IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

"FINANCIAL TRANSACTIONS REPORTING (AMENDMENT) BILL"

SC (SD) No. 18/2026	**Petitioner**:	Centre for Policy Alternatives (Guarantee) Limited
	Counsel:	Viran Corea, PC with Luwie Ganeshathasan, Thahira Cader, Michelle Handy and Shabnam Mohammed
SC (SD) No. 19/2026	**Petitioners**:	1. Rajeev Amarasuriya President, Bar Association of Sri Lanka
		2. Nalin De Silva Secretary, Bar Association of Sri Lanka
	Counsel:	Saliya Peiris, PC with Pulasthi Hewamanne, Harith De Mel, Fadhila Fairoze and Linuri Munasinghe
SC (SD) No. 21/2026	**Petitioner**:	Ambika Sathkunanathan
	Counsel:	Pulasthi Hewamanne and Fadhila Fairoze
SC (SD) No. 22/2026	**Petitioners**:	Swastika Arulingam Duminda Nagamuwa
	Counsel:	Nuwan Bopage
	Respondent:	Hon. Attorney General
	Counsel:	Sudharshana De Silva, PC, Additional Solicitor General with Malik Azeez, State Counsel and Senal Senevirathne, State Counsel

BEFORE:	Achala Wengappuli	Judge of the Supreme Court
	Arjuna Obeyesekere	Judge of the Supreme Court
	K.M.G.H Kulatunga	Judge of the Supreme Court

[1] The Court assembled for hearing at 10.00 a.m. on 29th April 2026.

[2] A Bill referred to in its short title as the "Financial Transactions Reporting (Amendment)" [**the Bill**] was published as a Supplement in Part II of the Government Gazette of 17th March 2026. It was presented in Parliament by the Hon. Prime Minister and Minister of Education, Higher Education and Vocational Education and was placed on the Order Paper of Parliament of 9th April 2026.

[3] Six Petitioners have invoked the jurisdiction of this Court in terms of Article 121(1) of the Constitution by filing the above numbered petitions in the Registry of the Supreme Court on 22nd and 23rd April 2026. The Petitioners have prayed *inter alia*:

(a) That this Court declare that the Bill in its entirety and Clauses 4, 8, 9, 15, 17, 18, 19, 20, 22, 34 and 35 in particular are in violation of Articles 3, 4, 12(1), 14(1), 76 and 105 of the Constitution;

(b) For a determination that in addition to being passed with not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour [the special majority], the Bill must be approved by the People at a Referendum.

[4] Upon receipt of the said petitions, the Registrar of this Court issued notice on the Attorney General, as required by Article 134(1) of the Constitution.

[5] We heard extensive submissions of the learned President's Counsel for the Petitioners in SC (SD) No. 18/2026, the learned Counsel appearing for the Petitioners in the other three applications, and the learned Additional Solicitor General. All parties were also afforded the opportunity of filing written submissions.

Jurisdiction of Court

[6] This Court is exercising the jurisdiction conferred on it by Article 120 of the Constitution which requires this Court to determine whether the Bill in its entirety is, or any of its provisions are inconsistent with the Constitution. Article 123(1) provides further that, *"The determination of the Supreme Court shall be accompanied by the reasons therefor and shall state whether the Bill or any provision thereof is inconsistent with the Constitution and if so, which provision or provisions of the Constitution."*

[7] Once a primary determination is made in terms of Article 123(1), the consequential determinations the Court is required to make are specified in Article 123(2), which reads as follows:

> *"Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state –*
>
> *(a) whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 82; or*
>
> *(b) whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 84; or*
>
> *(c) whether such Bill or any provision thereof requires to be passed by the special majority required under the provisions of paragraph (2) of Article 84 and approved by the People at a Referendum by virtue of the provisions of Article 83,*
>
> *and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent."*

[8] It must be noted that in terms of Article 83, the requirement for a bill or a provision thereof to be passed with the special majority of Parliament and to be approved by the People at a Referendum will arise only where such bill or a provision thereof seeks to amend, repeal or replace Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 62(2) or 83 itself, of the Constitution.

The Financial Action Task Force

[9] In order to place in context the provisions of the Financial Transactions Reporting Act, No. 6 of 2006 [**the Act**] and the amendments that are sought to be introduced through the Bill, it is important that we refer to the Financial Action Task Force (**FATF**), an independent inter-governmental body established in 1989, of which Sri Lanka is a member, and to the periodical Recommendations made by it.

[10] The mandate of the FATF is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, financing of proliferation of weapons of mass destruction and other related acts that pose a threat to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse and abuse. These objectives are achieved through a set of comprehensive and consistent framework of measures known as FATF Recommendations that are reviewed and updated periodically.

[11] The FATF Recommendations were introduced initially in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. While it has been amended on many occasions to cover evolving money laundering trends and techniques, its scope has been broadened to deal with the issue of funding of terrorist acts and terrorist organisations and the financing of proliferation of weapons of mass destruction. The fact that the Recommendations are reviewed and amended on a continuous basis clearly demonstrate that the threat posed to the financial system of a country is not frozen in time but keeps evolving, thus highlighting the importance of the regulatory authorities staying ahead at all times. Last revised in 2025, the Recommendations are universally recognised as the global standard for the protection of the international financial system from money laundering, terrorist financing and financing of proliferation, and member countries are called upon to take effective measures to bring their national systems upto date with the FATF Recommendations.

[12] The FATF Recommendations set out the essential measures that countries should have in place to:

a) Identify the risks, and develop policies and domestic coordination;

b) Pursue money laundering, terrorist financing and the financing of proliferation;

c) Apply preventive measures for the financial sector and other designated sectors;

d) Establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;

e) Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and

f) Facilitate international cooperation.

[13] The Recommendations require a country to identify, assess and understand the risks posed to their financial system by money laundering, terrorist finance and financing of proliferation of weapons of mass destruction, and thereafter adopt appropriate measures to mitigate the risk. This approach, known as the risk-based approach, allows each country to adopt a more flexible set of measures, utilise their resources more effectively and apply preventive measures that are proportionate to the nature of risks faced by each country.

Financial Transactions Reporting Act, No. 6 of 2006

[14] The first legislative initiative by Sri Lanka to give effect to the FATF Recommendations came in 2006 with the introduction of the Prevention of Money Laundering Act, No. 5 of 2006 and the Act. The essence of the Act is threefold. The first is that it requires institutions engaged in or carrying out any finance business or designated non-finance business within the meaning of the Act to undertake due diligence measures to combat money laundering and the financing of terrorism and to have in place and implement robust customer identification procedures, maintain accurate transaction records, and conduct ongoing due diligence to detect suspicious transactions and activities. The second is the collection of data relating to

financial transactions and reporting any suspicious transactions to the Financial Investigation Unit [**FIU**] operating under the Central Bank, thereby facilitating the prevention, detection, investigation and prosecution of the offences of money laundering and the financing of terrorism. The third important feature of the Act is to empower the FIU to monitor the activities of all institutions to whom the Act applies.

[15] The Act has been designed to strengthen the country's financial system and ensure its integrity by addressing the risks posed to the economy by money laundering and terrorist financing. It is thus one of the main laws that support and strengthen the legal framework of Sri Lanka relating to Anti-Money Laundering and Countering the Financing of Terrorism.

The Bill

[16] The amendments proposed by the Bill seeks to expand the scope and operation of the provisions of the Act and must be understood in the context of Sri Lanka's broader anti-money laundering and counter financing of terrorism framework, which includes the Act, the Prevention of Money Laundering Act, No. 5 of 2006, and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 enacted to give effect to the International Convention for the Suppression of the Financing of Terrorism. These statutes operate together as an integrated legal regime aimed at addressing money laundering and terrorist financing, with the Act performing the critical role that we have referred to in paragraph 14.

[17] The Bill contains 39 clauses. While the long title seeks to expand the scope of the Act by the inclusion of provisions relating to the risks posed by the financing of proliferation of weapons of mass destruction, the Bill seeks to provide *inter alia* for the following:

[i] Clause 4 provides for the application of a risk-based approach and customer due diligence by Institutions in relation to transactions carried out with customers.

[ii] Clause 5 provides for the procedure to be followed when an Institution cannot comply with customer due diligence obligations.

[iii] Clause 6 specifies the period for which, and the manner in which, an Institution shall maintain records relating to transactions with customers.

[iv] Clause 7 requires Institutions to keep updated records of customers.

[v] Clauses 8 – 10 contain reporting requirements that must be complied with by an Institution and includes the need to report transactions exceeding the specified limit to the FIU, report suspicious transactions or information to the FIU and disclose information relating to property related to terrorism to the FIU.

[vi] Clause 11 contain provisions that ensure confidentiality of the steps taken by an Institution and prohibit persons from divulging information relating to action being taken in relation to suspicious transactions.

[vii] Clauses 12 and 13 provide for the disclosure of information relating to action being taken in relation to suspicious transactions in the investigation and prosecution of the offence of proliferation of weapons of mass destruction and permit the disclosure of information in judicial proceedings.

[viii] Clauses 14 and 15 provide legal protection to persons for lawful action taken under the Act and legal protection for privileged communication.

[ix] Clause 16 provides for the appointment of a Compliance Officer.

[x] Clauses 17 – 20 provide for the establishment of the FIU and to specify the powers, duties and functions thereof, to make provision for the FIU to exchange information with foreign institutions and agencies, and permit the FIU to share information with foreign regulatory and supervisory authorities on the basis of reciprocity. The FIU shall be an operationally independent and autonomous unit in the exercise, performance and discharge of its powers, duties and functions under the Act.

[xi] Clause 21 provides for the officers of the FIU to enter any premises and examine records relevant to ensuring compliance with the provisions of the Act.

[xii] Clause 22 provides for the imposition of administrative sanctions to enforce compliance with the requirements under the Act.

[xiii] Clause 24 provides for the establishment of a National Committee on Anti-Money Laundering, Countering Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction (the National Committee) to coordinate and oversee the implementation of the national policy of Sri Lanka on Anti-Money Laundering, Countering the Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction and provide necessary guidance in the formulation of such national policy. The Committee shall consist of the Governor, Central Bank, the Secretary to the Ministries of Finance, Foreign Affairs, Justice, Defence and Public Security, the Attorney-General, the Inspector General of Police and the Director General of the Commission to Investigate Allegations of Bribery or Corruption. It shall be the duty of the Committee to advise and make recommendations to the Cabinet of Ministers relating to combating money laundering, countering terrorist financing and financing of proliferation of weapons of mass destruction.

[xiv] Clause 34 contains provision relating to the making of regulations by the Minister.

[xv] Clause 35 provides for the Head of the FIU to make rules, directions etc, under the Act.

Overbroad provisions and Article 12(1)

[18] The principal submission of Mr. Viran Corea, PC, the learned Counsel for the Petitioner in SC SD No. 18/2026 and Mr. Pulasthi Hewamanne, the learned Counsel for the Petitioners in SC SD Nos. 19 and 21/2026 was twofold. The first was that the Bill confers excessive powers on the Minister and the FIU without ensuring proper Parliamentary control and without specifying them in the Bill. The second was that the provisions of the Bill and in particular Clauses 4, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 24, 34, 35 and 39 are vague, lack clarity and/or are overbroad. They submitted that taken cumulatively, such provisions can lead to arbitrariness in its application and therefore will result in the violation of Article 12(1).

[19] Responding to a similar argument raised in the **Sri Lanka Electricity Bill** [SC SD No. 42/2024], this Court stated as follows:

"The learned Additional Solicitor General however submitted that the Petitioners have failed to demonstrate how the structure of the Bill and the conferment of powers on the Minister would lead to their implementation in an arbitrary manner. She submitted further that in any event, the safeguards provided within the clauses of the Bill itself would prevent any arbitrary exercise of power by the Minister and the implementation of the Bill in an arbitrary manner.

It was also her position that the function of this Court is to consider the provisions of the Bill as it presently reads and not speculate whether there can be an arbitrary exercise of power in implementing the provisions of the Bill. In support of her submission, the learned Additional Solicitor General drew the attention of this Court to the determination in the ***Third Amendment to the Constitution Bill*** *[Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 139 at page 147] where it was held that:*

> *"A clear distinction must be borne in mind between the law and the administration of the law. A law cannot be struck down as discriminatory because of the fear that it may be administered in a discriminatory manner. Mere possibility of abuse of power is not sufficient ground to hold that a law offends the fundamental right of equality."*

In 2002, this Court considered the ***Welfare Relief Benefits Bill*** *[Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 279] which was intended to provide the necessary legal framework for the payment of all welfare relief benefits. In response to the submission that there would be favouritism in the selection process, this Court, having considered inter alia the provisions of the bill including those relating to the selection process for the recipients of such benefits, the criteria for eligibility to receive assistance in terms of a scheme formulated under the bill, the date of commencement and the duration of the payments under a scheme and the fact that all schemes shall be published in the Gazette and placed before Parliament prior to the commencement of such schemes, this Court concluded that the said provisions offer* ***adequate safeguards*** *to ensure that the selection of the recipients under each scheme will be made in a*

non-discriminatory manner thereby ensuring compliance with Article 12 of the Constitution.

This Court went onto state that, "It is not within the jurisdiction of the Court to speculate as to what would happen in the implementation of the scheme. ***The provisions of the Bill should be examined objectively to ascertain whether there are sufficient safeguards to prevent discrimination on any of the grounds referred to in Article 12 (2) of the Constitution and to prevent arbitrariness in the decision making process.*** *The provisions referred to above are in our view adequate safeguards in this regard" [emphasis added; at page 282].*

The above test has been cited with approval thereafter in several determinations of this Court including in the ***Twentieth Amendment to the Constitution Bill*** *[Decisions of the Supreme Court on Parliamentary Bills (2019-2020), Vol. XV, 87 at pages 133-134], the* ***Colombo Port City Economic Commission Bill*** *[Decisions of the Supreme Court on Parliamentary Bills (2021) Vol. XVI, 23; at page 26] and the* ***Petroleum Products (Special Provisions) (Amendment] Bill*** *[SC (SD) Application Nos. 50-52/2022;; at pages 9-10].*

In the ***Bureau of Rehabilitation Bill*** *[SC (SD) Application Nos. 54-61/2022], the thrust of the submissions of the petitioners was twofold. The first was that the provisions of the bill were vague, overbroad, and lacked clarity and that as such, the bill was arbitrary and therefore inconsistent with the provisions of Article 12(1) of the Constitution. The second was that such a law could lead to the arbitrary implementation of its provisions and therefore violate Article 12(1). On this issue, this Court held as follows [at page 9]:*

"Vague provisions prevent persons from understanding the ambit of the law. Citizens will not have the knowledge of what is permissible and what is not. ***Governmental authorities cloaked with powers under vague provisions will not know the ambit of their powers and as such the implementation of such powers would become necessarily arbitrary****. As was held by this Court in the* ***Prevention of Terrorism (Temporary Provisions) Amendment Bill*** *[SC (SD) Application Nos. 13-18/2022]:*

"When a provision of law is vague, it would only benefit the wrongdoer. Such a provision would not uphold the Rule of Law" [at page 22].

"This Court has stated time and again that vagueness must be avoided in the bills in order to make such provisions consistent with Article 12(1) of the Constitution" [at page 23].

In assessing whether the provisions of a bill are vague or lack clarity, ***the question before this Court would be whether the bill has been drawn up with the amount of clarity and precision as would enable a reasonable person to discern which actions are forbidden, or which actions are required****. If the operation and boundaries of the bill in question cannot be identified without resorting to guesswork, then the provisions of the bill would be vague, and therefore arbitrary. Even if the provisions of the impugned Bill are unambiguous, if it fails to provide adequate safeguards in the exercise of such power, that too will be arbitrary.* ***Thus, provisions that are vague and those that do not have adequate safeguards violate Article 12(1) of the Constitution****.*

In considering the application of a bill or its provisions, it is only plausible and real-world possibilities that would be entertained by this Court. The threat of potential abuse should not be based on fanciful hypotheses, and should always be guided by the perspective of the proverbial reasonable person. There should be a realistic possibility that the provisions of the Constitution would be abused through the provisions of the law. In such a situation, this Court undoubtedly possesses the jurisdiction to consider such possibilities, and would not have to wait for any actual or imminent infringement. ***The need for this Court to be proactive and vigilant is underscored by the absence of post-enactment review****." [emphasis added]"*

[20] Thus, in assessing whether a particular provision of the Bill confers unfettered power on an individual or authority, or is overbroad and hence would lead to any arbitrariness in its implementation, the test would be to look at the particular provision objectively bearing in mind whether the safeguards that have been provided for in the Bill are adequate and realisable.

Delegation of power without safeguards

[21] We shall now consider the first argument of the Petitioners, based on the provisions of Clauses 4, 8, 9, 17, 18, 19, 20, 24, 34 and 35 of the Bill.

[22] It was submitted that while the Bill purports to establish and/or strengthen the statutory framework relating to financial reporting, in substance, the width and breadth of its provisions are not determined by Parliament since it defers the content, scope, and application of that framework to future subordinate instruments to be made either by the Minister by way of regulations or by the FIU through its rule making power, thus leaving many matters to be determined *ex post facto* by the Minister or the FIU. It was submitted further that this would lead to the enactment of regulations and rules which are vague or overbroad in its application and would be in contravention of Articles 3, 4 and 76.

[23] The Act as it presently stands provides for the Minister to make regulations in respect of matters prescribed by the Act. The Bill reiterates that power conferred on the Minister under the Act to make regulations and in addition enables the FIU to make rules. The question that must be determined by this Court is whether conferring such regulation and rulemaking powers is permissible under the Constitution.

[24] The answer is found in Article 76 of the Constitution. While in terms of Article 76(1), *"Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power"*, Article 76(3) reads as follows:

> *"It shall not be a contravention of the provisions of paragraph (1) of this Article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation* ***for prescribed purposes****, including the power –*
>
> *(a) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;*

(b) to make by order any law or any part thereof applicable to any locality or to any class of persons; and

(c) to create a legal person, by an order or an Act."

[25] Thus, it is within the power of Parliament to empower the Minister to make regulations as well as to empower the FIU to make rules for prescribed purposes.

[26] In terms of Section 29(1) of the Act, "*The Minister may make regulations under this Act for* ***any matter authorized or required to be made under this Act****, or* ***for the purpose of carrying out or giving effect to the principles and provisions of this Act***." Section 29(4) provides that, "*Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for its approval. ...*"

[27] Section 29(2), which currently provides that the Minister may make regulations in respect of the matters set out in Section 29(1), is sought to be repealed and replaced with Clause 34, which reads as follows:

*"**In particular** and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of the following matters: -*

(a) prescribing any business as a "designated non-finance business or profession" or "finance business" ***taking into consideration the interests of the national economy****; and*

(b) prescribing any person as a customer in relation to a transaction or an account."

[28] It was the submission of Mr. Hewamanne that by regulation alone, the Minister may determine what constitutes a "*finance business*" or "*designated non-finance business or profession*", thereby deciding who comes within the Act and who shall be subject to its obligations, liabilities, and sanctions. He submitted further that this allows the Minister to expand the reach of the Act beyond the categories set out by Parliament without specifying any criteria or without requiring any nexus to money laundering or terrorist financing.

[29] We are unable to agree with this argument for three reasons. The first is that Section 29(1) clearly circumscribes the power of the Minister to make regulations by specifying that regulations can be made only in respect of any matter authorized or required to be made under the Act, or for the purpose of carrying out or giving effect to the principles and provisions of the Act. The second is that in the definition of *"finance business"* or *"designated non-finance business or profession"* contained in Clause 34, Parliament has specifically recognised that a necessity may arise to expand the persons and/or institutions already identified by the said definitions and has in the said definitions itself conferred the Minister with the power to add a *"finance business"* or *"designated non-finance business or profession"* by way of regulations. While this power is circumscribed by the use of the words, '*taking into consideration the interests of the national economy*', the application of the *ejusdem generis* rule would ensure that the persons who are included in the future must be persons whose actions have a connection with, and are within the financial system of the Country. The third is, all Regulations made by the Minister must be placed before Parliament for approval, and thus, Parliament retains control over the acts of the Minister. Thus, we are of the view that there are adequate safeguards that would ensure the Minister stays within the four corners of the Act when exercising the regulation making power.

[30] Mr. Corea, PC submitted that by conferring the power to make rules or issue directions in respect of matters set out in Clauses 4, 8, 9, 17 and 18, the Bill seeks not only to expand the powers of the FIU and confer a wide discretion in the FIU, but also to concentrate executive, legislative, and quasi-judicial authority in it, without adequate safeguards. This position was echoed in the submissions of Mr. Hewamanne, as well.

[31] Clause 35 seeks to introduce three new Sections numbered as 29A, 29B and 29C, with Section 29A conferring the Head of the FIU with the power to make Rules. The proposed Section 29A reads as follows:

> *"(1) The Head of the Financial Intelligence Unit may,* ***subject to the provisions of this Act****, make rules in respect of any matter for which rules are authorized*

or required to be made under this Act ***for the effective implementation of the provisions of this Act****."*

(2) Without prejudice to the generality of the powers conferred by subsection (1), rules may be made in respect of the following matters:

(a) The official identification documents, or other reliable source documents, or information or data or evidence that is required for identification or verification of any particular customer or class of customers;

(b) The timing of the identification and verification requirements for the purposes of section 2;

(c) The threshold for, or the circumstances or the manner in which, identification and verification requirements shall apply to transactions carried on by the customers of an Institution;

(d) Conducting of simplified customer due diligence measures;

(e) Record keeping, reporting obligations, identification of suspicious transactions, suspension of transactions, and customer screening;

(f) Application of risk-based approach as referred to in section 2;

(g) Identification or verification of the identity of the beneficial owner of a customer as referred to in section 2;

(h) Obtaining information in relation to the originator and beneficiary of, or any other related party to, any category of transaction as the Head of the Financial Intelligence Unit may deem necessary; and

(i) Sharing of information among Institutions under Section 2 (6).

(3) ...

(4) The Head of the Financial Intelligence Unit shall, in making rules under this section, take into account the recommendations of the Financial Action Task Force.

(5) Every rule made under this section shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified therein."

[32] It would thus be seen that the Head of the FIU is vested with the power to define the operational content of compliance obligations and decide on thresholds for customer due diligence, the form and manner of reporting, and the circumstances under which simplified or enhanced procedures apply. All these provisions relate to the submission and collation of information and the manner in which an Institution must exercise due diligence in respect of financial transactions and in dealing with customers, and by their very nature, are not matters that can lead to any arbitrariness in its implementation.

[33] While the power of the FIU to make rules is circumscribed by the proposed Section 29A(1) by the use of the words, *'for the effective implementation of the provisions of this Act'*, we must state that the said provisions must be viewed from the standpoint of (a) the objective sought to be achieved by the Act, and (b) the need to be able to respond swiftly to developments that take place in the international financial system as well as the FATF Recommendations.

[34] We are therefore of the view that Clauses 4, 8, 9, 17, 18, 19, 20, 24, 34 and 35 that confer *inter alia* the power to make regulations and rules as aforesaid are not inconsistent with Articles 3, 4, 12(1) and 76 of the Constitution.

Privileged Communication and the rights of Attorneys-at-Law – Clauses 15, 18-20 & 22

[35] The Act places the obligation of collecting data relating to financial transactions on an 'Institution', which has been defined in Section 33 of the Act to mean *"any person or body of persons engaged in or carrying out any finance business or designated non-finance business within the meaning of this Act."*

[36] A "designated non-finance business" has been defined to include *inter alia*:

"lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their clients in relation to any of the following activities :—

(i) buying and selling of real estate;
(ii) managing of client money, securities or other assets;
(iii) management of bank, savings or securities accounts;
(iv) organization of contributions for the creation, operation or management of companies; and
(v) creation, operation or management of legal person or arrangements and the buying and selling of business entities."

[37] The Bill seeks to amend the definition of 'Institution' to mean, "*any person engaged in or carrying out any finance business or designated non-finance business or profession within the meaning of this Act*".

[38] "Designated non-finance businesses or professions" have been defined in the Bill to include *inter alia*:

"lawyers, notaries, other independent legal professionals or accountants, when they prepare for, or carry out transactions for their clients in relation to any one or more of the following activities: -"

(i) buying and selling of real estate;
(ii) managing of client money, securities or other assets;
(iii) management of bank savings or securities accounts;
(iv) organization of contributions for the creation, operation or management of companies; and
(v) creation, operation or management of legal persons or legal arrangements or the buying and selling of business entities;

[39] Mr. Hewamanne submitted that by virtue of the above, all Attorneys-at-Law operating in the following capacities are included:

(a) An Attorney-at-Law acting as a Notary Public in preparing for and carrying out transactions relating to the buying and selling of real estate;

(b) An Attorney-at-Law acting as an instructing attorney, by virtue of signing a proxy with a client and obtaining a deposit of fees and expenses, in the management of client money (solicitors' accounts);

(c) An Attorney-at-Law acting as a corporate lawyer advising on mergers and acquisitions of a client which is a publicly listed company, and carrying out steps in relation to the management of bank savings or securities accounts;

(d) A firm of Attorneys-at-Law acting in the provision of corporate consultancy services, including the organisation of contributions for the creation, operation, and management of companies;

(e) A firm of Attorneys-at-Law acting in the provision of probate and testamentary services, including in the capacity of executors, administrators, or trustees;

(f) Attorneys-at-Law acting as power of attorney holders on behalf of their clients in relation to legal proceedings or other steps;

(g) An Attorney-at-Law providing advice as to the formation or management of legal persons or legal arrangements;

(h) A firm of Attorneys-at-Law acting as an escrow agent for its clients, or pursuant to an escrow arrangement.

[40] The second argument of the learned Counsel for the Petitioners was that the Bill does not provide adequate procedural safeguards to enable Attorneys-at-Law to discharge their professional duties within the existing regulatory framework governing the legal profession, as established by the Supreme Court Rules. It was submitted further that communications between the client and attorney is privileged and that under the Supreme Court Rules, disclosure of such confidential communications is permissible only in narrowly defined circumstances, principally with the express or implied consent of the client, or in exceptional cases such as communications made in furtherance of an illegal purpose or to prevent a crime or fraud.

[41] Section 13 of the Act already contain provisions relating to privileged communication between an Attorney-at-Law and his client, and reads as follows:

"(1) Nothing contained in sections 4, 5, 6, 7 or 8 of this Act shall be construed as requiring a lawyer to disclose any privileged communication only if -

(2) (a) it is a confidential communication, whether oral or in writing, passing between —

(i) a lawyer or legal advisor in his or her professional capacity and another barrister, solicitor, lawyer, attorney or legal advisor in such capacity ; or

(ii) a lawyer or legal advisor in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either; and

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or unlawful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a person (whether a lawyer his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer."

[42] Thus, under the Act, confidential communication as identified in Section 13(2) is considered as privileged communication. The learned Counsel for the Petitioners did not complain that the above provisions as it currently reads has resulted in a violation of the privileges enjoyed by Attorneys-at-Law.

[43] Clause 15 of the Bill seeks to amend Section 13, and reads as follows:

"(1) Nothing contained in sections 4, 5, 6, 7 or 8 of this Act shall be construed as requiring a lawyer to disclose any privileged communication.

(2) For the purpose of this section, a communication shall be a privileged communication, only if –

(a) it is a confidential communication, whether oral or in writing, passing between —

(i) a lawyer or legal advisor in the professional capacity and another barrister, solicitor, lawyer, attorney or legal advisor in such capacity; or

(ii) a lawyer or legal advisor in the professional capacity and the client, whether made directly or indirectly through an agent of either;

(b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) it is not made or brought into existence for the purpose of committing or furthering the commission of any illegal or unlawful activity.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a person (whether a lawyer, client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer."

[44] Having examined the amendments sought to be introduced to Section 13, it is clear that the said amendments are being made to add clarity to Section 13. Furthermore, communications between a client and an Attorney-at-Law continues to be privileged with regard to confidential communication which has been clearly identified in Clause 15. We are therefore of the view that Clause 15 will not result in an erosion of such privilege and the said clause is therefore not inconsistent with Article 12(1) or Article 14(1)(g).

Proceedings in camera – Clause 18

[45] In terms of Section 15(2) of the Act, where the FIU has reasonable grounds to suspect that a transaction or attempted transaction may *inter alia* involve the proceeds which are attributable to any unlawful activity, is connected to the commission of an offence under the Money Laundering Act or is preparatory to the

commission of an offence under the Convention on the Suppression of Terrorist Financing Act, it may direct an Institution not to proceed with such transaction for a period not exceeding seven days. Section 15(3) provides that, "*The FIU may make an ex -parte application to the High Court of the Western Province, holden in Colombo, for an extension of the period of time stipulated in subsection (2) setting out the grounds for such application.*"

[46] Clause 18 of the Bill seeks to amend (a) Section 15(2) *inter alia* by extending the time period to not more than fourteen days, and (b) Section 15(3) by specifying that "*such application, and the proceedings pertaining to the same shall be held in camera.*"

[47] Article 106(1) provides that, "*The sittings of every court, tribunal or other institution, established under the Constitution or ordained and established by Parliament shall subject to the provisions of the Constitution be held in public, and all persons shall be entitled freely to attend such sittings.*" The Sinhalese text of the Constitution refers to '*sittings*' as 'නඩු විභාග'.

[48] In terms of Article 106(2), "*A judge or presiding officer of any such court, tribunal or other institution may, in his discretion, whenever he considers it desirable*

(a) in proceedings relating to family relations,
(b) in proceedings relating to sexual matters,
(c) in the interests of national security or public safety, or
(d) in the interests of order and security within the precincts of such court, tribunal or other Institution,

exclude there from such persons as are not directly interested in the proceedings therein."

[49] The Sinhalese text refers to 'proceedings' as 'නඩු කටයුතු වල'.

[50] Mr. Corea, PC submitted that the amendment proposed to Section 15(3) is violative of Article 106(1) and does not come within the four situations provided for in Article 106(2). While it is clear from Article 106(1) that what is contemplated are proceedings or 'නඩු විභාග', the situation contemplated by Section 15(3) is only an *ex parte* application made to extend the time period directing an Institution to suspend a transaction and does not extend to a "sitting" as contemplated by Article 106(1)

nor is it a public sitting in open court. We are therefore of the view that the proposed Section 15(3) is not violative of Article 106 of the Constitution.

Imposition of administrative sanctions – Clauses 22 and 39

[51] Clause 22 seeks to repeal and replace Section 19 of the Act with 8 sub-sections, of which sub-sections 1 and 2 reads as follows:

> *"(1) A person who contravenes or fails to comply with –*
>
> *(a) any provision of this Act or any regulation, rule or Order made or issued thereunder;*
>
> *(b) any condition or restriction imposed on such person under this Act; or*
>
> *(c) any written notice, directive or any other requirement issued or imposed on such person under this Act,*
>
> *shall be liable to one or more of the administrative sanctions, imposed by the Head of the Financial Intelligence Unit,* ***taking into consideration the nature and gravity of the contravention or the failure*** *and where relevant,* ***subsequent action taken by such person to rectify the contravention or the failure****.*
>
> *(2) An administrative sanction referred to in subsection (1) may be –*
>
> *(a) - (e) ....*
>
> *(f)* ***recommending*** *to the supervisory, regulatory, self - regulatory, licensing or registration authority of an Institution, as the case may be, to –*
>
> *(i) issue a written warning;*
>
> *(ii) suspend or restrict the license, or prohibit the continuation, of the business or profession undertaken by an Institution;*
>
> *(iii) revoke the license of an Institution; or*
>
> *(iv) impose a penalty in terms of the provisions of the relevant written law, or impose a time bar or restriction on a person from engaging in employment, trade, business or profession within the sector relevant to the supervisory, regulatory, self-regulatory, licensing or registration authority,*

as may be permitted in terms of any applicable written law for the regulation or supervision of such Institution."

[52] The words, *licensing authority, registration authority, regulatory authority, self-regulatory authority* and *supervisory authority* have been defined in Clause 39 as follows:

(i) "licensing authority" means, an authority established by or under any written law with powers to license Institutions to carry on the relevant business or activity.

(ii) "registration authority" means, an authority established by or under any written law with powers to register Institutions to carry on the relevant business or activity.

(iii) "regulatory authority" means, an authority established by or under any written law with powers to regulate, or authorize and enforce standards and controls in relation to Institutions.

(iv) "self-regulatory authority" means, an authority that regulates, supervises, monitors and oversees its members (such as lawyers, notaries, other independent legal professionals or accountants) within any designated non-finance business or profession.

(v) "supervisory authority" means, any authority established by or under any written law to oversee or enforce compliance by Institutions with applicable written laws, but does not include the Financial Intelligence Unit established under section 14a.

[53] Mr. Hewamanne submitted that in terms of Clause 22, the FIU is vested with the power to initiate processes which **may** lead to disciplinary consequences affecting the right of an Attorney-at-Law to engage in his practice and that this is inconsistent with, and an interference with the existing regulatory scheme governing Attorneys-at-Law, under which disciplinary control over Attorneys-at-Law is vested exclusively in the Supreme Court.

[54] It must be noted that in terms of the above, the FIU would only be recommending to the relevant authority or institution that one or more of the actions be taken,

provided such actions are permitted by the enabling law of such authority. It is thereafter upto the relevant authority to decide on the course of action that must be taken on such recommendation. In the case of Attorneys-at-Law, the recommendations from the FIU will be based on their investigations. Be that as it may, the final decision in respect of disciplinary issues relating to Attorneys-at-Law shall be taken by the Chief Justice or any other Judge of the Supreme Court, as clearly provided for in Section 43 of the Judicature Act.

[55] The Bill confers power on the Head of the FIU to issue directions to a 'regulatory authority' defined in Clause 39. Mr. Corea, PC submitted that the Supreme Court may be categorised as a 'regulatory authority' and that as a result, the Supreme Court shall be subject to the reporting and compliance requirements of the FIU, thereby undermining the independence of the judiciary. We are in agreement with the submissions of Mr. Corea, PC and Mr. Hewamanne and are of the view that to subject the Supreme Court to the direction of the FIU in whatever form would be in violation of Articles 3 and 4 of the Constitution. Hence, the above definitions in Clause 39 would have to be passed by the special majority of Parliament and shall be approved by the People at a Referendum.

[56] Mr. Sudarshana De Silva, PC, the learned Additional Solicitor General submitted that it was never the intention to include the Supreme Court within the definition of 'Institution' and that an amendment shall be moved at the Committee Stage of Parliament by adding the words, '*but does not include the Supreme Court of the Republic of Sri Lanka*' at the end of the definition of 'Institution' in Clause 39. This would however only partially address the above view of this Court. We are therefore of the view that the words, '*but does not include the Supreme Court of the Republic of Sri Lanka*' shall be added at the end of the aforementioned definitions of *Institution, licensing authority, registration authority, regulatory authority, self-regulatory authority* and *supervisory authority*. We are of the view that the said violation would cease if Clause 39 is amended as above.

[57] It was submitted further by Mr. Corea, PC that the sanctions that can be imposed can vary from a written warning to a monetary penalty which shall not exceed Rs. Two Hundred Million, and that the Bill does not set out any criteria that should govern the exercise of the discretion vested in the Head of the FIU. This is not correct

since the proposed Section 19(1) contained in Clause 22 specifically provides that in the exercise of its discretion, the FIU shall take into consideration the nature and gravity of the contravention or failure, and where relevant, subsequent action taken by such person to rectify the contravention or the failure. We are of the view that this is a sufficient safeguard to prevent any arbitrariness creeping into the decision of the FIU.

[58] Mr. Corea, PC and Mr. Hewamanne submitted that even though the Head of the FIU can impose administrative sanctions, the Bill does not set out the procedure that shall be followed in order to decide if a contravention has taken place as required by the proposed Section 19(1), nor does the Bill require the Minister to specify by way of regulations the procedure that must be followed by the FIU in determining whether any person has failed to comply with any provision of the Act or any regulation or rule made thereunder.

[59] We are of the view that fairness demands that principles of natural justice be adhered to and that any person who may be affected by an administrative sanction is entitled to a reasoned consideration of their position prior to the imposition of an administrative sanction. Failure to do so would result in a violation of the protection afforded by Article 12(1). In **Harin Fernando v Samagi Jana Balawegaya and others** [SC Expulsion No. 1/2023; SC minutes of 9th August 2024], it was held as follows:

> *"It is important that individuals are provided with the opportunity to participate in the decision making process prior to decisions affecting their rights being taken by public authorities and/or authorities vested with statutory power. This would promote the quality, accuracy and rationality of such process, and enhance the legitimacy thereof while at the same time improving the quality of decisions made by public authorities. As stated in De Smith's Judicial Review [Eighth edition, 2018] "Procedural justice aims to provide individuals with a fair opportunity to influence the outcome of a decision and so ensure the decision's integrity" [page 341] and "assist in achieving a sense that justice has both been done and seen to be done" [page 342]."*

[60] The learned Additional Solicitor General submitted that adequate safeguards must be in place to ensure that a party is heard prior to the imposition of penalties including monetary penalties. He submitted further that as it currently stands, the FIU has set out in an operational manual the procedure that shall be followed prior to imposing penalties under Section 19 of the Act, and that such procedure contains a show-cause mechanism wherein responses are called for and considered.

[61] We are of the view that an Institution is entitled to be heard prior to any steps being taken that would result in the imposition of an administrative sanction as contemplated by Clause 22. Thus, we are of the view that the proposed Section 19(1) sought to be introduced by Clause 22 is inconsistent with Article 12(1) of the Constitution and requires to be passed by the special majority of Parliament.

[62] The learned Additional Solicitor General submitted that an amendment shall be moved at the Committee Stage of Parliament to Section 19(1) by including the following sentence at the end of Section 19(1):

> *"The Head of the FIU shall, before imposing any administrative sanctions give such person an opportunity of showing cause as to why such sanctions shall not be imposed on him."*

[63] We are of the view that the said inconsistency shall cease if the proposed Section 19(1) is amended as proposed by the learned Additional Solicitor General. The said Section may thereafter be passed by a simple majority.

[64] Mr. Corea, PC submitted further that where a monetary penalty remains unpaid, the Head of the FIU may make an *ex parte* application to the High Court for an order requiring the payment of the monetary penalty, and upon such order being made such amount shall be recoverable in the same manner as a fine imposed by the Court – vide proposed Clause 19(5) in Clause 22. We are of the view that while the Head of the FIU may make an application, the High Court shall issue notice of such application to the affected party prior to making an order. Thus, the proposed Section 19(5) is inconsistent with Article 12(1) and needs to be approved by the special majority of Parliament. The said inconsistency shall however cease and the proposed Section may be passed by the simple majority of Parliament if the words, *"The High Court shall issue notice of such application prior to making an order."* are inserted at the end of the proposed Section 19(5).

Summary of the Determination

[65] The Bill can be passed by the simple majority of Parliament, except Clause 22 [proposed Section 19(1) and Section 19(5)] and Clause 39 [proposed definitions of "Institution, licensing authority, registration authority, regulatory authority, self-regulatory authority and supervisory authority"] which Clauses shall be passed by the special majority of Parliament. However, if Clause 22 and Clause 39 are amended as follows, the said Clauses too can be passed by the simple majority of Parliament:

Clause 22 — By the insertion of the words, "*The Head of the FIU shall, before imposing any administrative sanctions give such person an opportunity of showing cause as to why such sanctions shall not be imposed on him.*" at the end of the proposed Section 19(1).

Clause 22 – By the insertion of the words, "*The High Court shall issue notice of such application prior to making an order.*" at the end of the proposed Section 19(5).

Clause 39 – By the insertion of the words, '*but does not include the Supreme Court of the Republic of Sri Lanka*' at the end of the definitions of the words, "Institution, licensing authority, registration authority, regulatory authority, self-regulatory authority and supervisory authority"

[66] We place on record our appreciation of the assistance given by the learned Additional Solicitor General who represented the Hon. Attorney General, the learned President's Counsel and other learned Counsel who appeared for the Petitioners.

ACHALA WENGAPPULI, J
JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J
JUDGE OF THE SUPREME COURT

K.M G.H KULATUNGA, J
JUDGE OF THE SUPREME COURT