

Offences Relating to the Business Environment & New Regulations

AAT Level II
BLA - Business Law

Shanilka Perera
LL.B, Dip. in Counseling and Psychotherapy

Offences related to the Business Environment

Shanilka Perera

1) What are the relevant acts?

- A) Intellectual Property Act No. 36 of 2003.
- B) Consumer Affairs Authority Act No. 09 of 2003.
- C) Financial Transactions Reporting Act No. 06 of 2006.
- D) Prevention of Money Laundering Act No. 05 of 2006.
- E) Computer Crimes Act No. 24 of 2007.
- F) Electronic Transactions Act No.19 of 2006.
- G) Bribery Act No.11 of 1954.

A) Intellectual Property Act No. 36 of 2003

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A) Intellectual Property Act No. 36 of 2003.

a) What is Intellectual Property?

- There is no definition provided by the Act, however, intellectual property is an intangible creation of the human intellect.
- It is also a contribution for the economic, social, and technological development of any country.
- In the international arena, intellectual property rights are protected by the world intellectual property organization (WIPO) while other organisations such as UNESCO, World Trade Organization, International Unions also assist for the protection of intellectual property rights.
- In Sri Lanka, this is governed by the National Intellectual Property Organization (NIPO)

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b) What is the purpose of this Act?

- The purpose of this act can be found in the preamble, and it states as follows;
 - Provide for the law relating to intellectual property.
 - Provide for an efficient procedure for registration control and administration.
 - Appointment of the Director General of intellectual property of Sri Lanka.
 - To amend the Customs Ordinance and the High Court of the Provinces Special Provisions Act.
 - To provide laws for matters connected therewith and incidental thereto.

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c) What are the areas covered under the Intellectual Property Act?

- I. Copyright
- II. Industrial designs
- III. Patent
- IV. Trademark and trade name
- V. Layout designs and integrated circuits
- VI. Geographical indications

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I. Copyright

- Section 6 of the intellectual property act recognizes the protection of literary, artistic and scientific work as protected under copyrights.
- Section 6 provides an exhaustive list, which means any other work that is not mentioned in the Act, cannot be considered as a copyright. Therefore, only the acts mentioned will be protected or considered to be protected as copyrights.

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Section 6 recognizes the following as protected;

- a) books, pamphlets, articles, computer programs and other writings ;
- b) speeches, lectures, addresses, sermons and other oral works ;
- c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions
- d) stage production of works specified in paragraph (c) and expressions of folklore that are apt for such productions
- e) musical works, with or without accompanying words ;
- f) audiovisual works ;

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- g) works of architecture ;
- h) works of drawing, painting, sculpture, engraving, litho-graphy, tapestry and other works of fine art ;
- i) photographic works ;
- j) works of applied art ;
- k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

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- The owner of the work who possess the copyright has the right to enjoy economic rights and the moral rights.
- Economic rights under section 9 include:
 - Reproduction of the work;
 - Translation of the work;
 - Adaptation, arrangement or other transformation of the work ;
 - The public distribution of the original and each copy of the work by sale, rental, export or otherwise ;
 - Rental of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned ;

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- Importation of copies of the work, (even where the imported copies were made with the authorization of the owner of the copyright) ;
 - Public display of the original or a copy of the work ;
 - Public performance of the work ;
 - Broadcasting of the work ; and
 - Other communication to the public of the work.
- Moral Rights under section 10 include the protection against any mutilation, distortion or other modifications including the prohibition of derogatory action related to his work which would be prejudicial to the honor and reputation of the creator.

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Q1) What is the duration of protection for Copyrights?

- The general rule is that copyrights (economic and moral rights) shall have protection from the day it was created until the lifetime of the author and a further 70 years after his death.
- Duration = lifetime + 70 years after death

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II) Industrial Designs

Q1) What are industrial designs?

- These are the decorative and aesthetic features of a good.
 - “ any composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours, that gives a special appearance to a product of industry or handicraft and is capable of serving as a pattern for a product of industry or handicraft shall be deemed to be an industrial design”. [section 30].
- The license for industrial designs are available and protected only if they are new or is novel.
- That means, a design should be so new that it has not been available to the public anywhere in the world before the date of application for the registration.

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- The registration of an industrial design is subject to certain conditions.
- For example:
 - If the design is disrespectful for any religious belief or nationality; or
 - The design is scandalous or contrary to morality, public order or public interest, then registration will not be granted.

Q2) What is the duration of protection?

- A registered industrial design is protected for five years and renewable for two more terms of five years.

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Q3) What are the rights of the registered owner of an industrial design?

- The registered owner of an industrial design, during the period of protection, has the power to exercise his exclusive rights such as using, making, importing and exporting goods comprising of such protected design.

Q4) Who will own the industrial design in an employer-employee relationship ?

- As per section 34, industrial designs created by an employee for the purpose of the business will be accrued to the employer, subject to the agreement in the employment contract.

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III) Patents

Q1) What are patents?

- The State grants the inventor, by means of a patent, a monopoly, that is, the right to exclude others from making, using and selling the patented invention for a period of 20 years from the date of application.
- The owner of the patent can use, by selling or licensing through commercializing, the patented technology and derive financial benefits which will contribute to the growth of the economy.
- As per section 62 of the Intellectual Property Act, Patents are provided for inventions.
- An Invention is a practical solution to a problem in the field of technology. An invention may relate to a **product** or a **process**.

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Q2) Is anything patentable?

- No, this is because the Intellectual Property Act only provides a negative list which shows what cannot be patentable instead of what can be registered under patent.
- The following cannot be patented;
 - (i) discoveries, scientific theories and mathematical methods;
 - (ii) plants, animals, micro-organisms other than transgenic micro-organisms and an essentially biological process for the production of plants and animals other than non biological and micro-biological processes;
 - (iii) schemes, rules or methods for doing business, performing purely mental acts or playing games
 - (iv) methods for treatment of human or animal body by surgery or therapy and diagnostic methods practiced on human or animal body
 - (v) inventions which are necessary to protect public order, morality including human animal or plant life, health, or to avoid serious prejudice to environment.

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IV) Trademark

Q1) What is a mark?

A mark may consist of

- a word(s),
- a symbol(s),
- a device(s),
- letters, numerals, a name, surname or geographical name,
- a combination or arrangement of colors and shapes of goods or containers etc.
- A mark should be a visible and a distinctive sign and it should always be capable of distinguishing the goods or services of different enterprises.

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Q2) What is the benefit of registering a mark?

- The registration of the mark gives its owner exclusive right;
 - To use,
 - To assign and
 - license the mark.
- These rights can be easily enforced effectively through civil or criminal court procedure or both.
- Owner of the mark can restrain others from using his mark or a mark deceptively resembling his mark.
- Owner is even entitled to claim damages for violating his trademark rights.

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Q3) What is the difference between registered and un-registered marks?

- A mark which is registered at the National Intellectual Property Office under the law, is considered as a registered mark.
- A mark can be used even without registration.
- Unregistered marks can be protected under the unfair competition law or common law action for passing off.

Q4) Can all marks be registered?

- The marks which are not inadmissible under sections 103 and 104 of the Intellectual Property Act are registrable.
- A mark is inadmissible
 - if it is descriptive of the goods or services concerned,
 - if it is not capable of distinguishing the goods or services from those of others and;
 - if it is deceptively similar to the other registered or well-known marks.

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V) Layout Designs and Integrated Circuits

- As per section 146 (1);
 - “The right to protection of a layout design shall belong to the creator of layout design. Where several persons have jointly created a layout design such persons shall be co-owners of the right to protection”.
- As per section 146 (2), the protection belongs to the employer in an employer-employee relationship, unless stated otherwise in the employment agreement.
- As per section 147, these designs need to be original, the mere production of another layout is not applicable.
- The design should be an original intellectual effort and not be available in common among the manufacturers or a common creation among other creators of such designs.
- Once registered, protection is provided for a period of 10 years.

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Vi) Geographical Indications

Q1) What is a geographical indication?

- It is a name or sign that is used on goods by a group of producers or manufactures and that indicates that the goods have
 - A special quality,
 - Character or reputation because they are originating from a specific place (country or a geographical area of a country).
- For example,
 - Ceylon Tea,
 - Ceylon Cinnamon,
 - Ceylon Sapphire,
 - Nuwara-Eliya Tea,
 - Ceylon Pepper
 - Ceylon Cashew

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- Geographical Indications of Sri Lanka can be protected in all the member countries of WTO under the national law of the particular country.
- For example, in India, they are registrable under the Geographical Indication Laws while in USA, they are registrable as a certification mark.

Q2) What is the Benefit of registration ?

- As they carry the symbol of quality, character or reputation of the particular goods, it helps greatly to commercialize the goods.
- Protection given to Geographical Indications will provide facilitation for the owners to face the competition when exporting their products to the international markets.

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B) Consumer Affairs Authority Act No. 09 of 2003

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B) Consumer Affairs Authority Act No. 09 of 2003

Q1) What is the objective of this Act?

- This Act provides greater protection to consumers.
- This act was incorporated so that there will be a regulatory mechanism to protect consumers from unfair trade practices.
- The consumer affairs authority was established through this Act for the regulation of the provisions provided under the Act.
- The act itself recognizes certain objectives such as;
 - i. To protect consumers against the marketing of goods or providing services which are harmful to life and property of consumers.
 - ii. To ensure that wherever possible, consumers have sufficient access to goods and services at competitive prices.
 - iii. To protect consumers against unfair trade practices and guarantee that consumer interest is given sufficient attention.
 - iv. To obtain damages against unfair trade practices or restrictive trade practices or any other form of trade manipulation by traders which are not recognized under the Act.

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Q2) What are the duties of the consumer affairs authority?

- To control and eliminate restrictive trade agreements among traders or enterprises.
- To control prices
- To eradicate unfair competition that adversely affects local or international trade.
- To regulate the arrangements among the traders regarding price.
- To promote and protect the rights and interests of consumers
- To investigate into anti-competitive practices including the abuse of dominant position.
- To maintain and promote effective competition among suppliers of goods and services.
- To update the consumers regarding the quality, standards, the quantity, the price of goods and services which are available in the market.

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Q3) What are the main offences under the act?

- If a trader who has possession of any goods and holds such goods for the purpose of trade but ;
 - i. Refuses to sell the goods.
 - ii. Denies the possession of the goods.
 - iii. Sells the goods subject to other conditions apart from the price.
 - iv. Hoarding goods in an excessive manner.
 - v. Failing to exhibit a price list of goods available for sale.
 - vi. Failing to provide a receipt for the purchases, when requested by the consumer.
 - vii. Failing to display notices as issued by the authority.
 - viii. If the trader has misled or deceived any customer or any other trader during the course of his business.
 - ix. Failing to label the products with the manufacturing date, expiration date, the production code and the price.
 - x. Displaying or selling the goods above the normal price

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Financial Transactions Reporting Act No. 06 of 2006

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Financial Transactions Reporting Act No. 06 of 2006

Q1) What are the objectives of the Act?

- To prevent money laundering and terrorist financing including the discovery of such activities.
- To require certain institutions to conduct due diligence and take measures to combat money laundering and the finance of terrorism.
- To establish an authority to investigate and prosecute offences of money laundering and financing of terrorism

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Q2) What is an important unit under this Act?

- The Financial Transactions Reporting Act established the Financial Intelligence Unit.
- This unit is task with the authority to investigate and prosecute offenses relating to and that are recognized under the Act.

Q3) What are the objectives of the Financial Intelligence Unit?

- To strengthen anti money laundering practices and combat against the financing of terrorism.
- To collect, receive, analyze information to prevent money laundering and financing of terrorism.
- To advise relevant authorities regarding money laundering and the financing of terrorism.
- To upgrade the compliance status of Sri Lanka to an accepted level that is recognized internationally.
- To improve the cooperation with international organizations and implement international recommendations relating to anti money laundering and the countering of financing of terrorism.
- To improve public awareness regarding money laundering and the financing of terrorist activities.

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Q4) What are the important provisions of this act ?

- According to **section 2** of the Act, no institution is allowed to open or operate or maintain an account where the holder of such account cannot be identified.
- This includes the prohibition of anonymous accounts for such accounts that are identified only by a number or such accounts which to the knowledge of the institution is being operated under a false name.
- **Section 2 (3)** provides the rules (No.11 of 2011 rules), where data applicable to identify customers and the necessary due diligence that needs to be conducted by financial institutions.
- As per the rules, if a customer is opening a new account there are standard information that should be disclosed by the customer and such information should be provided for the satisfaction of the bank.
- Only if the bank is satisfied and is happy with the credibility of the information provided, the bank may open an account for that person.

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- When opening individual accounts, information such as the full name, other names, the permanent address, contact details, the occupation, the name of the employer (if applicable), the annual net salary, and reasons for opening NRC accounts in foreign jurisdictions are some information that should be requested by the bank from the relevant individual.
- Further, the individual also should provide documents such as the properly filled account opening form, copies of identification documents, a copy of address verification documents, copy of the valid visa or permit where relevant, copy of the business registration where relevant.

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- If the account is opened by a company, then the bank should obtain the details that are relevant to the company.
- Information such as the business name, contact details of the business, principal place of business, the incorporation certificates, articles of association, partnership agreements where relevant.
- Moreover, the nature of the business and the objectives of the business and information on the relevant person who has authority to regulate the account on behalf of the company.
- Apart from that, personal information of the directors, the tax file number, details of main shareholders including a description of their administrative power.
- The company must provide the mandate paper, the resolution deciding to initiate an account, copies of forms 18 and 20, copies of forms 44 and 45 if overseas company, if a Chamber of Commerce approved company, then a copy of the Chamber of Commerce contract, for board of investment registered companies the letter of approval from the BOI and audited accounts if available.

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- Regarding non-commercial associations and clubs;
 - The identity of the institution
 - Account signatories' details and identity
 - Identity of persons who handle the administration of the institution

Q5) How does the bank verify information?

- The bank will verify information through the inspection of national identity cards.
- Addresses can be verified using utility bills, other bank records, tax reports, the voters list or through the Grama Niladhari certificate.
- In certain situations, details can be verified through an affidavit or even through e-mail or telephone call.

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- However, all financial institutions should take additional steps to verify details of high-risk customers.
 - If they are a permanent resident – should be confirmed by a field visit
 - Ask them to obtain personal recommendations
 - Prior bank recommendations about the customer
 - Request them to show the sources of income
 - To confirm the details of present and previous positions
- Apart from that, it is the duty of the financial institution to conduct “know your customer procedures” (KYC).
- KYC and customer due diligence (CDD) are procedures that all financial institutions should conduct.
- The financial institution has a duty to identify the potential risk of each customer using the information obtained through KYC and CDD procedures while continuously monitoring and observing the activities of the customers.

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- Some of the rules in KYC and CDD are;
 - To suspend the account of a customer if the information provided seems to have a discrepancy until such investigation is over.
 - To retain copies of all identification and address verification documents of the customers.
 - To discourage the opening of bank accounts from a bank if the permanent address of the customer is not in that area and encourage the opening of the account from the area that is closest to the residential or permanent address of where they live.
 - To record the specific purpose of opening two or more accounts by the same customer.
 - To keep an internal record when a customer has provided instructions to transfer funds from one account to another account.

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- For foreign clients who needs to open bank accounts, it is important that the financial institution ensure that a valid visa is always held by the client during the continuation of the opened account. Also, a local address should be obtained as their permanent address during the stay in Sri Lanka.
- When opening accounts for “politically exposed persons” (PEPs), the authorization of a senior manager or from a person from the senior management is mandatory.
- To verify the legal origin of the funds which are invested using foreign currencies to a local account.
- To investigate unusual behaviors of customers
- To inform the compliance officer on customers who are trying to avoid reporting requirements by means of multiple transactions so that they can avoid the compulsory reporting amount.

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Q6) What are Suspicious Transaction Reports (STR)?

- According to section 6,7 and 8 of the Financial Transactions Reporting Act, financial institutions should report to the finance intelligence unit of any suspicious transaction.
- For example, they should report if an amount in a transaction has exceeded the sum prescribed by the minister in the Gazette.
- Apart from that, there are other situations the financial institution should report to the finance intelligence unit, such as;
 - Any transaction the financial institution deems to be suspicious or deems to be associated with the commission of an offense or any other unlawful activity.
 - Any transaction which is suspicious to be related to the financing of terrorism.
- Transactions which are suspicious should be reported within 24 hours in written form.
- It is also mandatory for financial institutions to appoint a compliance officer who is tasked with making sure the said financial institution adheres or complies with provisions of this Act.

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D) Prevention of Money Laundering Act No. 05 of 2006

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D) Prevention of Money Laundering Act No. 05 of 2006

Q1) What is the purpose of this Act?

- The main purpose of this Act is to provide necessary measures for the prevention and combat of money laundering including other matters relevant or associated with money laundering.

Q2) How is money laundering defined in the Act?

- It is identified as the concealing of funds by individuals or companies that were earned by **unlawful activities**.
- Thereafter, with the aim of introducing that money to the economy, or to the financial system, they are invested in legal activities so as to show that the funds earned were legal or was obtained through legal means.
- Therefore, the process of legitimizing illegal money or money earned through illegal means is known as money laundering.

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Q3) How is “unlawful activity” defined in the act ?

- “Unlawful activity” is identified as offences that are recognized by the existing laws such as;
 - i. Poisons, opium and dangerous drugs ordinance
 - ii. The Bribery Act
 - iii. The Offensive Weapons Act
 - iv. The Firearms Ordinance
 - v. The Explosives Ordinance
 - vi. The relevant law applicable at the time on cyber crimes
 - vii. The relevant law applicable at the time for offences against children
 - viii. The relevant law applicable at the time for transnational organized crime
 - ix. The relevant law applicable at the time for the prevention and suppression of terrorism
 - x. Any offence that is punishable with life imprisonment for a term of seven years or above or any offence that is punishable with death.

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Q4) What constitutes the offence of money laundering in Sri Lanka?

- The receiving, possession, concealing, investigating, depositing of or bringing in or out of Sri Lanka funds derived from illegal activities (unlawful activities) constitutes the offence of money laundering.

Q5) What are the 3 stages of money laundering process.

- The three stages can be identified as follows ;
 - i. Placement – introducing the illegal money to the financial system
 - ii. Layering – conceals the origin of funds. Usually done by complicating the tracing process of funds.
 - iii. Integration – the illegal money becomes integrated to the financial system. By this stage money would be “clean”.

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Q6) What are the main defences against money laundering?

- There are two types of defences against money laundering

- i. Consent defense

- This is when an authorized disclosure is made to the relevant authorities and the consent to the transaction has been obtained before the transaction was initiated.

- ii. Reasonable excuse defence

- This is where the party had failed to make a disclosure to the relevant authority prior to the transaction, but that failure is due to a reasonable excuse.

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E) Computer Crimes Act No. 24 of 2007

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E) Computer Crimes Act No. 24 of 2007

Q1) What is the purpose of the Act?

- The purpose of this Act is to provide for the identification of computer crimes including the investigation and prevention of such crimes.

Q2) To whom is this Act applicable?

- This Act is applicable to persons who commit an offense under this Act, whether they were in Sri Lanka or outside Sri Lanka.
- This Act will still be applicable even if the computer, the computer system or the information affected or which was to be affected by the action which is recognized as an offense under the Act, was at the material time in Sri Lanka or outside Sri Lanka.
- It is also important to note that if employees of an organization commits such crimes, then the organization is equally responsible as the person, because the organization have failed to take adequate measures for the prevention of such crimes within the organization.

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Q3) What is a “computer” as identified under the Act?

- A computer is an electronic or similar device which has the capacity to process information.

Q4) What are the offences recognized under the Act?

- Unauthorized access and securing unauthorized access to computer.
- Unauthorized access to a computer to commit a crime and securing the unauthorized access of the computer to commit a crime.
- Destroying, deleting or corrupting or adding moving or altering any information held in any computer.
- Using a hacking system to obtain data from sources which are unauthorized to access.
- Conspiracy to engage in crimes committed by computers including the aiding and abetting of such offences.

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Electronic Transactions Act No.19 of 2006

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Electronic Transactions Act No.19 of 2006

Q1) What is the purpose of this Act?

- To establish a regulatory body
- To identify electronic contracts and facilitate them
- To facilitate the creation, transaction and the communication of messages and documents in electronic form
- To recognize the electronic service providers

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Q2) What is the benefit of this Act?

- This Act has enabled for the formation of contracts digitally. Communication is a key aspect in every contract. It is also important to fulfill the elements in a contract.
- As per Section 4 of this Act,
 - Data message
 - electronic document
 - electronic record
 - object communications in electronic form
- If the above are accessible as to be usable for subsequent reference, then it is presumed that the general requirements of the law are fulfilled.

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Q3) Are online signatures recognized?

- As per Section 7 of the Act, if any act provides that any information or communication should be authenticated by placing the signature or that any document should be signed or bear the signature of any person, then without regard to anything contained in such law, the requirement of such laws shall be deemed to be satisfied, if such information or matter is authenticated through an electronic signature.
- The summary of section 7 is that where relevant digital signatures now have legal validity.

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Q4) What documents are excluded from this Act?

- The electronic transactions Act will not be applicable for the following documents;
 - a) Deeds
 - b) Power of Attorney
 - c) Trust
 - d) Bills of Exchange
 - e) Last will and testamentary disposition
 - f) Licences for telecommunication systems

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Bribery Act No.11 of 1954

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Bribery Act No.11 of 1954

Q1) What amounts to a bribe?

- Offer
 - Solicitation
 - Acceptance
- Of any gratification
- By any government-servant, non-government servants and parliamentarians are criminal offences.

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Bribery Act No.11 of 1954

Q2) What amounts to a gratification?

- Gratification may include money, fee, gift reward, commission, valuables, any office, employment, contract, discharge from a loan, protection from penalty, protection from disability due to any action or proceeding of a disciplinary or penal nature.

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Q3) Who can investigate bribes?

- A commission to investigate and take actions against the offence of bribe was setup in 1994.
- This was by the enactment of the **Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994.**
- They can investigate and file actions in the High Court.
- There must be a request to inquire into a bribery or corruption matter, however, currently, even without such a request, the Commissioner General has the power to investigate, inquire and file action in the High Court

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Q4) What is the duty of the Commission

- The duty of the Commission is to
 - Investigate claims made under the Bribery Act
 - Matters relevant to Declaration of Assets and Liabilities Law No. 01 of 1975.
 - After the 19th Amendment to the Constitution, it has the power to inquire into allegation on its own motion.

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Q5) What is the punishment for committing this offence?

- The punishment if someone is found guilty of committing a bribe is that;
 - Imprisonment not exceeding 7 years
 - Fine not exceeding Rs. 5000
 - Extra penalty and reversion of property to the State.
- For corruption
 - Imprisonment for 10 years
 - Fine not exceeding Rs. 100,000

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Other Acts and Agreements

- Securities and Exchange Commission Act
 - The Securities and Exchange Commission Act prohibits insider dealing in Sri Lanka and makes it an offence with an imprisonment of 10 years and Rs One Million in fines.
 - Makes it also an offence to trade outside the Colombo Stock Exchange
 - Applicable mainly for Public Limited Companies
- Companies Act No. 07 of 2007
 - Governs the registration, maintenance, regulations, offences and dissolution of all companies in Sri Lanka. (Applicable mainly for Private Limited Companies while certain provision are for Public Limited Companies as well).
- Company acquisition and mergers treaty

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Other Acts and Agreements

- Right to Information Act No. 12 of 2016.
 - This was enacted as an amendment to the fundamental rights in Sri Lanka.
 - Article 14(A) by virtue of this Act recognizes the right to information in Sri Lanka.
 - This Act also recognizes the limitation to access information. Information that is relevant to national defence, economy , relations with other nations, medical records etc. are limited.

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Other Acts and Agreements

- Memorandum of Understanding
 - This is an agreement between two or more nations.
 - It is less binding compared to a bilateral agreement.
 - Sri Lanka is a party for few MOU's.
 - MOU between Sri Lanka and Singapore Business Council and Singapore Chinese Chamber of Commerce and Industry.
 - MOU between financial intelligence unit of Sri Lanka and Maldives.

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Summary

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- Other Acts and Agreements

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