

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

***In the matter of an Application under Article  
126 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka***

Vasudeva Nanayakkara  
Attorney-at-Law  
Advisor to His Excellency the President  
Secretary, The Democratic Left Front  
49 1/1, Vinayalankara Mawatha  
Colombo 10.

**Petitioner**

SC FR Application No. 158/2007

**Vs**

1. K.N. Choksy M.P.  
President's Counsel  
Former Minister of Finance  
23/3, Sir Ernst De Silva Mawatha  
Colombo 7.
2. Milinda Moragoda M.P.  
Former Minister of Economic Reform  
3/2, Allen Methiniyarama Road  
Colombo 5.
3. Sripathy Sooriyarachchi M.P.  
Attorney-at-Law  
Former Minister, Public Enterprise Reforms  
22, Niwasa Mawatha  
Rilaula  
Kadana.
4. Charitha Ratwatte  
Former Secretary to the Treasury  
16, Jawatte Road  
Colombo 5.
5. Faiz Mohideen  
Former Deputy Secretary to the Treasury  
5/2, Liberty Plaza Flats  
250, R.A. De Mel Mawatha  
Colombo 3.
6. N. Pathmanathan  
Former Deputy Secretary to the Treasury  
16, Gregory's Place  
Dehiwela.
7. P.B. Jayasundera  
Secretary to the Treasury / Former  
Chairman,

Public Enterprises Reform Commission  
(PERC)  
The Secretariat  
Colombo 1.

8. Chrisantha Perera  
Former Chairman, PERC / Sri Lanka  
Insurance Corporation Ltd. (SLIC)  
40/10, Lake Garden, Off Lake Drive  
Rajagiriya.
9. M. Kandasamy  
Member of the Steering Committee / General  
Manager SLIC  
"Rakshana Mandiraya"  
21, Vauxhall Street  
Colombo 2.
10. V. Kanagasabapathy  
Chartered Accountant  
Member of the Steering Committee /  
Former Member of PERC  
79/3, W.A Silva Mawatha  
Colombo 6.
11. Dayanath Jayasuriya  
Member Steering Committee /  
Former Director General SEC / Member  
PERC  
Apt. 3/1, Seagull Apartments  
12, Melbourne Avenue  
Colombo 4.
12. Rani Jayamaha  
Member Steering Committee / Deputy  
Governor Central Bank  
30, Janadhipathi Mawatha  
Colombo 1.
13. Nihal Sri Ameresekere  
Chartered Accountant  
Former Chairman, PERC  
167/4, Vipulasena Mawatha  
Colombo 10.
14. M.D. Bandusena  
Chairman, PERC  
11-01, West Tower, World Trade Center  
Colombo 1.
15. Shamalee Gunawardene  
Attorney-at-Law  
Former Director Legal, PERC  
500/111, Thimbirigasyaya Road  
Colombo 5.

16. Aneela De Soysa  
Chartered Accountant  
Former Director PERC / Later Partner  
PricewaterhouseCoopers, Sri Lanka  
207/22, Dharmapala Mawatha  
Colombo 7.
17. PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasuna Said, Kav C - 3  
Jakarta 12920  
Indonesia.
18. Roger De Montfort  
Chartered Accountant  
Former Attorney – In Fact  
PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasunasaid, Kav C - 3  
Jakarta 12920  
Indonesia.
19. Devasiri Rodrigo  
Chartered Accountant  
Former Senior Partner  
PricewaterhouseCoopers  
42/8, Rosmead Place  
Colombo 7.
20. Y. Kanagasabai  
Chartered Accountant  
Senior Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.
21. S. Manoharan  
Chartered Accountant  
Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.
22. Asite Talwatte  
Chartered Accountant  
Senior Partner  
Ernst & Young  
201, De Saram Place  
Colombo 10.
23. Ruwan Fernando  
Chartered Accountant  
Partner  
Ernst & Young

- 201, De Saram Place  
Colombo 10.
24. Distilleries Company of Sri Lanka Ltd.  
110, Norris Canal Road  
Colombo 10.
25. Aitken Spence & Company Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
26. Aitken Spence Insurance (Pvt) Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
27. Sri Lanka Insurance Corporation Ltd.  
"Rakshana Mandiraya"  
21, Vauxhall Street  
Colombo 2.
28. Milford Holdings (Pvt) Ltd.  
110, Norris Canal Road  
Colombo 10.
29. Greenfield Pacific EM Holdings Ltd.  
C/o Asia Box Consultancy Services (Pte)  
Ltd.,  
61, Club Street  
Singapore 069436.
30. Channa De Silva  
Director General  
Securities & Exchange Commission of Sri  
Lanka (SEC)  
Level 11-01, East Tower  
World Trade Center  
Echelon Square  
Colombo 1.
31. President  
Institute of Chartered Accountants of Sri  
Lanka  
30 A, Malalasekera Mawatha  
Colombo 7.
32. F.H. Puvimanasinghe  
Chartered Accountant  
Senior Partner,  
F.H. Puvimanasinghe & Co.  
126-2/1, 2<sup>nd</sup> Floor, YM.B.A. Building  
Sir Baron Jayatileke Mawatha  
Colombo 1.

33. Wijeyadasa Rajapakse M.P.  
President's Counsel  
Chairman, Parliamentary Committee on  
Public Enterprises (COPE)  
17, Wijeba Mawatha  
Off Nawala Road  
Nugegoda.
34. Inspector General of Police  
Police Headquarters  
Colombo 1.
35. Deputy Inspector General of Police  
Criminal Investigation Department  
4<sup>th</sup> Floor, New Secretariat Building  
Colombo 1.
36. Chairman  
Commission to Investigate Allegations of  
Bribery or Corruption  
36, Malalasekera Mawatha  
Colombo 7.
37. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Respondents**

**TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this 28<sup>th</sup> day of May 2007

The **P**etition of the Petitioner above-named appearing by Razmara Abdeen practising under the name and style of **ABDEEN ASSOCIATES**, and his Assistants, Bushra Muheesa Hashim, Manjula Pasquel and Asirinie Wanniarachchi, their Attorneys-at-Law, states as follows:

1. The Petitioner is an Attorney-at-Law and the Secretary, The Democratic Left Front, Advisor to His Excellency the President, Leader of the Opposition, Colombo Municipal Council and former Member of Parliament.
2.
  - a) 1<sup>st</sup> Respondent was the Minister of Finance at times material to the transaction in issue.
  - b) 2<sup>nd</sup> Respondent was the Minister of Economic Reform at times material to the transaction in issue.
  - c) 3<sup>rd</sup> Respondent was the Minister of Public Enterprise Reforms at times material to the transaction in issue
  - d) 4<sup>th</sup> Respondent was the Secretary to the Treasury at times material to the transaction in issue.
  - e) 5<sup>th</sup> Respondent was the Deputy Secretary to the Treasury at times material to the transaction in issue.

- f) 6<sup>th</sup> Respondent was the Deputy Secretary to the Treasury at times material to the transaction in issue.
- g) 7<sup>th</sup> Respondent is Secretary to the Treasury and was the Chairman / Senior Advisor, PERC at times material to the transaction in issue; and was a Member of the Steering Committee appointed by the 2<sup>nd</sup> Respondent.
- h) 8<sup>th</sup> Respondent was the Chairman, Sri Lanka Insurance Corporation Ltd., / PERC at times material to the transaction in issue; and was the Chairman of the Steering Committee appointed by the 2<sup>nd</sup> Respondent.
- i) 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents were Members of the Steering Committee, together with 7<sup>th</sup>, 8<sup>th</sup>, and 19<sup>th</sup> Respondents, appointed by the 2<sup>nd</sup> Respondent overseeing and facilitating the privatisation of SLIC.
- j) 13<sup>th</sup> Respondent was the Chairman, PERC at times material to the transaction in issue.
- k) 14<sup>th</sup> Respondent was the Chairman, PERC at times material to the transaction in issue.
- l) 15<sup>th</sup> Respondent was the Director Legal, PERC at times material to the transaction in issue.
- m) 16<sup>th</sup> Respondent was the Director, PERC and later Partner, PricewaterhouseCoopers, Sri Lanka, at times material to the transaction in issue; and was the Secretary of the Steering Committee appointed by the 2<sup>nd</sup> Respondent.
- n) 17<sup>th</sup> Respondent is incorporated in Jakarta, Indonesia and was the main Consultant to the Government of Sri Lanka (sometime referred to as the "Government") for 'Investment Banking and Legal Advisory Services' for the transaction in issue and had acted in concert with PricewaterhouseCoopers, Sri Lanka, (both, hereinafter jointly and severally referred to as "PWC") on the transaction in issue.
- o) 18<sup>th</sup> Respondent had been the 'Attorney In Fact' of the 17<sup>th</sup> Respondent and the "Project Co-ordinator" on the transaction in issue (sometimes jointly and severally referred to as "PWC").
- p) 19<sup>th</sup> Respondent was Senior Partner of PricewaterhouseCoopers, Sri Lanka, acting in concert with the 17<sup>th</sup> Respondent, (sometimes jointly and severally referred to as "PWC"), and has also been a former Chairman of the Ceylon Chamber of Commerce and Member of the Monetary Board, Central Bank of Sri Lanka; and was a Member of the Steering Committee appointed by the 2<sup>nd</sup> Respondent.
- q) 20<sup>th</sup> Respondent is the Senior Partner of PricewaterhouseCoopers, Sri Lanka, who had acted in concert with the 17<sup>th</sup> Respondent, (sometimes jointly and severally referred to as "PWC").
- r) 21<sup>st</sup> Respondent is Partner of PricewaterhouseCoopers, Sri Lanka, who had acted in concert with 17<sup>th</sup> Respondent, (sometimes jointly and severally referred to as "PWC"), and had acted as the 'PWC Sri Lanka Team Leader' on the transaction in issue.
- s) 22<sup>nd</sup> Respondent is a Senior Partner of Ernst & Young, who have been the Auditors of the 27<sup>th</sup> Respondent, Sri Lanka Insurance Corporation Ltd., at times material to the transaction in issue; and in addition have rendered Special Audit Services in preparing Financial Statements for the transaction in issue (sometimes jointly and severally referred to as "Ernst & Young").
- t) 23<sup>rd</sup> Respondent is a Partner of Ernst & Young, who have been the Auditors of the 22<sup>nd</sup> Respondent, Sri Lanka Insurance Corporation Ltd. at times material to the transaction in issue; and in addition who have rendered Special Audit Services in preparing Financial Statements for

the transaction in issue; and had been the lead Partner in performing the said services for the transaction in issue. (sometimes jointly and severally referred to as "Ernst & Young").

- u) 24<sup>th</sup> Respondent is a listed public company incorporated in Sri Lanka, with large financial resources (sometimes jointly and severally referred to as the "Guarantors").
- v) 25<sup>th</sup> Respondent is a listed public company incorporated in Sri Lanka with large financial resources (sometimes jointly and severally referred to as the "Guarantors").
- w) 26<sup>th</sup> Respondent is a limited liability company incorporated in Sri Lanka (sometimes jointly and severally referred to as the "Guarantors").
- x) 27<sup>th</sup> Respondent is a public limited company duly incorporated in Sri Lanka and was fully owned by the Government with valuable assets and business (sometimes referred to as "SLIC").
- y) 28<sup>th</sup> Respondent is a limited liability company incorporated in Sri Lanka. (sometimes jointly and severally referred to as the "Purchasers").
- z) 29<sup>th</sup> Respondent is a company incorporated in Gibraltar with an address given in Singapore (sometimes jointly and severally referred to as the "Purchasers").
- aa) 30<sup>th</sup> Respondent is the Director General, SEC and in terms of PERC Act No. 1 of 1996 is an *ex-officio* Member of PERC and ought to be concerned with the investigation of the transaction in issue; the SEC being statutorily mandated to protect the interests of the investing public, is also *quazi* judicial body.
- bb) i) 31<sup>st</sup> Respondent is the President, Institute of Chartered Accountants of Sri Lanka, a statutory body incorporated under Act No. 23 of 1959, as amended, to which the Government has made contributions from the Consolidated Fund and appoints a majority of Members on its Council of management.  
ii) The conduct of affairs of the Institute of Chartered Accountants of Sri Lanka is in terms of the said Act No. 23 of 1959, as amended, including enrolling Members and conducting disciplinary inquiries into the professional misconduct of Members in terms of Section 17 of the said Act and against the decisions made at such inquiries, appeals could be proffered to the Supreme Court in terms of Section 19 of the said Act; thereby making the Institute a *quazi* judicial body.
- cc) 32<sup>nd</sup> Respondent is a very Senior practising Chartered Accountant, Senior Partner of F.H. Puvimanasinghe & Co., who was the Chairman of a Panel of the Ethics Committee of the Institute of Chartered Accountants of Sri Lanka, which had investigated into the conduct and actions of Ernst & Young and PWC on the transaction in issue, on a complaint made by the member of the public in respect of the transaction in issue.
- dd) 33<sup>rd</sup> Respondent is the Chairman of COPE, which has carried out investigations into the transaction in issue.
- ee) 34<sup>th</sup>, 35<sup>th</sup> and 36<sup>th</sup> Respondents are relevant law enforcement authorities.
- ff) 37<sup>th</sup> Respondent is the Hon. Attorney General of Sri Lanka, who had already put Ernst & Young and PWC on notice of professional misconduct and wrong-doing; and also the Purchaser and Guarantor of legal action.

3. The Petitioner

- a) has dedicated his entire life to work tirelessly, as a national politician and social worker, striving hard to achieve equitable social justice and the upliftment of the multitude of the poor down trodden masses of the country
- b) has sustainedly espoused the cause of combating the pillage and plunder of public resources, misuse and waste of public property, denouncing fraud and corruption.
- c) files this Application
  - i) for himself and for and on behalf of all citizens of the country, who own the Consolidated Fund and all public property, which should not be plundered from them.
  - ii) in the national and public interest representing the rights of the citizens of the country, to enforce the fundamental rights to equality before the law, which has been denied by unjust, wrongful, unlawful, unreasonable, arbitrary, capricious and mala-fide administrative and executive actions.

4. The Petitioner respectfully

- a) invokes the jurisdiction of Your Lordships' Court in terms of Article 126, read with Articles 3, 4 and 17 of the Constitution, to examine the transaction in issue set out herein and to make requisite Orders, upholding the Directive Principles of State Policy and Fundamental Duties enshrined in Chapter VI of the Constitution, to protect and safeguard public property that belongs to the People, and which property is held in trust for the People, and any brazen abuse of power to wrongfully alienate or misappropriate the benefit of such public resources, conferring undue and unjust benefit or gain on a privileged few, to the loss and detriment of the People, is an infringement of the fundamental right to equality before the law guaranteed by Articles 12 (1) and 12 (2) of the Constitution, and any such act, if unchecked, uncorrected and not denounced, would render such Constitutional guarantee of equality before the law meaningless.
- b) states that Your Lordships' Court exercising such jurisdiction, delivered Judgment recently in S.C. (F.R.) Application No. 503/2005, upholding that good governance and transparency characterise Democracy and the Rule of Law, and where an infringement of equality before the law is alleged by the wrongful and unlawful grant of facilities and benefits at the highest level of the executive, strict rules of pleadings cannot be insisted upon; also citing also "Sed quis custodiet ipsos Custodes ?" i.e. "but who is to guard the guards themselves ?"; and that Cabinet of Ministers were the custodians of public property and public funds, and such property and funds will have to be dealt with according to law for the benefit of the People, and that therefore the law itself is the instrumentality through which custodians are guarded, which is the basic postulate of the Rule of Law.
- c) states that Your Lordships' Court further held that "Nemo debet sua iudex" is a principle of natural justice, which has now permeated the area of corporate governance as well, and that power is exercised in trust for the People, and where in the purported exercise of such power a benefit or advantage is wrongfully secured there is an entitlement in the public interest to seek a declaration from Your Lordships' Court, as to the infringement of the fundamental right to equality before the law, and that the respective organs of government are reposed power as custodians for the time being to be exercised for the People, as laid down by a 7 Member Bench of Your Lordships' Court in the Determination in regard to the proposed 19<sup>th</sup> Amendment to the Constitution.
- d) states that Your Lordships' Court also cited – "If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the

State within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon a judiciary and it is by exercising this power which constitutes one of the most potent weapons in armory of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse of abuse of power by the State or its officers".

5. a) The 2<sup>nd</sup> Respondent by Letter dated 21.1.2002 appointed the following persons as a Steering Committee to oversee and facilitate the privatisation of SLIC;
- i) Chrisantha Perera, Chairman SLIC – Chairman (8<sup>th</sup> Respondent)
  - ii) P.B. Jayasundera, Chairman PERC – Member (7<sup>th</sup> Respondent)
  - iii) N. Kandasamy, General Manger, SLIC – Member (9<sup>th</sup> Respondent)
  - iv) Devasiri Rodrigo, Partner PWC – Member (19<sup>th</sup> Respondent)
  - v) V. Kanagasabapathy, Addl. DG, Dpt. of Public Finance – Member (10<sup>th</sup> Respondent)
  - vi) Marina Tharmaratnam, Executive Vice President, DFCC – Member (Resigned in July 2002 due to a conflict of interest)
  - vii) Dayanath Jayasuriya, DG, Insurance Board of Sri Lanka – Member (11<sup>th</sup> Respondent)
  - viii) Rani Jayamaha, Assistant to Governor, Central Bank – Member (12<sup>th</sup> Respondent)
  - ix) Aneela de Soysa, Director PERC – Secretary (16<sup>th</sup> Respondent)

*A true copy of the said Letter dated 21.1.2002 is annexed hereto marked P1, pleaded as part and parcel hereof*

- b) The said Steering Committee, **without Cabinet Approval**, solicited offers and appointed PWC Indonesia as the Consultants for the Government of Sri Lanka, to provide Investment Banking & Legal Advisory Services at a Fee of around US \$ 1.6 million for the Sale of the 90% Shares of SLIC.

*A true copy of the Contract between the Government and PWC Indonesia is annexed hereto marked P2, pleaded as part and parcel hereof*

- c) PWC, Indonesia acted through its Attorney, the 18<sup>th</sup> Respondent, and at all times acted in concert with their local counterparts PWC, Sri Lanka.

*Appendix C - 'Key personnel and Sub-Consultants' of the aforesaid Contract (P2) is marked P2(a), also pleaded as part and parcel hereof*

- d) 16<sup>th</sup> Respondent, as a Director of PERC and Secretary, Steering Committee, having been involved in the process of privatisation of SLIC, just about one month prior to the execution of the sale Agreement on 11.4.2003, joined PWC, Sri Lanka, as a Partner.

6. a) Having appointed the Steering Committee, 2<sup>nd</sup> Respondent forwarded a Cabinet Memorandum dated 28.2.2002 and sought Cabinet Approvals to initiate action on the Sale of 90% Shares of SLIC by appointing a Technical Evaluation Committee (TEC) and a Tender Board.

*A true copy of the Cabinet Memorandum dated 28.2.2002 is annexed hereto marked P3, pleaded as part and parcel hereof*

- b) The Cabinet on 18.4.2002 approved the above Cabinet Memorandum, **subject to a Tender Board being appointed by the Cabinet, itself**, and the 2<sup>nd</sup> Respondent was required to report to the Cabinet on the feasibility of the sale of the ownership of SLIC, retaining a minority Shareholding for the Government.

*A true copy of the Cabinet Decision dated 18.4.2002 is annexed hereto marked P4, pleaded as part and parcel hereof*

- c) Though Cabinet had not granted approval for the appointment of a Tender Board, **disregarding the Cabinet Decision**, 6<sup>th</sup> Respondent by Letter dated 7.8.2002 at the request by Letter dated 29.7.2002, of the 7<sup>th</sup> Respondent, as then Chairman PERC had appointed a Tender Board, **appointing, himself, as its Chairman.**

*True copy of the Letter dated 7.8.2002 is annexed hereto marked P5, pleaded as part and parcel hereof*

- d) **6<sup>th</sup> Respondent could not have so acted in breach of the Cabinet Decision, without the knowledge and approval of the 1<sup>st</sup> and 4<sup>th</sup> Respondents, who would have received the Cabinet Decision, where the Cabinet decided to appoint a Tender Board by itself,** expressly refusing approval for the Secretary to the Treasury to appoint a Tender Board.
- e) Members of the Steering Committee referred to at paragraph 5 above had been aware of the said Cabinet Decision, **but had chosen to act otherwise.**
- f) In terms of the PERC Act No. 1 of 1996, the 4<sup>th</sup> Respondent, as the Secretary to the Treasury, was an *ex-officio* Member of PERC.
- g) 6<sup>th</sup> Respondent also by the said Letter dated 7.8.2002 (P5) had appointed a TEC, to handle the evaluation process, drawing specific attention to the **Government Tender Procedure Guidelines and Public Finance Circulars.**
7. a) Expressions of interests for the Sale of 90% Shares of SLIC were invited from about mid July 2002 on behalf of the Government by the Government's Consultants PWC, both Indonesia and Sri Lanka, giving the contact names of the 18<sup>th</sup> Respondent (PWC Indonesia) and 21<sup>st</sup> Respondent (PWC Sri Lanka).

*A true copy of one such advertisement is annexed hereto marked P6, pleaded as part and parcel hereof.*

- b) By 23.8.2002, 17 parties had expressed interest in the purchase of 90% Shares of SLIC.
- c) On 25.3.2003 the TEC, after an evaluation process, had recommended the 90% Sale of SLIC to a consortium comprising 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> Respondents
- d) 24<sup>th</sup> and 25<sup>th</sup> Respondents were well known, financially strong, listed public companies, whilst the 26<sup>th</sup> Respondent was to work with Technical Partner, ING Institutional & Government Advisory Services BV, Holland.
- e) TEC evaluation has been on 'ranking' on a 'points awarding system' for factors – 'operational experience in life and general insurance industry', 'financial capacity to operate SLIC' and 'business plan to develop future business'.

*A true copy of TEC Recommendation dated 25.3.2003 and Minutes and Annexes are annexed hereto compendiously marked P7, pleaded as part and parcel hereof.*

8. a) The 'indicative valuation' of SLIC by PWC had taken into reckoning both the General Insurance Fund and Life Insurance Fund, and had indicated a value in the range of Rs. 5,102 million to Rs. 5,377 million.

- b) The 'indicative valuation' had been on the basis of a 'Net Present Value of a Discounted Cash-flow'. The Net Profits of SLIC for the year ended 31.12.2001 had been around Rs. 1,162 million. A 'price earnings multiple' of around '10' had been considered, but on an unexplained adjusted annual profit of SLIC of around only Rs. 420 million.
- c) The 'net assets value' of SLIC has been reckoned on historical book values, which disclose the Land, Buildings, Plant and Equipment only at Rs. 275 million, as per the SLIC Accounts.
- d) The 'market values' of the following valuable freehold properties, with valuable Buildings of SLIC, have not been taken into reckoning in placing a valuation on the 90% Shares of SLIC.

- Lands & Buildings in Colombo 1 and 2	3A 2R 33.35P
- Land at Katubedda	2A 0R 13P
- Lands & Buildings at Anuradhapura, Kandy, Matara, Trincomalee, Avissawella, Gampaha, Marawila, Kalutara, Thalgaswela, Negombo, Ambalangoda, Chilaw	2A 3R 38.96P
- Bungalows at Anuradhapura, Nuwara-Eliya, Kandy	1A 0R 25.83P
- Staff Quarters at Hingurakgoda, Mahiyangana	0A 1R 30P
- 2 properties in Jaffna	0A 1R 30P
- Condominium property at Kurunegala	

*A true copy of the 'Indicative Valuation' Report of PWC is annexed hereto marked P8, pleaded as part and parcel hereof*

9. On the same day as the TEC Report on 25.3.2003, the Tender Board constituted in violation of the Cabinet Decision, had approved the TEC recommendation.

*A true copy of the Tender Board Report dated 25.3.2003 is annexed hereto marked P9, pleaded as part and parcel hereof.*

10. a) 2<sup>nd</sup> Respondent had forwarded Cabinet Memorandum dated 27.3.2003, disclosing that 5 parties had been short-listed, recommending the Sale of 90% Shares of SLIC, at a consideration of Rs. 6050 million, to the Consortium comprising;

- Distilleries Company of Sri Lanka Ltd.,	- (24 <sup>th</sup> Respondent)
- Aitken Spence Co. Ltd.,	- (25 <sup>th</sup> Respondent)
- Aitken Spence Insurance (Pvt) Ltd.,	- (26 <sup>th</sup> Respondent)
with Technical Partner, ING Institutional & Government Advisory Services BV (Holland)	

*A true copy of the Cabinet Memorandum dated 27.3.2003 is annexed hereto marked P10, pleaded as part and parcel hereof.*

- b) Cabinet Approval had been granted for the above on 2.4.2003.

*A true copy of the Cabinet Approval dated 2.4.2003 is annexed hereto marked P11, pleaded as part and parcel hereof.*

11. a) In blatant violation of the Cabinet Decision, an Agreement structured by PWC and finalised by the 15<sup>th</sup> Respondent, then Director Legal, PERC, who has also signed as a Witness, for the Sale of 90% Shares of SLIC had been signed on 11.4.2003 on behalf of the Government by the 5<sup>th</sup> Respondent, as Acting Secretary to the Treasury, **not with the above selected and Cabinet approved parties**, but with the following new parties, as Purchasers;

- Milford Holdings (Pvt) Ltd., (28<sup>th</sup> Respondent)
  - Greenfield Pacific EM Holdings Ltd., incorporated in Gibraltar on 28.3.2003. (29<sup>th</sup> Respondent)
- b) Greenfield Pacific EM Holdings Ltd. Gibraltar had been incorporated on 28.3.2003, and hence **had not been even in existence on the date of the Cabinet Memorandum of 27.3.2003.**
- A true copy of the Certificate of Incorporation dated 28.3.2003 of Greenfield Pacific EM Holdings Ltd. Gibraltar is annexed hereto marked P12, pleaded as part and parcel hereof*
- c) Distilleries Company of Sri Lanka Ltd., (24<sup>th</sup> Respondent), Aitken Spence & Co. Ltd., (25<sup>th</sup> Respondent) and Aitken Spence Insurance (Pvt) Ltd., (26<sup>th</sup> Respondent) have signed the said Agreement of 11.4.2003, as Guarantors, guaranteeing the payment of the purchase consideration to the Government by the aforesaid Purchasers.
- d) **D.H.S. Jayawardene has signed on behalf of the 2 Purchasers and the 3 Guarantors, aforesaid.**
- A true copy of the Agreement dated 11.4.2003 is annexed hereto marked P13, pleaded as part and parcel hereof*
- e) P.B. Jayasundera (7<sup>th</sup> Respondent), who had been Chairman PERC since January 1997, had curiously resigned in or about January 2003 and had continued thereafter as Senior Advisor PERC, in effect *de-facto* Chairman, whilst G. Hewagama had been Chairman PERC from January 2003.
- f) Chrisantha Perera (8<sup>th</sup> Respondent), Chairman SLIC had been appointed Chairman PERC, after the aforesaid Agreement for the Sale of 90% Shares of SLIC had been signed on 11.4.2003, whilst P.B. Jayasundera (7<sup>th</sup> Respondent) had continued to be Senior Advisor, PERC until February 2004.
12. a) The above Agreement dated 11.4.2003 could not have been signed on behalf of the Government by the 5<sup>th</sup> Respondent, as the Acting Secretary to the Treasury, **without the knowledge and express approval of the 1<sup>st</sup> Respondent.**
- b) 1<sup>st</sup> Respondent, as a Lawyer, has represented and acted to protect the interests of the said D.H.S. Jayawardene and/or some of his Companies.
- c) 4<sup>th</sup> Respondent, in whose absence and on whose behalf the 5<sup>th</sup> Respondent had signed the said Agreement, **had not questioned the same, but in fact had ratified.**
13. a) The two private Companies, Milford Holdings (Pvt) Ltd., (28<sup>th</sup> Respondent) and Greenfield Pacific EM Holdings Ltd., Gibraltar, (29<sup>th</sup> Respondent) **had never expressed any interest, and therefore had not been evaluated by the TEC.**
- b) **Greenfield Pacific EM Holdings Ltd., Gibraltar (29<sup>th</sup> Respondent), had not even been in existence during the entire process of evaluation and selection, and had been incorporated only on 28.3.2003, a day after the Cabinet Memorandum of 27.3.2003. Its ownership, standing, credentials were not known to the TEC, the questionable Tender Board and the Cabinet, in essence, the Government.**
- c) These two private Companies had not been recommended by the questionable Tender Board, nor evaluated by the TEC with the other several parties, who had expressed interest. **They are**

not the parties, who had been approved by the Cabinet. These two private Companies have been total 'strangers' to the entire arrangement / process.

- d) **'Non-evaluated' and 'non-existent parties', could not be substituted, in place of the duly 'evaluated and selected parties', as per Government Tender Procedure Guidelines and Public Finance Circulars, to which the 6<sup>th</sup> Respondent had specifically drawn attention to by his Letter dated 7.8.2002 [P5] in appointing the Tender Board and TEC.**
  - e) **It is grossly in contempt of the norms of government tender evaluation process and a blatant violation of Government tender procedure, to have allowed an 'unevaluated party', who had not even expressed interest, to be substituted in place of an 'evaluated and selected party', who had been selected and approved by the Cabinet.**
  - f) **This is an infringement of the fundamental rights guaranteed under the Constitution of the other parties, who had been evaluated 'on ranking' on a 'point awarding system' for factors – 'operational experience in life and general insurance industry', 'financial capacity to operate SLIC' and 'business plan to develop future business'.**
  - g) **Such dubious and surreptitious substitution had made a 'mockery' of the entire Government 'tender evaluation process', which had been carried out on specific criteria on a ranking system by the TEC.**
  - h) **Also, Distilleries Company of Sri Lanka Ltd., (24<sup>th</sup> Respondent) and Aitken Spence & Co. Ltd. (25<sup>th</sup> Respondent) both being financially strong listed public companies, had been selected after the above evaluation process.**
  - i) **These two listed public companies' rights and entitlements to purchase 90% Shares of SLIC, as had been selected, had been misappropriated by the said two private Companies, owned and/or controlled by one of the Shareholders of the said two listed public Companies, thereby defrauding the said two listed public Companies and their Shareholders.**
  - j) **30<sup>th</sup> Respondent, as the Director General, SEC, who is statutorily mandated to protect the interests of public investors, could not have turned a 'blind eye' to the investigations before COPE into the transaction in issue carried out by PERC, of which he is an ex-officio Member in terms of PERC Act No. 1 of 1996.**
14. a) Audited Accounts of SLIC for the Year Ended 31.12.2001 had been certified by its Auditors, Ernst & Young on 11.6.2002.

*A true copy of the SLIC Accounts as at 31.12.2001 is annexed hereto marked P14, pleaded as part and parcel hereof*

- b) **Though the Audited Accounts of SLIC as at 31.12.2001 were available on 11.6.2002, the Steering Committee for some 'mysterious' reason had required Ernst & Young, Auditors of SLIC, to prepare SLIC Accounts as at 31.3.2002 (to a date just 3 Months after 31.12.2001), which Accounts had been signed by Ernst & Young on 9.8.2002 as un-audited Accounts, containing several comments, expressly stating – "We have not performed an audit, and accordingly do not express an opinion".**

*A true copy of the SLIC Accounts as at 31.3.2002 is annexed hereto marked P15, pleaded as part and parcel hereof*

- c) **Un-audited Accounts of SLIC as at 31.3.2002 dated 9.8.2002 had been held out by Ernst & Young to be Accounts of SLIC, re-presented according to International Accounting Standards.**

- d) **As per Minutes of the Steering Committee,**
- i) **Ernst & Young had sent a proposal to re-state the SLIC Financial Statements, according to International Accounting Standards, and have quoted a fee of around US \$ 81,000/- for an IAS Audit. (International Accounting Standards Audit)**
  - ii) **Steering Committee had noted that a 'Freeze Letter' (P18) had been sent to SLIC informing that unusual transactions of SLIC should require the prior approval of PERC**

*True copies of the Steering Committee Minutes of 25.1.2002, 13.2.2002, 18.2.2002, 22.3.2002 and 3.10.2002 are annexed hereto respectively marked P16(a), P(b), P(c), P16(d) and P16(e), pleaded as part and parcel hereof*

- e) **The above position held out by Ernst & Young that the SLIC Accounts as at 31.3.2002 were in conformity with International Accounting Standards had not been questioned by the Government's Consultants, PWC, who by their conduct had corroborated such position.**
15. a) **PWC, as Consultants to the Government, had rendered professional services to carry out the Sale of 90% Shares of SLIC, making necessary arrangements and structuring the Agreement, under the supervision of the Steering Committee in terms of their Contract with the Government (P2).**
- b) **Offers for the Sale of 90% Shares of SLIC had been received, *inter-alia*, on the basis of the un-audited SLIC Accounts as at 31.3.2002 of Ernst & Young dated 9.8.2002, whilst the audited Accounts of SLIC as at 31.12.2001 dated 11.6.2002 had been available.**
  - c) **Whilst the audited Accounts of SLIC as at 31.12.2001, in accordance with accounting policy had shown the Current Assets and Current Liabilities separately on the Balance Sheet, the un-audited Accounts of SLIC as at 31.3.2002 had not shown the Current Assets and Current Liabilities separately on the Balance Sheet or even by a Note thereto, deviating from the accounting policy, which had been followed by SLIC.**
  - d) **No explanation had been given on the SLIC un-audited Accounts as at 31.3.2002 of Ernst & Young dated 9.8.2002, as to why there had been a change in the above accounting policy. What had been held out is that the SLIC Accounts as at 31.3.2002 had been re-stated in accordance with International Accounting Standards.**
  - e) **It has subsequently been revealed to COPE by the 13<sup>th</sup> Respondent, that the International Accounting Standards Board had confirmed that Current Assets and Current Liabilities should be shown on the Balance Sheet or disclosed by way of a Note thereto in accordance with International Accounting Standards.**
16. a) **Agreement dated 11.4.2003 for the Sale of 90% Shares of SLIC structured by PWC had been on the basis of the SLIC un-audited Accounts as at 31.3.2002 dated 9.8.2002.**
- b) **Hence, Clause 4 of the Agreement dated 11.4.2003 had provided for an adjustment to the aforesaid purchase consideration of Rs. 6050 million for the 90% Shares of SLIC by the increase or decrease in the Net Working Capital between 31.3.2002 and the date of Sale 11.4.2003; Net Working Capital had been defined in Agreement dated 11.4.2003 to be – 'the Current Assets less Current Liabilities'.**
  - c) **For the computation of the aforesaid adjustment to the purchase consideration, in terms of the Agreement dated 11.4.2003 structured by PWC, requiring such adjustment to be made to the**

purchase consideration, the Current Assets and Current Liabilities of SLIC should have been shown on the Balance Sheet as at 31.3.2002 signed by Ernst & Young, on the basis of which 90% Shares of SLIC had been sold.

- d) Audited Accounts of SLIC for the year ended 31.12.2002 had been certified by Ernst & Young on 28.11.2003, after the Purchasers had taken over from 11.4.2003 the management of SLIC, once again showing the Current Assets and Current Liabilities of SLIC, separately on the Balance Sheet, in conformity with the accounting policy followed by SLIC.
- e) **The SLIC Balance Sheet as at 31.12.2002, which had shown the comparative figures as at 31.12.2001, had revealed that over Rs. 3000 million of Fixed Assets of SLIC had been re-stated as Current Assets retrospectively as at 31.12.2001, without any explanation given therefor; whilst such questionable re-statement had an adverse impact on the New Working Capital increase, for the adjustment to be made to the purchase consideration to be paid to the Government.**

*A true copy of the SLIC Accounts as at 31.12.2002 is annexed hereto marked P17, pleaded as part and parcel hereof*

- f) PERC by Letter dated 9.10.2002 had required SLIC not to commit any material and extraordinary transactions, except its ordinary business, until the finalisation of the re-structuring process underway.

*A true copy of the said Letter dated 9.10.2002 is annexed hereto marked P18, pleaded as part and parcel hereof*

- g) PWC in structuring the Agreement for the Sale of 90% Shares of SLIC, as aforesaid, **instead of taking into reckoning the increase or decrease of the 'total Net Assets'**, intriguingly had provided for only the increase or decrease in the 'Net Current Assets', which is the Net Working Capital.
  - h) **The total investment portfolio readily realisable in cash under the management and control of SLIC as at 31.12.2002 had been stated to be Rs. 22,616.7 million, as per the SLIC Audited Balance Sheet as at 31.12.2002.**
17. a) Ernst & Young, who were Auditors of SLIC, had been required to prepare the Accounts of SLIC as at date of Sale 11.4.2003, and to afford the computation of the increase or decrease in the Net Working Capital of SLIC between the said two dates 31.3.2002 and 11.4.2003 to make the requisite adjustment to the purchase consideration.
- b) Ernst & Young forwarded the SLIC Accounts as at 11.4.2003 signed on 26.3.2004, again as un-audited Accounts expressly stating – **“We have not performed an audit, and accordingly do not express an opinion”**.
  - c) As per Clause 4 of the Agreement dated 11.4.2003 the above computation to make adjustment to the purchase consideration had to be completed, **not later than 60 days from 11. 4. 2003, that is by 11. 6. 2003**.
  - d) Ernst & Young having undertaken to forward the foregoing and having requested and obtained 16 extensions, directly by themselves and/or through SLIC, from June 2003 to October 2004, to carry out the above, and having intimated that they had nearly completed the same, however finally had questionably reneged from discharging their duty and obligation. PWC as Government's Consultants had been aware of this position.

*True copies of the correspondence pertained to the aforesaid extensions are annexed hereto compendiously marked P19, pleaded as part and parcel hereof*

- e) **A Government transaction of such large magnitude could never be concluded on the basis of un-audited Accounts.**
18. a) On a complaint made by a member of the public, it had been reported in the media, that the Ethics Committee of the Institute of Chartered Accountants of Sri Lanka had carried out an investigation into the matter of professional misconduct on the part of Ernst & Young and PWC in providing professional services more particularly to the Government in connection with the transaction in issue.
- b) By Letter dated 6.10.2006 the 13<sup>th</sup> Respondent, who had been examined on the transaction in issue by COPE, chaired by the 33<sup>rd</sup> Respondent, had forwarded his Letter dated 5.10.2006 in connection with the above investigation, submitted to the 32<sup>nd</sup> Respondent, Chairman of the Panel of the Ethics Committee of the Institute of Chartered Accountants of Sri Lanka.

*True copies of aforesaid Letters dated 6.10.2006 and 5.10.2006, together with the annexes thereto, are annexed hereto marked P20(a) and P20(b), respectively, pleaded as part and parcel hereof*

- c) The annexes to 13<sup>th</sup> Respondent's Letter dated 5.10.2006 revealed two Letters dated 17.11.2004 forwarded by the 13<sup>th</sup> Respondent, as then Chairman PERC, to Ernst & Young and PWC, with copies to P.B. Jayasundera (7<sup>th</sup> Respondent).
- d) It had been reported in the media that the Ethics Committee of the Institute of Chartered Accountants of Sri Lanka having found after investigation that there is a prima-facie case of professional misconduct by Ernst & Young and PWC, had recommended that a Disciplinary Committee be appointed to conduct an inquiry as mandated by law into the conduct of Ernst & Young and PWC. However the Council of the Institute of Chartered Accountants of Sri Lanka, of which the 31<sup>st</sup> Respondent is the President, had failed and neglected to do so.
- e) It had been reported in the media, without denial, that the 22<sup>nd</sup> Respondent had got himself appointed as the Government Member of the Council of the Institute of Chartered Accountants of Sri Lanka, in violation of the provisions of Act No. 23 of 1959, as amended, more particularly Section 10 thereof, at the time the aforesaid Ethics Committee inquiry was being conducted, to inhibit the Council from appointing a Disciplinary Committee as statutorily mandated; and which Disciplinary Committee is yet to be appointed.
19. a) In December 2005, 3<sup>rd</sup> Respondent as Minister of Public Enterprise Reform in charge of PERC, had forwarded a Cabinet Memorandum on the transaction in issue, setting out the conduct of Ernst & Young and PWC, recommending administrative measures to be taken until the matter is resolved, and legal action against the relevant parties to be expedited by the 37<sup>th</sup> Respondent, who had already forwarded Letters dated 9.2.2005 and 11.4.2005 to both Ernst & Young and PWC; and Letter dated 11.4.2005 to the Purchasers and the Guarantors.

*True copies of the said 4 Letters dated 9.2.2005 and 11.4.2005 addressed to Ernst & Young and PWC, and Letter dated 11.4.2005 to the Purchasers and Guarantors by 37<sup>th</sup> Respondent are annexed hereto marked P21(a), P21(b), P22(a), P22(b) and P23 respectively, pleaded as part and parcel hereof*

- b) No action appears to have been taken on the 3<sup>rd</sup> Respondent's Cabinet Memorandum of December 2005.

*A true copy of said Cabinet Memorandum is annexed hereto marked P24, pleaded as part and parcel hereof*

20. a) 19<sup>th</sup> Respondent, Senior Partner of PWC had been a Member, Steering Committee, which had selected PWC as Consultants to the Government, and had continued thereafter as a Member, Steering Committee, supervising the work of PWC and approving payments to them. It is understood that Auditors of PERC had queried this. (Marina Tharmaratnam, a Member of the Steering Committee had **resigned** in July 2002, for conflict of interest).

*True copies of Steering Committee Minutes of 5.12.2002, 14.11.2002, 14.8.2002 and 29.7.2002 are annexed hereto respectively marked P25(a), P25(b), P25(c) and P25(d), pleaded as part and parcel hereof*

- b) 16<sup>th</sup> Respondent had been a Director, PERC and Secretary, Steering Committee, handling this transaction, as the 'Transaction Manager' and had joined PWC as a Partner in March 2003, just prior to the execution on 11.4.2003 of the Agreement to sell 90% Shares of SLIC.
- c) Ernst & Young, had been Auditors of SLIC, when the Government was 100% owner, and had continued to be Auditors of SLIC after the Sale of 90% Shares of SLIC to the Purchasers, and thereby had failed and neglected to discharge their duty and responsibility to the Government.
- d) 7<sup>th</sup> Respondent, who had handled this transaction as Chairman / Senior Advisor, PERC, and thereafter as Secretary to the Treasury and *ex-officio* Member of PERC had been a Senior Policy Advisor to Ernst & Young, and **had failed and neglected to take action to protect the interests of the Government.**
21. a) It has also been reported in the media that COPE, chaired by the 33<sup>rd</sup> Respondent, had been carrying out investigations into the transaction in issue.
- b) Hansard of 12.1.2007 contains a Report by COPE on several investigations carried out by it, including an Interim Report on the transaction in issue in its Columns 362 and 363, as quoted below:

**"Sale of 90% Shares of Sri Lanka Insurance Corporation (SLIC)**

1. Steering Committee to handle the Sale of 90% Shares of SLIC has been appointed on 21.1.2002 by the Hon. Minister Milinda Moragoda, without a Cabinet Approval.
2. Steering Committee has appointed PricewaterhouseCoopers (PWC), Indonesia in collaboration with the PWC, Sri Lanka, without a Cabinet Approval on 10.4.2002 as Consultant to the Government for a fee of US \$ 1.6 Mn. (at present rate of Sri Lanka Rs. 172.8 million).
3. The Cabinet approval granted on 18.4.2002 to appoint a Technical Evaluation Committee (TEC) – By that time PWC had already been selected.
4. The Cabinet has approved the appointment of a TEC by the Secretary to the Treasury, but had rejected the request of the Secretary to the Treasury to appoint a Tender Board by himself and decided that the Tender Board shall be appointed by the Cabinet.
5. Disregarding the Cabinet disapproval, the Secretary to the Treasury had caused the Deputy Secretary to the Treasury, Mr. N. Pathmanathan to appoint CATB, including himself as Chairman.

6. After the evaluation of Bids, the TEC has recommended the Sale of 90% Shares to the Consortium comprising of Distilleries Company Ltd., Aitken Spence Co. Ltd., Aitken Spence Insurance (Pvt) Ltd., together with Technical Parties, ING Institutional & Government Advisory Services BV (Holland) on 25.3.2003.
7. On the same day 25.3.2003 CATB recommended the TEC recommendations.
8. The Cabinet Memorandum dated 27.3.2003 had recommended the Sale of 90% Shares of SLIC to the above Consortium.
9. On 11.4.2003 Share Sale & Purchase Agreement has been signed with Milford Holdings (Pvt) Ltd., and offshore company, Greenfield Pacific EM Holdings (Pvt) Ltd., incorporated in Gibraltar on 28.3.2003. It was not in existence when the Cabinet approved it on 27.3.2003.
10. These two companies were not bidders and they were strangers.
11. The said sale has been taken place on unaudited accounts and thereby it was not possible to enter into any kind of Share transaction. It also appeared the accounts have been surreptitiously and intentionally adjusted.
12. Ernst & Young auditors and PWC consultants were directly involved in the said fraudulent conduct.
13. Deva Rodrigo Senior Partner PWC has been a member of the steering committee selecting PWC as consultants to the Government, and continuing thereafter as a steering committee member supervising the work of PWC and approving payments to PWC.
14. Director PERC and Secretary Steering Committee, who handled this transaction for PERC, Aneela de Soysa joined PWC as a Partner in March 2003.
15. Ernst & Young, who had been auditors of SLIC, whilst the Government was 100% share holder, continued as SLIC auditors after the sale to the illegal buyers and had been compromised by them not to discharge their responsibilities to the Government.
16. The Ethics Committee of Institute of Chartered Accountants, coming under the purview of the Minister of Trade, after a preliminary investigation established a *prima-facie* case, had decided that a Disciplinary Committee should be appointed into the professional misconduct by PWC and Ernst & Young.
17. Chairman PERC, who handled this SLIC transaction and later Secretary to the Treasury Dr. P.B. Jayasundera has been a Senior Policy Advisor to Ernst & Young, and had failed and neglected to act in the interest of the Government in this matter.
18. In the facts and circumstances of the said transaction is null and void *ab-initio* and frustrated. Prima facie the conduct of the responsible Officers is in violation of the provisions of Public Property Act and the Bribery and Corruption Laws. We await the recommendations of the Sub-Committee. "

*A true copy of Hansard Columns 362 and 363 of 12.1.2007 is annexed hereto marked P26, pleaded as part and parcel hereof*

- c) 13<sup>th</sup> Respondent, who had been examined by COPE on the matter of the transaction in issue had forwarded Letter dated 23.1.2007 (together with P20(a) and P20(b) attached thereto) to the 33<sup>rd</sup> Respondent, Chairman COPE, on the said matter.

*A true copy of said Letter dated 23.1.2007 is annexed hereto marked P27, pleaded as part and parcel hereof*

22. The Petitioner respectfully states that;

- a) the conduct and actions of some of the Respondents as aforesaid, in the perpetration of the transaction in issue are executive and administrative actions within the meaning of Article 17, read with Article 126 of the Constitution, which said acts have infringed and continue to infringe the fundamental rights of the Petitioner and the citizens of the country, guaranteed under Articles 12 (1) and 12(2) of the Constitution.
- b) the 10<sup>th</sup>, 13<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 31<sup>st</sup> and 32<sup>nd</sup> Respondents are Members of the Institute of Chartered Accountants of Sri Lanka, a statutory body established by Act No. 23 of 1959, as amended, and to which said statutory body contributions have been made from the Consolidated Fund. The said Respondents hold Membership of said statutory body and their conduct and actions are governed and regulated by the provisions of said Act and the Regulations gazetted thereunder.
- c) from the foregoing facts, it is abundantly clear that the Government had been misled and had been taken for a ride, with deliberate intentional pre-designed misleading misrepresentations, resulting in the frustration of the transaction in issue, and in addition, causing grave loss and damage and mischief to the Government, that is the public, wrongfully and unjustly causing the alienation / alienating and/or unjustly causing misappropriation / misappropriating the property of the public held in trust, with the deliberate intent of conferring unjust, wrongful and unlawful enormous benefit on a privileged few, in blatant violation of the constitutional safeguards.
- d) the transaction in issue has caused enormous loss and detriment to the Petitioner and the citizens of the country, and continues to cause enormous loss and detriment, conferring unjust, wrongful and unlawful benefit and enrichment to a privileged few, impoverishing the millions of the poor of the country.
- e) he reserves the right to add any other Respondents, as and may be necessary, and/or to adduce any further facts and documents, as may become available to the Petitioner.
- f) he came to be aware of this despicable, deplorable and shameless transaction in issue, only through recent media reports on the investigations by the Institute of Chartered Accountants of Sri Lanka, a statutory body established through an Act of Parliament, and by COPE, a Parliamentary Committee.
- g) thereupon he in the public interest being concerned of the matter, more particularly in his role to expose fraud and corruption of public resources and to protect the interest of the poor and the fundamental rights of the people, sought and obtained from colleagues, who are Ministers and Members of Parliament and from the Report to Parliament on the privatisation of SLIC, Documents referred to herein, and the averments herein contained are based upon such Documents and information gathered therefrom.
- h) the averments contained herein, supported by the Documents annexed herewith, disclose an obnoxious, wrongful and unlawful transaction, causing enormous loss and detriment to the Government and the public, including the Petitioner, wrongfully and unlawfully brazenly

conferring unjust enrichment on a privileged few, violating the Rule of Law, with misuse and abuse of power in breach of the trust of the People.

23. In the premises, the Petitioner respectfully states that he is entitled to invoke the jurisdiction of Your Lordships' Court for the reliefs prayed for herein.
24. The Petitioner has not invoked jurisdiction of Your Lordships' Court previously in this matter.
24. The Affidavit of the Petitioner in support of the averments herein contained is annexed hereto.

**WHEREFORE** the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- a) grant Leave to Proceed with this Application in the first instance,
- b) make Order declaring that the fundamental rights guaranteed under Articles 12(1) and 12(2) of the Constitution of the Petitioner and the citizens of Sri Lanka have been infringed,
- c) direct any one or more of the above Respondents to adduce relevant facts and to submit all documents and records in their possession, which Your Lordships' Court shall or may deem necessary at any stage of these proceedings, for the due and proper adjudication of this matter,
- d) make Order declaring that the Sale of 90% Shares held by the Secretary to the Treasury on behalf of the Government, in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent) had been carried out in a wrongful, unlawful and irregular manner,
- e) make Order that the Sale of 90% Shares held by the Secretary to the Treasury on behalf of the Government, in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent) is *ab-initio* invalid null and void and of no force or avail in law,
- f) make Order cancelling, annulling and making void the Agreement dated 11<sup>th</sup> April 2003 for the Sale of 90% Shares held by the Secretary to the Treasury on behalf of the Government, in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent) and restoring the ownership of all the Shares of SLIC to the Government,
- g) make Order removing the present Directors of the Board of Directors of Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent), and directing the Secretary to the Treasury, with the approval of the Hon. Minister of Finance, to appoint Directors to constitute a new Board of Directors of Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent),
- h) make Order directing the Secretary to the Treasury to obtain a realistic valuation of the Assets and Liabilities of Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent) as at April 2003,
- i) make Order directing the Secretary to the Treasury to obtain a Report from the Auditor General of all monies and/or assets appropriated by the 28<sup>th</sup> and/or 29<sup>th</sup> and/or 24<sup>th</sup> and/or 25<sup>th</sup> and/or 26<sup>th</sup> Respondents and/or their agents, servants and nominees and all those holding under them, from the Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent) after 11<sup>th</sup> April 2003,
- j) make Order directing the 28<sup>th</sup> and/or 29<sup>th</sup> and/or 24<sup>th</sup> and/or 25<sup>th</sup> and/or 26<sup>th</sup> Respondents and/or their agents, servants and nominees and all those holding under them to re-pay and/or return those monies and/or assets appropriated as referred to in prayer i) above, to the Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent),

- k) make Order directing the 31<sup>st</sup> Respondent to appoint a Disciplinary Committee in terms of the law to conduct the inquiry into the professional misconduct of Ernst & Young and PWC, and report its findings and the decisions made in that regard to Your Lordships' Court,
- l) make Order directing the 30<sup>th</sup> Respondent to conduct investigations and take warranted action in terms of the law into the misappropriation of the lawful rights and entitlements of the 24<sup>th</sup> and 25<sup>th</sup> Respondents,
- m) make Order directing the 34<sup>th</sup> and 35<sup>th</sup> Respondents to take action in terms of the law, including under the Offences Against Public Property Act No. 12 of 1982 against all those persons, whether any of the above Respondents or otherwise, who have acted wrongfully and/or unlawfully and/or fraudulently in the Sale of 90% Shares held by the Government in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent),
- n) make Order directing the 36<sup>th</sup> Respondent to take action in terms of the law, more particularly under the provisions of the Bribery Act, against all those persons, whether any of the above Respondents or otherwise, who have acted wrongfully and/or unlawfully in the Sale of 90% Shares held by the Government in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent),
- o) make Order directing the 37<sup>th</sup> Respondent to take action or cause action to be taken in terms of the law, including under the Offences Against Public Property Act No. 12 of 1982 against all those persons, whether any of the above Respondents or otherwise, who have acted wrongfully and/or unlawfully and/or fraudulently in the Sale of 90% Shares held by the Government in Sri Lanka Insurance Corporation Ltd., (27<sup>th</sup> Respondent),
- p) grant costs, and
- q) such other and further relief as to Your Lordships' Court shall seem meet.

*Abdeen Associates*  
Attorneys-at-Law for the Petitioner