining to bribery in both private-to-private and private-to-public corruption.

Sri Lanka's new ACA repealed the Bribery Act while consolidating and expanding on the criminalisation of bribery of both local and foreign public officials, in line with UNCAC. The ACA defines bribery as the offer, solicitation, or acceptance of any gratification in violation of the offences detailed in Part III of the Act.⁸⁴

The ACA covers bribery across various categories of public officials, including judicial officers, parliamentarians, local authorities (Sections 93 and 94), police officers, and other public officials (Section 96). Collectively, Sections 93, and 96 to 102 criminalise various forms of bribery across multiple categories of public officials. It also resolves previously identified deficiencies and introduces provisions for private sector bribery under Section 106.⁸⁵

Table 5: UNCAC Article 15 – Bribery of National Public Officials, Article 16 – Bribery of Foreign Public Officials and Officials of Public International Organizations, and Article 21 – Bribery in the Private Sector

International Convention/Standards	Description
UNCAC Article 15 – Bribery of National Public Officials	<p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;</p> <p>(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.</p>

⁸³ Transparency International (2018), p. 2.; J R Boles, *The Two Faces of Bribery: International Corruption Pathways Meet Conflicting Legislative Regimes* (2014) Michigan Journal of International Law, 35:4.

⁸⁴ Section 162, Anti-Corruption Act, No. 9 of 2023.

⁸⁵ Section 105 of the ACA now criminalises bribery of foreign public officials and officials of international organisations, which was a gap identified in Sri Lanka's past UNCAC reviews. Section 105 also aligns with the requirements of Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials, although the language used in the ACA is more closely aligned with UNCAC than with the OECD Convention. Importantly, section 105, when read in conjunction with section 110(4), grants the High Court jurisdiction to prosecute persons (including legal persons) who offer, solicit or accept gratification outside Sri Lanka, thereby extending the Act's reach to foreign entities involved in corrupt activities both within and beyond the country's borders.

International Convention/Standards	Description
UNCAC Article 16 – Bribery of Foreign Public Officials and Officials of Public International Organisations	1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
	2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
UNCAC Article 21 – Bribery in the Private Sector	<p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:</p> <p>(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;</p> <p>(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.</p>

International Convention/Standards	Description
<p>OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions</p> <p>Article 1 – The Offence of Bribery of Foreign Public Officials</p> <p>(Non-binding⁸⁶ – Sri Lanka is not a State Party to the Convention)</p>	<p>Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.</p>
<p>United Nations Global Compact (UNGC)</p> <p>Principle 10 – Anti-Corruption</p> <p>(Voluntary Initiative Based on CEO Commitments. As of March 2024, 77 Companies From Sri Lanka Have Signed Onto the Ungc Since 2002.⁸⁷)</p>	<p>Businesses should work against corruption in all its forms, including extortion and bribery.</p>

6.2.1. No Liability Imposed for Corporate Entities Soliciting and Accepting a Bribe

Section 106 (2) of the ACA on bribery in the private sector appears to impose **liability only on individuals (natural persons), not on legal persons, for soliciting or accepting a bribe**. While Section 106(1) uses the term ‘any person’ which includes both natural and legal persons, Section 106 (2), specifically restricts liability to ‘an employee in any capacity or a director in a private sector entity...’. It does not explicitly cover legal persons. This language may be interpreted as excluding legal persons from being held liable for ‘solicit[ing] or accept[ing], directly or indirectly an advantage’ under Section 106(2), thereby creating a gap in holding companies accountable for such offences.

6.2.2. No Positive Obligation on the Private Sector To Prevent Bribery

As analysed in the previous section on liability of legal persons, the use of the common law identification doctrine to determine corporate criminal liability can make the offence of private sector bribery difficult to establish. This is because the identification doctrine would require the prosecution to establish that a person with adequate seniority had the necessary mental element of the offence in order for the prosecution to be successful.

As the doctrine does not capture the realities of modern companies, there will arise a practical difficulty in securing convictions against legal persons, especially where management structures are divested across the company and rely on collective decision-making. These practical difficulties arise as the ACA **fails to impose a positive obligation on the private sector to prevent bribery**. If such an obligation was imposed, the challenges of the identification doctrine could be circumvented entirely.

⁸⁶ Sri Lanka is not a member of the Convention. See the Website of the OECD, at <https://search.oecd.org/about/> [last accessed 31 July 2024].

⁸⁷ UN Global Compact, *Our participants*, at https://unglobalcompact.org/what-is-gc/participants/search?page=8&-search%5Bcountries%5D%5B%5D=111&search%5Bkeywords%5D=&search%5Bper_page%5D=10&search%5Bsort_direction%5D=asc&search%5Bsort_field%5D= [last accessed 24 April 2024].

6.3. THEMATIC AREA THREE – TRADING IN INFLUENCE: MISSING THE MARK ON DISTINCT ELEMENTS

This thematic area examines the offence of trading in influence. It identifies one specific gap i.e. the **failure of the ACA to criminalise the offence of trading in influence**.

Trading in influence, also known as influence peddling, involves leveraging the real or supposed influence of an intermediary person to secure undue advantages from an administration or public authority.⁸⁸ Table 6 outlines Article 18 of UNCAC, which encourages—but does not mandate—states to criminalise the offence.

At the outset, it is important to acknowledge that the language surrounding the offence of trading in influence in the UNCAC itself, has faced criticism for its vagueness and lack of clarity, particularly regarding the actions that should be criminalised. Academics have noted that the UNCAC Article 18 “lacks the precision found [in other articles]” and risks encompassing conduct that may otherwise be considered lawful.⁸⁹ The concept of trading in influence has raised concerns about the clarity and predictability required in criminal law.⁹⁰ These concerns are important and must be considered seriously in Sri Lanka’s context.

Despite these complexities, this section identifies a critical gap in Sri Lanka’s attempt to address trading in influence through the ACA. The analysis highlights how the ACA fails to clearly distinguish trading in influence from bribery, resulting in the offence not being fully aligned with the elements required by UNCAC. As a result, the ACA fails to criminalise the offence of trading in influence despite claiming to do so. Notably, the ACA also lacks provisions addressing undue advantage and supposed influence, which are essential components of the offence under UNCAC.

Table 6: UNCAC Article 18 – Trading in Influence

International Convention/Standards	Description
UNCAC Article 18 – Trading in Influence	<p>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The promise, offering or giving to a public official or any other person, <u>directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence</u> with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original, instigator of the act or for any other person;</p>

88 Erdianto Effiendi, Zico Junis Fernando, Ariesta Wibisono Anditya, and M. Jeffri Arlinandes Chandra, *Trading in Influence (Indonesia): A Critical Study*, (2023) 9 Cogent Social Sciences, at <https://www.tandfonline.com/doi/epdf/10.1080/23311886.2023.2231621?needAccess=true> [last accessed 3 January 2025].; Joice Viladelfia and Rahel Octora, *Urgensi Pemidanaan Bagi Pelaku Perdagangan Pengaruh (Trading In Influence) Dari Kalangan Non Pejabat Publik Dalam Rangka Pemberantasan Tindak Pidana Korupsi* (2021) 13(1) *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 016–032.

89 Aloysius Llamzon, *Trading in Influence*, in Cecily Rose, Michael Kubiciel, and Oliver Landwehr (eds), *The United Nations Convention Against Corruption: A Commentary*, *Oxford Commentaries on International Law* (online edn Oxford Academic 2019), at <https://doi.org/10.1093/law/9780198803959.003.0020> [last accessed 3 January 2025].

90 UNODC, *State of implementation of the United Nations Convention against Corruption Criminalization, law enforcement and international cooperation Second edition* (2017), at https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V.17-04679_E-book.pdf [last accessed 29 January 2025], p. 42, 43.

	(b) The solicitation or acceptance by a public official or any other person, <u>directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence</u> with a view to obtaining from an administration or public authority of the State Party an undue advantage.
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6.3.1. Distinct Elements of Trading in Influence Offence Continue To Be Missing

Despite the purported inclusion of Article 18 of the UNCAC in the ACA, the ACA fails to criminalise the offence of trading in influence. **Section 104 of the ACA fails to distinguish the offence of trading in influence from the offence of bribery.** While the marginal note to Section 104 references trading in influence, the provision itself does not include the necessary elements to criminalise the offence.

To illustrate, trading in influence occurs when person A gives a gratification to person B so that B can use their influence over person C to secure an undue advantage from a public administration or public authority. Person B and C can be a public official or any other person. This scenario makes B the influence-peddler. However, Section 104 does not identify person B as an influence-peddler. It does not account for the fact that the 'influence' in the offence is supposed to be exerted by person B. Instead, it formulates the offence as person A giving a gratification to B, in order to influence B themselves to secure an advantage for A. This formulation conflates trading in influence with bribery and fails to recognize the distinct nature of the offence. Moreover, the provision itself erroneously refers to the offence as a 'bribery' offence.

For the ACA to accurately reflect the offence of trading in influence, two further critical elements must be included. First, it **must specify that the advantage obtained should be 'undue', and second, it should include that the influence in question can be 'real or supposed'.**

The failure to specify these elements broadens the Act's scope significantly. For instance, the ACA currently criminalises any gratification "with a view to obtaining . . . any benefit or service" for the offeror or a third party.⁹¹ Such broad phrasing risks inadvertently criminalising legitimate advocacy activities, such as a public interest group hosting a seminar with refreshments to persuade a Member of Parliament to support policies benefiting low-income groups. What is required by the UNCAC is that the 'undue' advantage must be tied to the influence, which the ACA fails to capture.⁹²

⁹¹ Section 104 (1) A person who offers to a public official or any other person, directly or indirectly any gratification in order to influence such public official or other person with a view to obtaining from the Government any benefit or service for himself or any other person commits the offence of bribery and on conviction be liable to a fine not exceeding one million rupees and to a term of rigorous imprisonment not exceeding seven years. (2) A public official or any other person who, directly or indirectly, solicits or accepts any gratification as is referred to in subsection (1) commits an offence of bribery and on conviction be liable to a fine not exceeding one million rupees and to a term of rigorous imprisonment not exceeding seven years.

⁹² UNODC (2012), *op. cit.*, p. 82/83.

Section 104 does not itself explicitly criminalise obtaining an undue advantage through ‘supposed influence’. However, this may be addressed when Section 104 is read in conjunction with Section 113 of the ACA,⁹³ which would criminalise instances where the influence peddler has no real influence over a public authority. However, the inclusion of this element explicitly in Section 104 would remove room for interpretation and better align the provision with UNCAC.

The 2013 country review report has already highlighted similar issues, noting that Sri Lanka did not explicitly criminalise trading in influence.⁹⁴ Although the provisions in Sections 17 and 19 of the Bribery Act in effect at the time (now repealed) were considered to have covered certain elements of the offence, the report was critical of these provisions. It pointed out that these provisions were identical to the sections criminalising the offence of bribery, and did not adequately address the distinct elements of trading in influence.⁹⁵ Sri Lanka continues to fail in addressing the distinct elements of trading in influence, a deficiency that persists even under the ACA.

93 Section 113(1) Where in any proceedings against any person for any offence under this Act, it is proved that such person solicited or accepted any gratification, having grounds to believe or suspect that the gratification was offered in consideration of such person's doing or forbearing to do any act referred to in that section, such person commits an offence under that section notwithstanding that such person did not actually have the power, right or opportunity so to do or forbear or that such person accepted the gratification without intending so to do or forbear or that such person did not in fact so do or forbear.

Section 113(2) Where in any proceedings against any person for an offence under Section 111 of this Act, it is proved that such person intended to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on such person or any other person, or had knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person by such person's doing or forbearing to do any act referred to in that section, such person commits an offence under that section notwithstanding that such person did not actually have the power, right or opportunity so to do or forbear or that such person did not in fact so do or forbear.

94 UNODC, *Country Review Report of the Democratic Socialist Republic of Sri Lanka 2012-2013* (2015), at https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_04_11_Sri_Lanka_Final_Country_Report.pdf [last accessed 30 December 2024], p. 48.

95 Ibid.

7. Recommendations

This section presents **eight recommendations** designed to address the legal gaps identified in the preceding sections of this report, offering pathways to strengthen Sri Lanka's legal and regulatory framework for combating private sector corruption. These recommendations are organised into two categories. **Category 1** focuses on gaps in areas of private sector corruption that are partially addressed by existing domestic legislation but **require amendments to strengthen the law**. **Category 2** focuses areas of private sector corruption that are not addressed at all in existing legislation and therefore necessitate the **introduction of new legal provisions**. A summary of recommendations is presented in Table 7 below.

Table 7: Summary of Recommendations

Category 1 - Covered Inadequately by Domestic Law – Amend Existing Provisions		
Article	Gap	Recommendation
UNCAC Article 26 – Liability of Legal Persons	Narrow definition of 'private sector' for ACA offences	Amend Section 162 to expand the definition of 'private sector entity' - include all companies required to pay EPF/ETF, to increase coverage of the ACA capturing the SMEs in the formal sector, which form a large part of Sri Lanka's private sector. ⁹⁶

⁹⁶ Small and Medium Enterprises (SMEs)—defined as businesses with fewer than 300 employees and annual revenue below LKR 750 million—comprise nearly (or more than) 75% of enterprises in Sri Lanka.

Category 1 - Covered Inadequately by Domestic Law – Amend Existing Provisions		
Article	Gap	Recommendation
UNCAC Article 18 – Trading in Influence	Distinct elements of trading in influence offence missing	Amend Section 104 – to align with UNCAC definition. (i) Capture the role of the influence peddler accurately, to distinguish from the offence of bribery (ii) Include ‘undue’ element of the advantage obtained (iii) Include instances where the influence of the influence peddler is only ‘supposed’ and not real.
UNCAC Article 21 – Bribery in the Private Sector	No liability imposed on legal persons for soliciting or accepting a bribe	Amend Section 106(2) – impose liability on legal persons for soliciting or accepting bribes.
Category 2 – Not Addressed in Domestic Law – Introduce Provisions		
Article 12 – Private Sector	No laws regulating beneficial ownership transparency Limited public access to beneficial ownership information	Beneficial ownership information should be disclosed to the Registrar of Companies and made publicly available
	Lack of laws preventing conflicts of interest when public officials transition into the private sector	Introduce time limits (cooling-off periods) or guidance for public officials to restrict post-public employment.
UNCAC Article 26 – Liability of Legal Persons	Insufficient penalties for corporate entities ⁹⁷	Penalties for legal persons should be linked to the size of the company, amount of profit, degree of complicity, etc. Penalties for legal persons should include non-monetary sanctions
	Unsettled law on establishing mental element for legal persons	Introduce a strict liability offence of “failure to prevent bribery”. Alternatively, amend Section 40 of the ACA to introduce a mandatory code of conduct for the private sector
UNCAC Article 21 – Bribery in the Private Sector	No positive obligation on the private sector to prevent bribery	Introduce the strict liability offence of ‘failure to prevent bribery’

⁹⁷ For example, Section 106 of the ACA imposes a maximum fine of LKR 1,000,000.00 on legal persons for offering a private sector bribe.

7.1. CATEGORY ONE - AMEND EXISTING PROVISIONS IN THE ACA

7.1.1. Amend Section 162 to Expand the Definition of ‘Private Sector Entity’

The ACA as it currently stands only covers Specified Business Enterprises, therefore the ‘bribery in the private sector’ provision and other provisions only apply to an extremely limited section of the private sector.

It is recommended that **the definition of ‘private sector entity’ should be extended to all companies required to make Employee Provident Fund (EPF) / Employee Trust Fund (ETF) payments.** Section 8 of the Employee Provident Fund Act, No. 15 of 1958 applies EPF to all covered employment, except if the establishment is a social service organisation providing technical training for minor offenders, destitute, deaf and blind, or a charity organisation with less than ten (10) employees or household employees, and institutions carried out by family members.⁹⁸ Expanding the applicability of the ACA to all entities required to make EPF payments will in effect extend coverage to all companies in the formal private sector irrespective of the number of employees and turnover.

Other countries have not adopted such narrow definitions of the private sector. The United States and the United Kingdom do not distinguish between private sector entities and their anti-corruption laws apply uniformly across the entire private sector.⁹⁹ To avoid placing an undue burden on small companies these laws require private sector entities to adopt a risk-based approach to anti-corruption. The United Kingdom for instance, requires companies to adopt anti-bribery measures that are proportionate to the bribery risks it faces, and the nature, scale and complexity of the company’s activities.¹⁰⁰ Companies assess the nature and extent of their exposure to bribery risks and adopt proportionate anti-bribery measures to address them.¹⁰¹ This would reduce the burden placed on smaller companies to adopt cost-heavy anti-bribery measures. Adopting a similar approach for Sri Lanka would alleviate such concerns. It is recommended that CIABOC should act under Section 40 of the ACA to issue a mandatory code of conduct which requires companies to adopt risk-based approach to anti-bribery efforts. This ensures that an undue burden is not placed on smaller companies due to the applicability of the ACA.

This amendment is crucial to ensuring a level playing field within the private sector, especially in contexts of widespread, systemic corruption. Companies that engage in corruption may gain an unfair advantage over their competitors as companies that are unwilling to engage in corruption may be excluded from the market.¹⁰² The cost of compliance with the ACA for some companies may be their exclusion from the market by companies that do not fall under the ambit of the ACA. The failure to regulate all private sector companies, therefore, perpetuates an unequal playing field, as companies unregulated by the ACA will continue to benefit from undue advantages.

Applying the ACA to the majority of Sri Lanka’s private sector also serves a norm-setting function for the entire sector. It allows the private sector a ‘way out’ of situations of coercive corruption.¹⁰³ It also has the potential to signal a better, more predictable business culture, to investors and other stakeholders locally and internationally.

98 The Website of the Employees’ Provident Fund, *FAQs’ For Employers*, at https://epf.lk/?page_id=811#:~:text=Any%20employer%20can%20make%20online,fifty%20employees%20in%20their%20employment [last accessed 30 December 2024]; The Website of Employees’ Trust Fund Board, *Employer Details*, at <https://etfb.lk/employer-details/> [last accessed 30 December 2024].

99 Bribery Act of 2010; Foreign Corrupt Practices Act of 1977.

100 Ministry of Justice, *The Bribery Act 2010 Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing* (Section 9 of the Bribery Act 2010)(2011), at <https://assets.publishing.service.gov.uk/media/5d80cfc3ed915d51e9aff85a/bribery-act-2010-guidance.pdf> [last accessed 25 January 2025], p. 21.

101 Ibid, p. 25.

102 Module 5: Private Sector Corruption, op. cit., p.11.

103 Sankhitha Gunaratne, op. cit. p. 45.

The expansion of the scope of the ACA in the recommended manner will also improve private sector entities' access to regulated markets including international markets. Smaller businesses that work with global corporations may benefit from a comparative advantage obtained by adopting such regulatory measures and the resultant good reputation. This is especially so, as global corporations strive to strengthen corporate governance practices within their supply chains¹⁰⁴ given the vigour with which certain jurisdictions, such as the United States, have exercised their jurisdiction in foreign bribery matters through the Foreign Corrupt Practices Act.¹⁰⁵

7.1.2. Amend Section 106(2) to Impose Liability on Corporates for Soliciting and Accepting Bribes

Section 106(2) of the ACA limits liability for soliciting and accepting bribes to an employee or director in their personal capacity. This is different to the formulation of Section 106(1), which imposes liability on 'any person' including legal persons, whereas **Section 106(2) imposes liability only upon an employee. Therefore, Section 106(2) should also be amended so that "any person", which would include legal persons, would be liable for soliciting or accepting a bribe as well.**

7.1.3. Amend Section 104 to Reflect the Elements of Trading in Influence

As dealt with above, UNCAC Article 18 has been criticised for being too vague and therefore being inconsistent with fundamental tenets of criminal law. However, as Sri Lanka has sought to introduce the offence despite its shortcomings, the following recommendations are made with the objective of aligning the offence with the UNCAC. Section 104 of the Act does not distinguish between the offence of bribery and trading in influence. **The section should be amended to indicate that the influence exerted by the person receiving a gratification from a third party to do so, is for the purpose of obtaining an undue advantage for a third party.** If Section 104 is amended to reflect the offence of trading in influence, it must also **incorporate the key elements of 'undue advantage, and 'real or supposed influence'**. In formulating the section, it must be noted that an undue advantage may be something tangible or intangible, which may be promised, offered or given directly or indirectly. The amendment must also ensure that the gratification is linked to the public official or person's real or supposed influence.¹⁰⁶

104 UNODC, *A Resource Guide on State Measures for Strengthening Corporate Integrity* (September 2013), at https://www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf [last accessed 30 December 2024], p.13.

105 Daneal Margolis and James Weaton, 'Non-U.S. Companies may Also be Subject to the FCPA', at <https://www.pillsburylaw.com/a/web/2784/961FAE6040BDB25EB4E6C63B250A3AAE.pdf> [last accessed 30 December 2024], p.168-169.

106 UNODC (2012), op. cit., p. 82/83.

7.2. CATEGORY TWO – INTRODUCE NEW PROVISIONS TO THE LAW

7.2.1. Introduce a Beneficial Ownership Register

UNCAC Article 12 requires the promotion of transparency within private entities. This includes, where appropriate, measures to disclose the identity of legal and natural persons involved in the establishment and management of corporate entities. However, Sri Lanka's law does not require private sector entities to disclose their ultimate beneficial ownership information to state authorities.

Best practice also indicates that such information should be made public. Several countries have adopted beneficial ownership registers.¹⁰⁷ In the United Kingdom, the Small Business, Enterprise and Employment Act 2015 established a beneficial ownership register which is publicly accessible.¹⁰⁸ Similarly, the Canada Business Corporations Act requires businesses registered under the Act to file information on their 'individuals with significant control' (i.e. beneficial owners) and some of this information is made public.¹⁰⁹ In keeping with such best practices, Sri Lanka too should take steps to introduce similar provisions requiring **legal persons and legal arrangements to disclose their beneficial ownership information to competent authorities and to the public.**¹¹⁰

7.2.2. Introduce Laws Governing Conflict of Interest

Article 12 requires States to take measures to prevent conflicts of interest by imposing reasonable restrictions on the professional activities of public sector officials after they leave office. However, Sri Lanka currently lacks a uniform law addressing conflict of interest in this specific area. To address this gap, it is recommended that Sri Lanka **introduce provisions in the law, to regulate post-employment activities of public officials.**

These **restrictions may take the form of cooling-off periods or the issuance of guidance for public officials by CIABOC.** For example, Section 6 (7) of the Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 prohibits members of the commission from being employed for a period of three years of ceasing to hold office, where they may be called upon to use or disclose information acquired during their pendency in office. In the United States of America, public officials in the executive branch have been provided with guidance concerning post-employment restrictions.¹¹¹ Similarly, other countries have adopted cooling-off periods which stipulate that public officials must wait a designated period before taking employment in the private sector.¹¹²

Until the law itself can be amended, CIABOC could issue guidelines to address key risks, such as restricting public officials from: seeking employment during official dealings, misusing confidential information gained

107 Open Ownership, *Open Ownership Map: Worldwide Action on Beneficial Ownership Transparency*, at <https://www.open-ownership.org/en/map/> [last accessed 30 December 2024].

108 Section 81, Small Businesses, Enterprise and Employment Act 2015.

109 Website of the Government of Canada, *Individuals with Significant Control*, at <https://ised-isde.canada.ca/site/corporations-canada/en/individuals-significant-control#2> [last accessed 30 December 2024]. For the purposes of this Act an Individual with Significant Control is defined as someone who owns or controls a corporation.

110 This is also required under Recommendation 24 and 25 of the Financial Action Task Force Guidance on Combatting Money Laundering and Terrorist Financing. While Sri Lanka is not a member of the FATF, it is part of the Asia/Pacific Group on Money Laundering (APG), an associate member of FATF. As a member of the APG, Sri Lanka is bound by the Financial Action Task Force recommendations and subject to its evaluations. FATF, *International Standards On Combating Money Laundering And The Financing Of Terrorism & Proliferation The FATF Recommendations* (2012), at <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> [last accessed 29 January 2025], p. 22.

111 Statute 18 U.S.C. § 207 and the U.S. Office of Government Ethics (OGE).

112 The German Civil Service Act; The Italian law in Statute d. lgs. 165/2001, art. 53, c. 16-ter, modified by the Anticorruption law n. 190/2012.

through public employment, and representing (within a specified time period after leaving office) private parties on any matter before the specific office or agency in which they had previously been employed.¹¹³

The introduction of cooling-off periods and clear guidance for public officials would significantly reduce the potential conflict of interest situations that can arise during their tenure in office. It would also restrict them from actions that can compromise the public interest even after their tenure in office ends.

7.2.3. Introduce Proportionate Sentences for Legal Persons

Where legal persons are convicted, **sanctions should be effective, proportionate, and dissuasive**, considering factors such as the nature, gravity, duration of the breach, and the company's size and turnover. Transparency International Sri Lanka suggests that fee structures should be proportionate to the size, scope, and resources of the company, whether incorporated or unincorporated.¹¹⁴ Such a model highlights the importance of tailoring penalties to the economic capacity of the offending entity, ensuring that the fines serve as an effective deterrent and encourage compliance.

7.2.4. Introduce Non-Monetary Sanctions for Legal Persons

Several other jurisdictions have introduced non-monetary sanctions for legal persons convicted of offences. Non-monetary sanctions usually take the form of disqualification from holding office,¹¹⁵ debarment from bidding or contracting with the government,¹¹⁶ or prohibiting such legal persons from benefiting from state loans, advances and other financial accommodations.¹¹⁷ The **introduction of similar non-monetary sanctions in Sri Lanka** may serve as a stronger deterrent to companies engaging in bribery and corruption, than the mere imposition of fines.

7.2.5. Introduce an Offence of 'Failure To Prevent Bribery'

Practical difficulties of prosecuting legal persons under the 'identification doctrine' can negatively impact the number of convictions that could be secured against legal persons. Article 26 of the UNCAC requires States Parties to impose legal liability on legal persons. However, the operation of this doctrine narrows down the practical applicability of the ACA to legal persons.

There are two ways to overcome this shortcoming of the identification doctrine. One solution is to follow the approach adopted in the United Kingdom and other countries. The United Kingdom has introduced the offence of **'failure to prevent' bribery**.¹¹⁸ This is a 'strict liability' offence that imposes liability on companies regardless of the mental intent of the directing mind and will of the company. The United Kingdom has introduced the defence of **'adequate procedures'**, to this offence.¹¹⁹ When prosecuted, companies need to only demonstrate that they have adopted adequate internal measures to combat bribery and corruption, to

avoid liability. These statutes hold companies liable for bribery if they do not have 'adequate procedures,' i.e., an effective compliance programme, in place to prevent bribery.¹²⁰ With the enactment of a 'failure to

¹¹³ UNODC (2009), op. cit., p. 59,60

¹¹⁴ Transparency International Sri Lanka, *Legislative Brief*, op. cit.

¹¹⁵ In Fiji and Hong Kong, China, a person convicted of bribery may also be banned from being a company director.

¹¹⁶ Australia, Cambodia, Korea, Hong Kong, China.

¹¹⁷ As seen in Pakistan; The Website of OECD, 'Publications', at <https://www.oecd-ilibrary.org/docserver/9789264097445-9-en.pdf?expires=1733811364&id=id&accname=guest&checksum=C04C0523297F3A13443E53AAE3EE5C53> [last accessed 30 December 2024].

¹¹⁸ Section 7, Bribery Act 2010.

¹¹⁹ Section 9, Bribery Act 2010.

¹²⁰ CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF), Liability of the Legal Person, at <https://rm.coe.int/16806eebf2> [last accessed 30 December 2024], p. 4-5.

prevent' bribery strict liability offence along the lines of those in force in the United Kingdom, Germany,¹²¹ Australia¹²² and other states, private sector entities would be required to implement measures to prevent their officers, employees, and consultants from paying bribes. If the ACA were to introduce an offence of 'failure to prevent bribery', a corresponding defence commensurate to that of 'adequate procedures' would also have to be introduced.¹²³

Alternatively, Section 40 of the ACA could be amended to mandate that CIABOC introduce a mandatory code of conduct for the private sector. Section 40 of the ACA gives CIABOC the discretion (but does not mandate it) to introduce a code of conduct for the private sector which shall be adhered to by private sector entities. An option, therefore, is that the code of conduct should mandate that companies must implement measures to prevent bribery, also known as anti-bribery/corruption programmes. Such measures would require companies to have codes of ethics or conduct, regular anti-bribery and corruption trainings, and for violations of the code to be sanctioned.

Both the above approaches give the private sector a powerful incentive to introduce anti-bribery measures in their own operations. There is a growing consensus on what those measures are. Annex I compares standards recommended by the OECD, the UNODC, the ISO 37000 (the international standard for antibribery compliance programmes), and the requirements of the United States Department of Justice, the first agency to develop such standards. Annex I shows that the requirements recommended by all organisations are substantively the same. More recent guidance notes, such as the one issued by the Australian government in 2024, are to the same effect.¹²⁴

If CIABOC were to require companies to have a compliance programme, or Parliament were to enact a failure to prevent bribery offence, it could help make the private sector a more active partner in the fight against corruption. It could incentivise private sector entities to adopt internal controls to mitigate corruption risks, due to the increased risk of liability. This can compel the private sector to be a partner in proactively addressing the problem of corruption within their ranks, instead of only dealing with the problem when CIABOC begins to investigate an instance of corruption. Either approach overcomes the challenges of securing a conviction given the identification doctrine. It lightens the burden on the prosecutors to prove the intent of the offender when an act of bribery has taken place, while ensuring that private sector entities that have in good faith adopted procedures to prevent bribery are not held liable.

121 Global Legal Insights, 'Bribery And Corruption Regulations 2025- Germany', at [https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/germany/#:~:text=130%20WiG\),.30%20WiG](https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/germany/#:~:text=130%20WiG),.30%20WiG) [last accessed 30 December 2024].

122 Herbert Smith Freehills, *Do you Know Your ABC? Get Ready for changes to Australia's Bribery Laws*, 4 March 2024, at <https://www.herbertsmithfreehills.com/insights/2024-03/get-ready-for-changes-to-australias-foreign-bribery-laws> [last accessed 30 December 2024].

123 Sri Lankan law currently provides only individuals with a defence against liability under the ACA, which is similar to the United Kingdom defence of adequate procedures. Section 116 of the ACA provides that a director, officer, or agent of a company shall not be held liable for offences under the ACA, if the offence was committed without their knowledge, or if they had used 'all due diligence' to prevent the commission of the offence. This defence however does not extend to the legal person itself.

124 Australian Government, Attorney General's Department, *Guidance on Adequate Procedures to Prevent the Commission of Foreign Bribery*, (2024).

Annex 1

Comparison of OECD, United Nations and World Bank Compliance Handbook with ISO 37001 and U.S. Department of Justice Compliance Programmes Guidelines

2013 OECD UN WB Compliance Handbook	ISO 37001	Sentencing Guidelines November 2014
Support and Commitment from Senior Management for the Prevention of Corruption (C1)	Sections 5.1 lists five requirements for the governing body, and Section 5.2 lists 13 for top management, that must be observed to demonstrate "leadership and commitment" to the antibribery management system	For an effective compliance and ethics program an organization must i) exercise due diligence to prevent and detect criminal conduct and ii) promote a culture that encourages ethical conduct and a commitment to lawful behaviour. 8B2.1(a)
Developing an Anti-Corruption Program (C2)	Section 4.4 requires the organization to "establish, implement, maintain, and continually review . . . an antibribery management system."	8B2.1(b)(1) mandates that the organization "establish standards and procedures to detect and deter criminal content."
Oversight of the Anti-Corruption Program (C3)	Section 5.3.1 specifies responsibilities of the top management and the governing body for overseeing compliance and implementation. Section 5.3.2 requires that the compliance program be adequately resourced, performance reported as appropriate. Manager must have access to top management and governing body.	8B2.1(b)(1)(2)(A) requires the governing authority to be knowledgeable about its compliance and ethics program's content and operation and exercise reasonable oversight. Subsection (B): "high-level personnel" must see that its compliance program is effective and one or more high-level individuals be responsible for program. Subsection (C): the person or persons responsible for program have adequate resources, report periodically and have direct access to governing body and top management.

2013 OECD UN WB Compliance Handbook	ISO 37001	Sentencing Guidelines November 2014
Clear, Visible and Accessible Policy Prohibiting Corruption (C4)	Section 5.2 requires top management to “establish, maintain, and review an antibribery policy” that prohibits bribery and is available in writing and communicated to employees and third parties.	8B2.1(b)(1) mandates that the organization “establish standards and procedures to detect and deter criminal conduct.”
Detailed Policies for Particular Risk Areas (C5)	Section 8.7 requires procedures to “prevent the offering, provision or acceptance of gifts, hospitality, donations, and similar benefits” that could reasonably be perceived as a bribe. A2.2. recommends banning facilitation payments and having a policy to address extortion. A.8.3 recommends identifying and evaluating conflict of interest risks and requiring employees to report any actual or potential conflict.	
Application of the Anti-Corruption Program to Business Partners (C6)	Section 8.5.2 “where antibribery controls implemented by business associates would help mitigate the relevant bribery risk” the organization must determine if the associate has effective controls in place and if not “where practicable” require them. Where not, assess risk of continuing relationship and ways to manage risk if relationship continues.	8B2.1(b)(4) requires “reasonable steps” to, “where appropriate,” communicate compliance and ethics program provisions to organization’s agents.
Internal Controls and Record Keeping (C7)	Section 8.3 requires the implementation of “financial controls that manage bribery risk.” A.11 suggests nine different procedures to ensure transactions accurately and completely.	The “books and records” provision of the FCPA and the accounting provisions require any covered entity to have a system of internal accounting controls reasonably calculated to ensure that the entity’s financial statements are accurately and fairly stated.

2013 OECD UN WB Compliance Handbook	ISO 37001	Sentencing Guidelines November 2014
Communication and Training (C8)	Section 7.4.1 requires the organization to determine what it will communicate, when, with whom, how, by whom and in what in what languages. Policy must be provided to all employees and business associates and published. Section 7.3 requires “adequate and appropriate” antibribery awareness and training to all personnel that covers nine issues. Training must be on a regular basis and periodically updated. Business associates acting on the organization’s behalf must be trained where more than low risk to the organization. Proof of training – content, recipients, and dates delivered – must be maintained.	8B2.1(b)(4) requires “reasonable steps” to communicate the provisions of its compliance and ethics program to members of the governing authority, high-level personnel, employees, and “where appropriate” the organization’s agents through effective training and information dissemination.
Promoting and Incentivizing Ethics and Compliance (C9)	Section 7.2.2 requires due diligence be conducted before hiring anyone exposed to more than low risk of bribery to ensure it is reasonable to believe they will comply with the antibribery policy. Section 7.2.1 requires procedures allowing sanctions for noncompliance and no retaliation either for refusing to participate in any bribery scheme or raising in good faith of concerns about reasonable belief of violation of antibribery policy by others.	8B2.1(b)(3), (5)(A) and (6) to use reasonable efforts to avoid hiring those who have engaged in illegal conduct or other actions inconsistent with its compliance and ethics program, to use reasonable steps to see the program is observed, provide incentives for observance including disciplining violators.
Seeking Guidance – Detecting and Reporting Violations (C10)	Section 8.9 requires anonymous reporting of concerns and bans retaliation for good faith or reasonable belief reporting. Employees must have a way to receive advice from “appropriate person” if faced with a situation that could involve bribery.	8B2.1(b)(5)(C) mandates a system permitting employees and agents to seek advice confidentially on compliance and to report without fear of retaliation potential or actual criminal conduct.

2013 OECD UN WB Compliance Handbook	ISO 37001	Sentencing Guidelines November 2014
Addressing Violations (C11)	Section 7.2.2 requires “procedures which enable [the organization] to take appropriate disciplinary action against personnel who violate the antibribery policy....” A.18 noted that depending upon severity of issue this could range from a warning to dismissal and that depending upon circumstances and severity, action upon ascertaining a violation could include “reporting the matter to the authorities.”	8B2.1(b)(6)(B) requires the program have appropriate measure in place for sanctioning those who engage in criminal conduct or fail to take reasonable steps to detect or prevent such conduct.

