

NOTES 1 TO 5 WITH ORAL SUBMISSIONS OF 13TH RESPONDENT

NOTE - 1

PREAMBLE

- Minister of Economic Reform, Milinda Moragoda, 2nd Respondent, under whom PERC functioned, by Letter dated 21.1.2002 (P1) addressed to P.B. Jayasundera, Chairman PERC, 7th Respondent, had appointed a ‘**Steering Committee**’, comprising of the following persons, *to facilitate the privatization of SLIC, 27th Respondent*.

- Chrisantha Perera, Chairman SLIC – *Chairman* (8th Respondent)
- P.B. Jayasundera, Chairman PERC – *Member* (7th Respondent)
- N. Kandasamy, General Manger, SLIC – *Member* (9th Respondent)
- Devasiri Rodrigo, Partner PWC – *Member* (19th Respondent)
- V. Kanagasabapathy, Addl. DG, Dpt. of Public Finance – *Member* (10th Respondent)
- Marina Tharmaratnam, Executive Vice President, DFCC – *Member (Resigned in July 2002 due to a conflict of interest)*
- Dayanath Jayasuriya, DG, Insurance Board of Sri Lanka – *Member* (11th Respondent)
- Rani Jayamaha, Assistant to Governor, Central Bank – *Member* (12th Respondent)
- Aneela de Soysa, Director PERC – *Secretary* (16th Respondent)

- After Cabinet Approval on 18.4.2002 (P4) on Cabinet Memorandum of 28.2.2002 (P3), by Letter dated 7.8.2002 (P5), a Cabinet Appointed Tender Board (CATB) and Technical Evaluation Committee (TEC) comprising of the following persons had been appointed; *specific attention had been drawn in (P5) for compliance with the ‘Guidelines on Government Tender Procedure’ and ‘Public Finance Circulars’*:

- CATB** - N. Pathmanathan, Deputy Secretary to the Treasury – *Chairman*, 6th Respondent
- * R. Tharmakulasingham, Secretary Ministry of Vanni Rehabilitation - *Member*
 - J.P. Hettiarachchi, Addl. Secretary, Ministry of Co-operatives - *Member*

* *However, final CATB Minutes of 25.3.2003 (P9) discloses Dharmasena Dissanayake Secretary, Ministry of Eastern Development, in place of R. Tharmakulasingham*

- TEC** -* Sunil Wijesinghe, Managing Director, Merchant Bank of Sri Lanka – *Chairman*
- Leel Wickramarachchi, CEO /GM, Private Sector Infrastructure Development Company – *Member*
 - * G.G. de Silva, Legal Consultant, Central Bank of Sri Lanka - *Member*
 - R.H.A. Samaratinga, Director, Department of National Planning - *Member*

* *However, final TEC Minutes of 25.3.2003 (P7) discloses names of P. Arumugam, Director General, Public Finance, Ministry of Finance and N. Meemaduma, Director General, Ministry of Economic Reforms, in place of Sunil Wijesinghe and G.G. de Silva*

➤ **PricewaterhouseCoopers, Indonesia, acting together with PricewaterhouseCoopers, Sri Lanka as Consultants to the Government –**

Contract (P2) had been entered into by the Government on **6.5.2002**, signed by N. Pathmanathan, 6th Respondent, as Actg. Secretary to the Treasury, with PT PricewaterhouseCoopers FAS, Indonesia, for **Investment Banking Services, Legal Advisory Services and Actuarial Valuation Services** for the Sale of Shares of SLIC, for Fees stipulated separately for International and Sri Lankan Consultants as given below – *vide* pages 11 and 12 of Contract **(P2)**, for a tax free total Fees of US \$ 1,065,000, and a Success Fee of 0.75% for the purchase consideration of the SLIC Shares to be sold.

International

<i>Partner</i>	<i>US \$ 450 per hour</i>
<i>Senior Associate</i>	<i>US \$ 385 per hour</i>
<i>Associate</i>	<i>US \$ 275 per hour</i>
<i>Paralegal</i>	<i>US \$ 140 per hour</i>

Sri Lankan

<i>Partner</i>	<i>US \$ 230 per hour</i>
<i>Associate</i>	<i>US \$ 60 per hour</i>

➤ The ‘key’ International and Sri Lankan Consultants, forming the ‘**PWC Team**’, comprising **22 Consultants**, including the 18th Respondent, as the ‘**Project Co-ordinator**’ and the 21st Respondent, as the ‘**Sri Lankan Team Leader**’, given in Appendix “C” **(P2(a))** to Contract **(P2)**, had been as follows:

Investment Banking and Valuation

Roger de Montfort	Project Co-ordinator
Channa Manoharan	PwC Sri Lanka Team Leader
Mark Speller	Head of Investment Banking
Kevin Reeves	Head of Business Valuation
Paul Reddel	Project Director
Faizan Rahan	Project Manager
Jayant Shah	Insurance Industry Expert
Steve Kasmun	Business Valuation Manager
Daya Weeraratne	Tax Advisor
Sriyani Perera	Sri Lanka Insurance & Accounting Expert
Dishna de Silva	Transaction support
Sujeewa Mudalige	Transaction support

Actuarial

Paul Nuttall *
Michael Playford *
Tony Leung *

Head of Actuarial Valuation
Support on Actuarial Life & General Valuation
Support on Actuarial Life Valuation

Legal

Keith McGuire
Philip Jarvis
Oo Ban Leong
Linda Lee
Paul Ratnayake
Amali Alawwa
Amrit Rajapakse

Head of Legal Advisory Services
Allen & Overy Senior Associate
Allen & Overy Senior Associate
Allen & Overy Senior Associate
Team Leader - Sri Lanka Legal Adviser
Manager - Sri Lanka Legal Adviser
Associate - Sri Lanka Adviser

* Note: *PWC 'Indicative Valuation' had been submitted by Paul Reddel with Reports submitted by Noeline Woof, Tim Jenkins, Chris Latham and Bruce Cameron.*

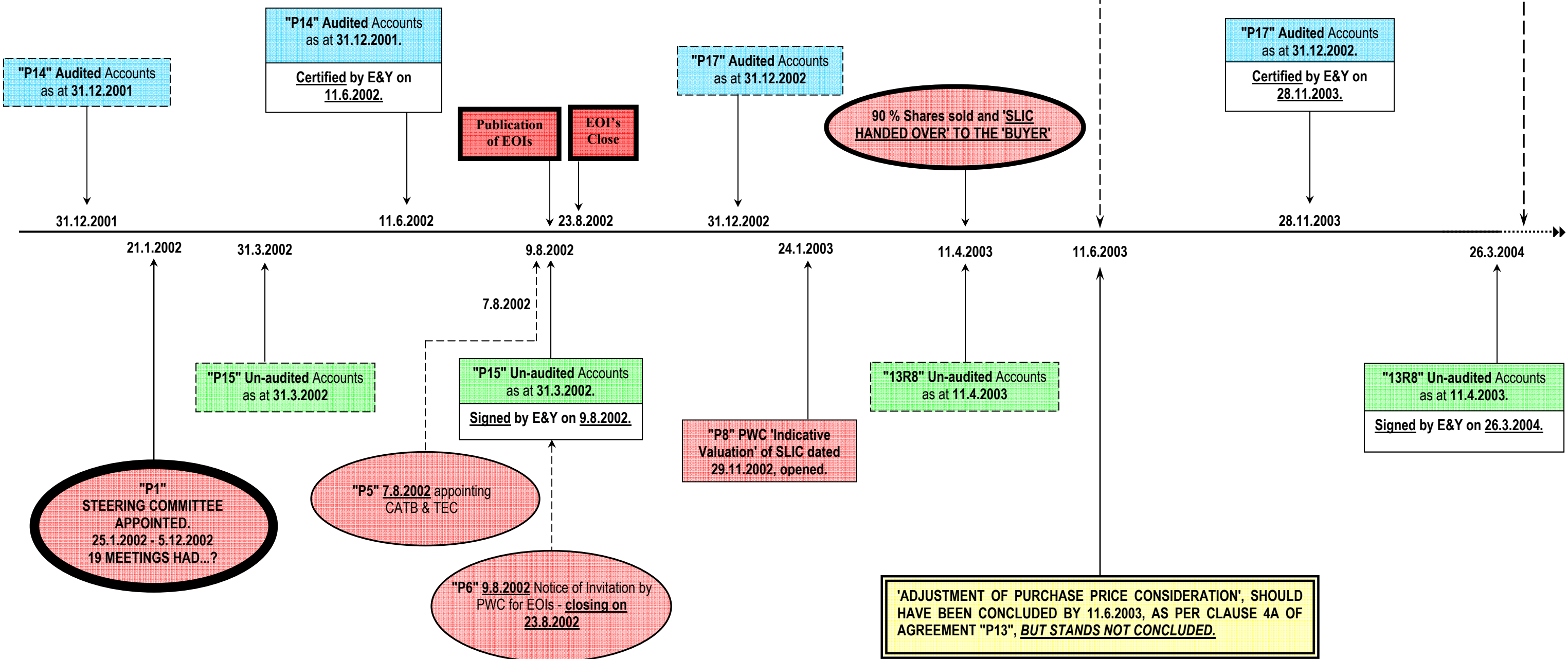
- Auditors of SLIC, Ernst & Young, Chartered Accountants, had rendered services as Auditors of SLIC, performing statutory audits, **as well rendering other professional services.**

SRI LANKA INSURANCE CORPORATION LIMITED

16 Extensions requested by Ernst & Young / 'Buyer' for Computation of 'Adjustment of Purchase Price Consideration', which had to be concluded by 11.6.2003, as per Clause 4A of Agreement "P13" - but stands not concluded - vide "P19"

1.	9.06.2003
2.	3.09.2003
3.	14.10.2003
4.	11.11.2003
5.	12.12.2003
6.	20.01.2004
7.	30.01.2004
8.	26.03.2004
9.	19.05.2004
10.	28.05.2004
11.	15.06.2004
12.	19.07.2004
13.	16.08.2004
14.	30.08.2004
15.	15.09.2004
16.	15.10.2004

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NOTE - 2

‘EXTRACTS’ FROM STEERING COMMITTEE MINUTES

(Emphasis Added)

P16(a) - 1st Meeting - 25.1.2002

Qualification of the Financial Statements

The Audited Financial Statements of SLIC for the year ended December 31, 2001 was examined. It was noted that the auditors had qualified the accounts on the basis of lack of reconciliations and records. **It was noted that the SLIC has requested the Auditors, Ernst & Young to assist with getting the books into order to overcome these deficiencies.**

It was noted that Ernst & Young had sent a proposal to SLIC for restating the Financial Statements according to International Accounting Standards and the preparation of Long form reports which give a detailed description of the past 3 years accounts. This can commence as soon as Cabinet approval and funding is in place.

Preparation of information

It was also decided that SLIC needs to identify a suitable person from within SLIC to head the unit and **contract with Ernst & Young, the current auditors to assist in the process of extracting information.**

Proposed Action Plan and Timetable - 25th January 2002

Ernst & Young in house team appointed 20 February

P16(b) - 2nd Meeting - 13.2.2002

It was noted that the auditors would have to be independent of writing up of the books especially if the new investor purchasing the company is regulated under US SEC rules. An audit firm other than the current auditors, Ernst & Young would have to be used to write up the accounts if they are to be in a position to continue to undertake the audit for the year 2002.

As the work needed to resolve the audit qualifications will take considerable time, it was decided that Ernst & Young should be requested to assist in this process as a special assignment as the independence of the auditors would not arise in this case.

Funding for Audit

Annex 3 of the Agenda was considered. In view of the delay in complying with the World Bank procurement requirements, **it was decided that SLIC will undertake to fund the IAS audit of SLIC which amounted to around US \$ 81,000.**

P16(c) - 3rd Meeting - 18.2.2002

IAS Accounts

The Financial Statements for the year ended December 31, 2001 are scheduled to be finalised in April 2002. **The IAS audit can start pending finalisation of the audited accounts.**

The Auditors, Ernst & Young have submitted a revised proposal for the IAS audit. This is to be circulated among the members and taken up at the next meeting.

RL suggested that since US GAAP (General Accepted Accounting Policies) has specified insurance standards, which IAS lacks, SLIC may consider preparing a third set of accounts which reflect the accounts in terms of US GAAP.

P16(d) - 5th Meeting - 22.3.2002

Status on preparation of accounts

SLIC is meeting regularly along with the Senior staff and the Auditors to monitor progress on the accounts. PERC staff had also attended the last meeting to observe the arrangements for completion of the accounts.

It was decided that M/s Asita Talwatte and Ruwan Fernando, the partners in charge of the Audit be requested to adequately staff the audits so as to achieve the deadlines.

Audit of Final Accounts

Ch/SLIC stated that the IAS audit would commence on April 1, 2002.

Final Accounts

The Time Table for completion of accounts was noted:

Audit completed 30 June

IAS audit completed 15 July

14. Technical Evaluation Committee (TEC)

It was decided that the Secretary to the Treasury should be requested to appoint a Technical Evaluation Committee as follows to evaluate the bids and make a recommendation to the Tender Board:

- Mr. Sunil Wijesinha MD Merchant Bank of Sri Lanka
- Mr. Leel Wickremaarachchi CEO / GM PSIDC
- Mr. CC Jayasuriya Dy General Manger SLIC
- Mr. Warusawitharana Director General State Accounts, Ministry of Finance

15. Time Table

b) The IAS Audit which was due to commence on March 15 2002.

**ANNEX-1 - Minutes of Pre-bid conference for financial Advisory Services for SLIC
- March 22, 2002**

Mr. S. Manoharan, Pricewaterhouse Coopers
Mr. Roger de Montfort, Pricewaterhouse Coopers
Mr. B Wijesuriya, Ernst & Young
Mr. Kalum Gunaratne, Ernst & Young

P16(e) - 16th Meeting - 3.10.2002

Asian Re Shares transferred to government through a Current Account Transfer with Treasury at a valuation provided by Ernst & Young and the profit booked was included in the interim dividend declared of Rs. 175m.

Freeze letter

Ch/SLIC was informed that a freeze letter requesting that unusual transactions of SLIC should require prior approval from PERC would be sent on to SLIC as is usually done for companies that are identified for privatisation.

P25(a) - 19th Meeting - 5.12.2002

Approval for payments to Financial Advisors

Payments to Financial Advisors for investment banking and reimbursable expenses were considered (annex 1 and 2) and approval was given by the Steering Committee subject to verification by PERC.

P25(b) - 18th Meeting - 14.11.2002

2.6 Restructuring expenses

It was noted that the Treasury had instructed SLIC to limit the restructuring expenses on account of SLIC at not more than the amount already approved by the Cabinet which is US \$ 2m. In view of this, PERC was requested to ask for Rs. 130m. to be transferred to PERC which is the balance in the provision account after retaining sufficient for further expenses to be met by SLIC. PERC to make available the details to the Financial Advisors.

P25(c) - 13th Meeting - 14.8.2002

TEC & CATB

It was noted that the following persons were appointed to the Cabinet Appointed Tender Board (CATB) and to the Technical Evaluation Committee (TEC) respectively.

Mr. N. Pathmanathan - Deputy Secretary to the Treasury
Mr. D. Dissanayake, Secretary Eastern Rehabilitation and Muslim Affairs
Mr. J.P. Heettiarachchi - Addl. Secretary, Ministry of Co-operatives

TEC members are

Mr. Sunil Wijesinha, Managing Director, Merchant Bank of Sri Lanka
Mr. Leel Wickremaarachchi, CEO/GM, Private Sector Infrastructure Development
Mr. G.G. de Silva, Legal Consultant, Central Bank of Sri Lanka
Dr. R.H.S. Samaratunga, Director, Dept. of national Planning (Treasury Representative)

Approval of fees to financial advisors

Steering Committee considered annex 1 relating to payments to be made to the Financial Advisors and acknowledged that the milestones required for disbursement of 40% of the fees has been completed and that PERC could make payments as per contract. (Annex 2)

P25(d) - 12th Meeting - 29.7.2002

Accounts

IAS copies are now available and a copy has been sent to PERC. It was noted that it will take 3 weeks from 26/7/2002 for Ernst & Young to complete the high level review.

Resignation of Mrs. Marina Dharmaratnam:

The letter sent by Mrs. Marina Dharmaratnam, member of the Steering Committee (Annex 1) resigning from the Steering Committee due to the fact that DFCC has expressed interest in the SLIC transaction was tabled. The appreciation of the Steering Committee for her contribution was noted.

Financial Advisor's presentation:

Payments to PwC:

It was noted that PERC should evaluate the PwC work and make the payments when they fall due. PERC should disclose to Steering Committee on progress on contract and how much money has been dispersed from time to time.

Re withholding tax on the consulting fees: PERC is in the process of getting a direction for withholding tax. SLIC will transfer 95% until PERC get the clearance for the 5% withholding tax.

13R1 - 6th Meeting - 11.4.2002

Progress report to the Secretary to the Treasury

It was decided to write a short note on progress of the transaction to the Secretary to the Treasury on a monthly basis.

It was noted that the Prime Minister is following closely, the progress of this transaction.

Mr. Paskaralingam was of the view that this decision need not be made immediately. It was decided that the Financial Advisor should be consulted on the structuring of the transaction. A decision will have to be made by early July 2002 before the Information Memorandum is sent out.

NOTE - 3

ADJUSTMENT TO PURCHASE PRICE CONSIDERATION

1. The following **Financial Accounts of SLIC** are relevant and pertinent to be taken into reckoning in examining this '**transaction put in issue**'.

P14 - **Audited** Balance Sheet of SLIC as at **31.12.2001**, **certified** by Ernst & Young on **11.6.2002**, *in accordance with Sri Lanka Accounting Standards.*

P17 - **Audited** Balance Sheet of SLIC as at **31.12.2002**, **certified** by Ernst & Young on **28.11.2003**, *in accordance with Sri Lanka Accounting Standards.*

P15 - **Un-audited** Balance Sheet of SLIC as at **31.3.2002**, **signed** by Ernst & Young on **9.8.2002**, *stated to be as per International Accounting Standards.*

13R8 - **Un-audited** Balance Sheet of SLIC as at **11.4.2003**, **signed** by Ernst & Young on **26.3.2004**, *stated to be as per International Accounting Standards.*
2. 90% Shares of SLIC had been sold by the government, as per Agreement (**P13**) on **11.4.2003**, based on the **un-audited** Balance Sheet of SLIC as at **31.3.2002**, **on the basis that the purchase price consideration would be adjusted**, when the Balance Sheet of SLIC is made available upto the date of sale i.e. **11.4.2003** - *vide Clause 4 (A) of Agreement (P13).*
3. **Whilst audited and certified Balance Sheets of SLIC as at 31.12.2001 (P14) and 31.12.2002 (P17) were available, 'intriguingly' this transaction had been endeavoured to be 'concluded' on the basis of un-audited Balance Sheets of SLIC as at 31.3.2002 (P15) and 11.4.2003 (13R8).**
4. **A government transaction of this magnitude, surely cannot be concluded on the basis of un-audited Balance Sheets !** The SLIC Balance Sheets as at **31.3.2002** (**P15**) and as at **11.4.2003** (**13R8**) ***ought to have been audited and certified in the first instance***, to make the '**purchase price adjustment**' to conclude this transaction.
5. After the sale of 90% Shares on **11.4.2003** to the 'Buyer', and **the 'Buyer' having been given the management, control and possession of SLIC on 11.4.2003**, the 'purchase price consideration', which had been paid on the basis of the **un-audited** Balance Sheet as at **31.3.2002** (**P15**) **was to be adjusted** in terms of the updated Balance Sheet of SLIC as at **11.4.2003** (**13R8**), ***whilst the management of SLIC was then under the direction and control of the 'Buyer'***.

6. The purchase price consideration, based on the **un-audited** Balance Sheet as at **31.3.2002 (P15)** was to be adjusted to date of sale **11.4.2003** *vide* **Clause 4 (A)** of Agreement **(P13)**, as per the ‘increase’ or ‘decrease’, between **31.3.2002** and **11.4.2003** of the Net Working Capital, defined as ‘**Current Assets**’ **less** ‘**Current Liabilities**’ at ‘**Clause 1 - Interpretation**’ at page 3 of Agreement **(P13)**.
7. The cogent question arises, as to why it had been agreed only to adjust the purchase price consideration by the increase in the ‘Net Current Assets’ and not the ‘Total Net Assets’ ?

In this connection, paragraph 151 of the Counter Affidavit dated 9.1.2008 of the Petitioner is quoted:

“151. Attention is drawn to paragraphs 49, 28 (e) and (f) of the Affidavit of the 27th Respondent, wherein it is admitted that PricewaterhouseCoopers had structured the price adjustment on the basis of ‘net working capital’ and not ‘net assets’ in Agreement P13, only after discussions had with the Bidders, i.e. 24th, 25th and 26th Respondents, giving a purported rationale therefor. Such ought to have been in agreement with the State.”

8. ‘**Investments**’, which form a main asset of an **Insurance Company**, is *classified* as ‘Fixed Assets’, if intended to be held for a long period of time, and is *classified* as ‘Current Assets’ if intended to be held for a period less than 12 Months, as per Accounting Standards. *vide* – **(13R3(e) citing IAS I Para 57)**.
9. In comparing the SLIC **audited** Balance Sheets as at **31.12.2001 (P14)** and **31.12.2002 (P17)**, investments of Rs. 3958 million, which had been stated as ‘Fixed Assets’ in the **audited** Balance Sheet as at **31.12.2001 (P14)**, had been **retrospectively re-classified** as ‘Current Assets’ as at **31.12.2001 itself**, as revealed by the **audited** Balance Sheet as at **31.12.2002 (P17)**, which gives the *comparative figures* as at **31.12.2001**.
10. Such **retrospective re-classification** would have the effect of **reducing** the ‘Net Working Capital’ between the said 2 dates i.e. **31.12.2001** and **31.12.2002** by the said **Rs. 3958 million**, as given below.

Note: Incidence of retrospective clarifications of Investments as at 31.12.2001, without any explanation therefore.

	A As per Audited Balance Sheet <u>31.12.2001</u>	C The <u>comparative</u> figures as at <u>31.12.2001</u> , given in Audited Balance Sheet as at <u>31.12.2002</u>	A-C <u>Difference</u>
	Rs. Mn.	Rs. Mn.	Rs. Mn.
Non-Current Assets			
Investments	11,833	7,875	3,958
Others	1,805	2,760	(955)
	<u>13,638</u>	<u>10,635</u>	<u>3,003</u>
Current Assets			
Investments	9,567	13,525	(3,958)
Others	4,691	3,736	955
	<u>14,258</u>	<u>17,261</u>	<u>(3,003)</u>
Current Liabilities	6,506	6,506	-
Net Current Assets / '<u>Net Working Capital</u>'	<u>7,752</u>	<u>10,755</u>	<u>(3,003)</u>
Net Assets	<u>21,390</u>	<u>21,390</u>	<u>-</u>
Equity & Non-Current Liabilities			
Share Capital & Reserves	3,109	3,109	-
Non-Current Liabilities	18,281	18,281	-
	<u>21,390</u>	<u>21,390</u>	<u>-</u>

*Note: **Rs. 955 Mn.** - comprising Loans to Policy Holders Rs. 403 Mn., and Other Loans Rs. 552 Mn., has been retrospectively re-classified from Current Assets to Non-Current Assets, **thereby reducing the incidence of Rs. 3958 million to Rs. 3,003 million.**

11. The incidence of the 'Net Current Assets' / 'Net Working Capital' 'increase', in comparing the **original** Balance Sheet as at 31.12.2001 and the Balance Sheet as at 31.12.2002, **and** the **retrospectively re-classified** Balance Sheet as at 31.12.2001 and the Balance Sheet as at 31.12.2002 are set out below:

	A	B	B-A	C	B-C
	As per Audited Balance Sheet <u>31.12.2001</u>	As per Audited Balance Sheet <u>31.12.2002</u>	<u>Difference</u>	The comparative figures as at <u>31.12.2001</u> , given in Audited Balance Sheet as at <u>31.12.2002</u>	<u>Difference</u>
	Rs. Mn.	Rs. Mn.	Rs. Mn.	Rs. Mn.	Rs. Mn.
Non-Current Assets					
Investments	11,833	9,223	(2,610)	7,875	1,348
Others	<u>1,805</u>	<u>5,191</u>	<u>3,386</u>	<u>2,760</u>	<u>2,431</u>
	13,638	14,414	776	10,635	3,779
Current Assets					
Investments	9,567	13,394	3,827	13,525	(131)
Others	<u>4,691</u>	<u>3,490</u>	<u>(1,201)</u>	<u>3,736</u>	<u>(246)</u>
	14,258	16,884	2,626	17,261	(377)
Current Liabilities	6,506	5,665	(841)	6,506	(841)
Net Current Assets / '<u>Net Working Capital</u>'	<u>7,752</u>	<u>11,219</u>	<u>3,467</u>	<u>10,755</u>	<u>464</u>
Assets before deducting Non-Current Liabilities	<u><u>21,390</u></u>	<u><u>25,633</u></u>	<u><u>4,243</u></u>	<u><u>21,390</u></u>	<u><u>4,243</u></u>
Equity & Non-Current Liabilities					
Share Capital & Reserves	3,109	4,224	1,115	3,109	1,115
Non-Current Liabilities	18,281	21,409	3,128	18,281	3,128
	<u><u>21,390</u></u>	<u><u>25,633</u></u>	<u><u>4,243</u></u>	<u><u>21,390</u></u>	<u><u>4,243</u></u>

12. (P18) dated 9.10.2002 is a **standard Letter**, commonly referred to as the 'freeze letter' sent by PERC to Government owned Companies being privatized, so that there are no material changes effected until the sale process is concluded, during a divestiture process, to prevent changes which would have a 'material incidence' on the evaluation and price – vide Minutes of Steering Committee 3.10.2002 (P16(e)).
13. Therefore, the above material *re-classification* adjustment *retrospectively* effected as at **31.12.2001** having a material impact on the purchase price consideration, **could not have been permitted in the context of (P18).**

14. Though the SLIC **audited** Balance Sheets as at **31.12.2001 (P14)** and **31.12.2002 (P17)** have classified the ‘Fixed Assets’ and ‘Current Assets’ **separately**, the **un-audited** Balance Sheets as at **31.3.2002 (P15)** and **11.4.2003 (13R8)**, **intriguingly** do not show the ‘Fixed Assets’ and ‘Current Assets’ separately.
15. These Balance Sheets as at **31.3.2002 (P15)** and **11.4.2003 (13R8)** *have been stated to have been presented in conformity with International Accounting Standards*.
16. It is disclosed that **International Accounting Standards** on ‘**presentation of financial statements**’, require the disclosure separately of ‘Fixed Assets’ and ‘Current Assets’ on the face of the Balance Sheet or in Notes thereto, which applies to Insurance Companies as well - *vide (13R9(a)) / (13R9(b))*.
17. In any case, **Clause 4 (A)** of Agreement (**P13**), read with **Clause 1 – ‘Interpretation’**, defines ‘Net Working Capital’ adjustment to be the ‘increase’ or ‘decrease’ of ‘**Current Assets**’ less ‘**Current Liabilities**’. Therefore, leaving aside disclosure requirements of Accounting Standards, whether Sri Lankan or International, *the Agreement (P13) itself warranted the disclosure of ‘Fixed Assets’ and ‘Current Assets’ separately to compute the adjustment of the purchase price consideration as had been required by Agreement (P13)*.
18. When this was the case, and when the **audited** Balance Sheets of SLIC as at **31.12.2001 (P14)** and **31.12.2002 (P17)**, both clearly disclosed ‘Fixed Assets’ and ‘Current Assets’ **separately**, it is indeed **intriguing**, as to why such policy and practice had been **intentionally changed** in the **un-audited** Balance Sheets as at **31.3.2002 (P15)** and **11.4.2003 (13R8)**, that too, in violation of **International Accounting Standards**, and **more importantly in violation of the requirements under Agreement (P13)**.
19. A further confusion to confound and frustrate the conclusion of this transaction had been a subtle attempt to draw a ‘red herring’, that the ‘general insurance’ and ‘life assurance’ funds, ought be treated differently, and that only the ‘general insurance’ fund belonged to the Company, and that the Net Working Capital ‘increase’ or ‘decrease’ to the adjustment of the purchase price consideration, ought be computed, only in relation to ‘general insurance’ funds.
20. Clearly, the foregoing is not the position, in that, both the **un-audited** Balance Sheets as at **31.3.2002 (P15)** and **11.4.2003 (13R8)** **show the total funds** of the Company, SLIC, and in addition, *Agreement (P13) does not draw any such purported distinction between ‘general insurance’ and ‘life insurance’ funds for such computation*. The PWC ‘Indicative Valuation’ (**P8**) of SLIC had taken into reckoning both the ‘general’ and ‘life’ insurance business lines of SLIC.
21. This is further endorsed by PWC Letter dated 1.10.2004 addressed to PERC (**13R3(e)**), whereby it had been attempted to compute the Net Working Capital i.e. ‘Current Assets’ less ‘Current Liabilities’ **in relation to the total of both such funds** as per the **un-audited** Balance Sheet as at **31.3.2002 (P15)** *vide Schedules to 13R3(e)* giving Total Assets as **Rs. 28,582.5 million** and the **un-audited** Balance Sheet as at **31.3.2002 (P15)** giving Total Assets as **Rs. 28,582.5 million**.

22. The foregoing issues pertaining to the **audited** and **un-audited** Balance Sheets of SLIC *certified / signed* by Ernst & Young (P14), (P17), (P15), (13R8) had been submitted by PERC to Ernst & Young, soliciting clarifications and explanations urgently in view of the materiality and necessity to conclude this long outstanding matter - *vide* Letters dated 17.11.2004 and 25.11.2004 (13R4(a) / (13R4(b), with copies to P.B. Jayasundera, Secretary to the Treasury, 7th Respondent, for which there had been no response notwithstanding reminders – *vide* (13R4(c), (13R4(d), (13R5).
23. PWC too had been sent a similar Letter by PERC on 17.11.2004 (13R2(j), with copy to P.B. Jayasundera, Secretary to the Treasury, 7th Respondent requiring PWC's clarifications and explanations to conclude this long outstanding matter.
24. Several correspondence were had by PERC with PWC, which bore no conclusive results - *vide* (13R2(f), (13R2(g), (13R2(h), (13R2(i), (13R2(k), (13R2(l), (13R3(d), (13R3(e), (13R3(f), (13R3(g), (13R3(h).
25. Intriguingly, PWC required indemnity to afford such clarifications – *vide* (13R3(d) / (13R2(g).
26. As per Letter dated 28.10.2004 (13R3(g), PWC when posed the question, **did not confirm that SLIC un-audited Balance Sheet as at 31.3.2002 was prepared in accordance with International Accounting Standards**, but stated – “*According to M/s Ernst & Young, the Balance Sheet as at 31.3.2002 was prepared in accordance with International Accounting Standards*”.
27. It had been held out that the endeavour **to re-state the SLIC Balance Sheets purportedly** as per *International Accounting Standards*, had been with the intention of attracting large and reputed international Insurance Companies to bid, to select a strategic investor - *vide* (13R3(g)) and Cabinet Memorandum (P3). However, the following dubious ‘short-circuited’ process, **gives the lie to such purported endeavour**.
28. It is revealed that (P6) a Notice placed in the *Daily News* of **9.8.2002** had invited Expressions of Interest (EOIs), within a **very short period** i.e. by 5.00 p.m. on 23.8.2002 (i.e. **within 14 days**), and that too, to be submitted by **mail or fax** to PWC Indonesia or Sri Lanka; **and not to PERC or any Agency of the government**.
29. Whereas, the CATB and TEC for this transaction **had been appointed just 2 days previously** by Letter dated **7.8.2002** (P5) *expressly stipulating therein that Guidelines on Government Tender Procedure should be complied with*. Intriguingly, the Notice for EOIs (P6) dated 9.8.2002 states – ‘*Prospective investors who have not submitted their EOI as yet are requested to submit EOI*’ !
30. **Guidelines on Government Tender Procedure mandate that formulation of EOIs have to be approved by the TEC and the CATB, and EOIs had to be received and opened by the CATB, with the requisite scheduling thereof.**

NOTE - 4

PWC - 'INDICATIVE VALUATION'

1. PWC had submitted an '**Indicative Valuation**' (P8) in a '**sealed envelope**', with a covering Letter dated 29.11.2002 addressed to **P.B. Jayasundera, Chairman, PERC, 7th Respondent**, to be held and opened by the CATB.
2. As instructed by the CATB, the TEC on 24.1.2003 (part of P7) had opened the PWC '**Indicative Valuation**'.
3. **As per Attachment 1** of PWC to TEC Minutes of 25.3.2003 (P7), it is disclosed that the original 'financial bids' had been opened on 24.1.2003, and that subsequently, 'financial bids' have been increased after 24.2.2003.
4. TEC at its Meeting at 9.30 a.m. on 25.3.2003 (P7) had made a final recommendation, and the CATB at its Meeting at 10.00 a.m. on the same day, i.e. 25.3.2003, had agreed with the TEC recommendation (P9).
5. The PWC '**Indicative Valuation**' stated such valuation of SLIC to be as at 31.12.2001 (P8), and it had been qualified by PWC, to the extent that—
 - *they had not verified the financial data they had relied on;*
 - *they do not accept any responsibility for any errors in the information;*
 - ***they have reserved their right, without any obligation, to review and amend the calculations in the Valuation Report and revise the same;***
 - *they have stated that they express no opinion as to how closely the actual results will correspond to the projected forecasts.*
6. PWC '**Indicative Valuation**' had included the valuations of both the 'general' and 'life' insurance business lines of SLIC.
7. The valuation of the 'general' insurance business is stated to have been based on a 'Discounted Cash-Flow' method, at 17% p.a. and 18% p.a., giving a Valuation of Rs. 4,017 million to Rs. 4,292 million, which together with the 'life' insurance business Valuation of Rs. 1,086 million, gave a total '**Indicative Valuation**' of Rs. 5,012 million to 5377 million - *vide Pages 7, 8, 9, 38 and 39 of (P8)*.
8. The above 'Valuation' of 'general' insurance business had been computed on the basis of SLIC 'audited profits before tax' for the **Year 2001** of Rs. 1567.2 million, **being reduced to Rs. 647.1 million** by the adjustment of '**Other Income**' as given below:

	Rs.Mn.	Rs.Mn.
Net Profit before Tax		1,567.2
This is shown to have included		
- Investment Income	875.5	
- Other Income / (Expenses)	<u>694.2</u>	
	<u>1,569.7</u>	
<u>Adjustment</u> – Deduct from Other Income		
‘Reversal of Provision for fall in value of Investment’	698.8	
Exchange Gain / Loss	<u>221.3</u>	<u>(920.1)</u>
<u>Adjusted</u> Net Profit before Tax		647.1
Income Tax (estimated @ 35%)		<u>(226.5)</u>
<u>Adjusted</u> Net Profit after Tax		<u>420.6</u>

The above adjustment i.e. Deduction of Rs. 920 million had been made against ‘Other Income / (Expenses) of **Rs. 694.2 million**, thereby making it a ‘**negative**’ figure of **Rs. 225.8 million**).

The question arises on the validity of such material deduction of the ‘Reversal of provision for fall in value of Investment’, when the audited Balance Sheets as at 31.12.2001 (**P14**) and 31.12.2002 (**P17**) disclose that the ‘**market value**’ of Equity Investments have been materially higher than the Book Values, as given at paragraph 19 below.

9. Based on the above ‘**net profits after tax**’ had been re-stated for the **Year 2001**, and projected for 5-Years as follows:

	2001 Rs.Mn.	2002 Rs.Mn.	2003 Rs.Mn.	2004 Rs.Mn.	2005 Rs.Mn.	2006 Rs.Mn.
Net Profit <u>after</u> Tax	<u>420.6</u>	221.0	264.7	406.1	386.4	411.7

10. As per the adjustment made for the **Year 2001** as above, the re-stated ‘net profits **before** tax’ for the Year 2001 and projections for the **5-Years**, as given below, had been **after deducting the amounts shown below as ‘Other Income’ / (‘Expenses’) - vide Page 38 of (P8)**

	2001 Rs.Mn.	2002 Rs.Mn.	2003 Rs.Mn.	2004 Rs.Mn.	2005 Rs.Mn.	2006 Rs.Mn.
Profits <u>before</u> Tax	647.1	339.9	407.2	624.7	594.5	633.4
Other Income / (Expenses) <u>deducted</u>	(225.8)	(485.4)	(400.5)	(424.8)	(456.9)	(487)
Projected Profits <u>before</u> Tax and <u>before</u> above Deduction		<u>825.3</u>	<u>807.7</u>	<u>1049.5</u>	<u>1051.4</u>	<u>1120.4</u>

11. The above ‘Discounted Cash-Flow’ valuation of the ‘general’ business, based on projections / forecasts for **5-Years**, and the valuation of ‘life’ business in total had been reckoned to be more than 10 times the ‘**adjusted profits**’ after tax for the **Year 2001**, as referred to above – *vide Pages 7 and 39 of (P8)*.
12. The above ‘**Indicative Valuation**’ is said to have also been ‘***crossed checked***’, with the Net **Tangible** Assets, as per the SLIC Balance Sheet as at 31.12.2001, noting that the ‘**Indicative Valuation**’ is 1.5 to 1.7 times the Book Value of Assets - *vide Pages 7, 39 and 40 of (P8)*
13. The Book Value of the Net **Tangible** Assets, as per the SLIC audited Balance Sheet as at 31.12.2001 had been **Rs. 3109 million**, whilst at page 40 of **(P8)** it had been reckoned to be Rs. 3015 million, adjusted with surplus cash, the adjusted Net **Tangible** Assets has been stated at **Rs. 2028 million**.
14. Very clearly, the Market Value of the Fixed Assets, including Land and Buildings had not been taken into reckoning, as referred to at paragraph 8(d) of the Petition - *viz*
- “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 “ | |
15. As per the SLIC audited Balance Sheet as at 31.12.2001, at page 9 of **(P14)** the Fixed Assets had been given at a Book Value of only Rs. 329.3 million (Rs. 274.9 million + Rs. 54.4 million).
16. Cabinet Memorandum dated 27.3.2003 **(P10)** however had stated thus;
- "SLIC recorded a turnover (Gross Written Premium) over Rs. 7.8 bn. **with a profit after tax of Rs. 753 mn.** and has **net assets of around Rs. 5.7 bn.** after revaluation of fixed assets, for the financial year ending 31st December 2002 as per the unaudited draft accounts."
17. In addition, the ‘**brand value**’ of SLIC a well established profitable insurance giant in Sri Lanka, apparently had not been taken into reckoning.
18. The total value of Investments, as per the audited Balance Sheets of SLIC as at **31.12.2001 (P14)** and **31.12.2002 (P17)**, has been given as **Rs. 21,308.1 million** and **Rs. 22,616.7 million**, respectively.

19. Of the above investments, Investment in Equity Securities, as per the above audited Balance Sheets, as at 31.12.2000, 31.12.2001 and 31.12.2002 are set out below:

Equity Investments

As at 31.12.2000

As per Note 10.2 at page 27 of (P14) and 10.2.1 on page 31 of (P14), the Equity Investments under Current Assets, are shown at a value of **Rs. 1870.7 million** (Rs. 1374.2 million + Rs. 496.5 million), whilst the ‘**market value**’ of such investments had been disclosed to be **Rs. 1870.7 million** (Rs. 1374.2 million + Rs. 496.5 million) i.e. **a Book Value has been stated to be the ‘market value’ as at 31.12.2000.**

As at 31.12.2001

As per Note 10.2 at page 27 of (P14) and 10.2.1 on page 31 of (P14), the Equity Investments under Current Assets, are shown at a value of **Rs. 2808.0 million** (Rs. 1863.2 million + Rs. 944.8 million), whilst the ‘**market value**’ of such investments had been disclosed to be **Rs. 3157.8 million** (Rs. 1945.3 million + Rs. 1212.5 million) i.e. **the Book Value has been less than the ‘market value’ by Rs. 349.8 million as at 31.12.2001.**

As at 31.12.2002

As per Note 10.2 at page 28 of (P17) and 10.2.1 on page 32 of (P17) the Equity Investments under Current Assets, are shown at a value of **Rs. 2783.7 million** (Rs. 1852.5 million + Rs. 931.2 million), whilst the ‘**market value**’ of such investments had been disclosed to be **Rs. 4856.7 million** (Rs. 3193.6 million + Rs. 1663.1 million) i.e. **the Book Value has been less than the ‘market value’ by Rs. 2073 million as at 31.12.2002.**

Hence, the *market value* of these Equity Investments had **increased** by Rs. 1723.2 million (Rs. 2073.0 million – 349.8 million) between **31.12.2001** and **31.12.2002**; whilst the PWC ‘**Indicative Valuation**’ had been dated and submitted on **29.11.2002** (P8)

20. Following extracts are cited from the PWC Reports given as Appendixes to the ‘**Indicative Valuation**’, which are pertinent to have been taken into reckoning.

Page 3- Appendix I

“It is important to note that not all of the information requested was capable of being provided by SLIC. This has led to more uncertainty in the outstanding claims estimates calculated than would otherwise be the case. In the absence of the data requested, it was not possible to narrow significantly the range of likely outstanding claims estimates.”

“Our analysis has necessitated a large number of assumptions to be drawn, most of which are based on very limited information. The extent to which these assumptions prove to be incorrect will have a significant impact on the reasonableness of the analysis conducted”

Page 5 – Appendix I

“Due to the fact that no computer database exists for non life claim records or payment information, we have not been able to obtain the data we required to complete an analysis of outstanding claims”.

“Nonetheless, an opinion on the adequacy of these provisions was requested. This has necessitated a large number of assumptions to be drawn, most of which are based on very limited information. This has resulted in a high level of uncertainty surrounding the calculated outstanding claims estimates”

Page 6 – Appendix I

“The provision for unissued policies amounts to 626 million Rs., or 10% of SLIC’s total non life insurance liabilities. This is intended to provide funds for possible refund of premiums from customers who paid their premium but did not follow through to completion of underwriting and policy issuance. This fund has accumulated over a number of years”.

“Based on discussions with SLIC management, it seems in our opinion that a large amount of the provision for unissued policies held as at 31 December 2001 could be released as profit”.

Page 20 – Appendix I

“The extent to which the provision for unissued policies can be reduced is not an actuarial question, but rather a legal or accounting question. We recommend this be considered by SLIC after discussions with its auditors and legal advisors”

Page 36 – Appendix I

“In our opinion satisfactory explanation for each of these items is required before firm recommendations can be given in respect of outstanding claims as at 31 December 2001 for the General Accident portfolio”.

Page 40 – Appendix I

“In our opinion satisfactory explanation for each of these items is required before firm recommendations can be given in respect of outstanding claims as at 31 December 2001 for the Non Life business of SLIC”

Page 6 - Appendix II

“This approach does not consider other possible ownership claims on the assets. The shareholders may well claim that they have a right to all of the net worth (or a significant portion of it). This may or may not include a claim on any capital injections made in the past.”

Page 15 - Appendix II

“SLIC has not conducted a detailed expenses analysis of its life business. Therefore we have assumed that expenses (and commissions) conform to those used in pricing the product concerned and have used these in developing the projection models. We have then been able to determine the total level for SLIC of expense and commission product allowances produced from the in force business and new business”.

Page 22 – Appendix II

“Common international practice is to select 10 or 15 years of new business. We have calculated multipliers taking into account 15 years new business”.

21. It is very evident from the ‘**procedure**’ followed, that the PWC ‘**Indicative Valuation**’ ***had not been subject to any review, examination or question***, and had been opened on **24.1.2003** by the TEC, and merely compared with the financial ‘Bids’ received – *vide (part of P7) and Letter attached to (P8)*.

* Note: Other Operating Income 2001 – as per Note 4 Page 21 of Audited Accounts
(P14)

	Rs.Mn.
Dividend Income	112.916
Rent Income	52.190
Interest Income	689.411
Profit / Loss on Disposal of Investment	21.013
Exchange Gain / Loss	221.298
Sundry Income / Expenses	1.652
Reversal of Provision for fall in Value of Investment	<u>698.725</u>
	<u>1,797,205</u>

NOTE - 5

CONDUCT AND ACTIONS OF

➤ PRICEWATERHOUSECOOPERS, *CONSULTANTS TO THE GOVERNMENT*

➤ ERNST & YOUNG, *AUDITORS OF SLIC, HAVING RENDERED OTHER SERVICES*

1. PricewaterhouseCoopers (PWC), Indonesia and PWC, Sri Lanka have acted as ‘**one consortium**’, in providing professional services to the Government, in terms of Contract (P2), on this ‘transaction put in issue’.
2. Ernst & Young (E & Y) have carried out the statutory audits of SLIC, whilst the Government was 100% Shareholder upto **11.4.2003**, and have continued to be Auditors of SLIC after the Sale of SLIC Shares on **11.4.2003**, whilst the transaction put in issue was pending conclusion with the Buyer, in relation to which, E & Y were rendering professional services.
3. Endeavour to carry out ‘this transaction put in issue’, i.e. the Sale of 90% Shares of SLIC on 11.4.2003, under and in terms of Agreement (P13), which had been structured by PWC, and for the purpose of which SLIC Accounts as at 31.3.2002 (P15) and 11.4.2003 (13R8) had been re-stated by E & Y, said to be in conformity with International Accounting Standards, stands not concluded and frustrated; **though it had to be concluded by 11.6.2003**.
4. **Retrospective re-classification of Investments** in the SLIC Balance Sheet as at 31.12.2001 (P14), disclosed in the SLIC Balance Sheet as at 31.12.2002 (P17) ***without any explanation therefor***, and which had a material bearing on the computation of the ‘purchase price adjustment’, in terms of Agreement (P13), and the ‘non-classification’ of Current Assets and Current Liabilities separately in the SLIC Balance Sheets of 31.3.2002 (P15) and 11.4.2003 (13R8) have resulted in this ‘transaction put in issue’, standing not concluded, **now for nearly 5 years, rendering same to be frustrated**.
5. SLIC Balance Sheets as at 31.12.2001 (P14) and 31.12.2002 (P17) **had been audited and certified** by E & Y showing the classification of Current Assets and Current Liabilities separately, and had been **certified that – ‘the said Accounts give a true and fair view of the state of affairs of SLIC as at the said dates’** *in conformity with normal audit certifications*.
6. On the other hand SLIC Accounts to 31.3.2002 (P15) and 11.4.2003 (13R8) **had been signed** by E & Y specifically stipulating that **‘they have not performed an audit, and accordingly do not express an opinion’**, whilst at the end of their Reports on the said two Accounts E & Y had stated thus – ***‘Nothing has come to our attention that causes us to believe that the accompanying financial statements do not give a true and fair view in accordance with International Accounting Standards’***

7. The frustrated situation had been precipitated due to the conduct and actions of both PWC and E & Y, who have evaded responding to the queries raised.
8. E & Y, with the knowledge of PWC, having obtained 16 Extensions between June 2003 and October 2004 to conclude the 'purchase price adjustment' in terms of Agreement **(P13) had been unable to duly perform the same, or give any explanations therefor.**
9. In the context of the conduct and actions of PWC and E & Y, the Hon. Attorney General by Letters dated 9.2.2005 **(P21(a)) / (P21(b))** had put PWC and E & Y on notice of negligence, and had forwarded further Letters dated 11.4.2005 **(P22(a)) / (P22(b))** to PWC and E & Y putting them on notice of legal action for negligent acts or willful misconduct and wrongful conduct. *Secretary to the Treasury, P.B. Jayasundera, 7th Respondent, had not pursued to protect the interests of the Government.*
10. The then Minister of Public Enterprises Reform, the 3rd Respondent (now deceased) in December 2005 had submitted a Cabinet Memorandum **(P24)** setting out the conduct and actions of PWC and E & Y, recommending that the Hon. Attorney General expedite the legal actions against PWC and E & Y. *Secretary to the Treasury, P.B. Jayasundera, 7th Respondent, had not pursued to protect the interests of the Government.*
11. The conduct and actions of PWC and E & Y in relation to this 'transaction put in issue' of the Government, has been subject to an Inquiry by the Institute of Chartered Accountants of Sri Lanka (ICASL), on a Complaint made in August 2005 by a member of the public, at which Inquiry, I was called to give evidence, as the former Chairman, PERC.
12. Having obtained approval from the Minister in charge of PERC, 3rd Respondent at that time (now deceased) *vide (13R6(b))*, I gave evidence at the ICASL Inquiry conducted by a 4-Member Panel of the 10-Member Ethics Committee, to which such Panel had reported for decision by the 10-Member Ethics Committee. I submitted my Letter dated 5.10.2006 **(P20(b))** to the Chairman of the said Panel, setting out the salient facts, which I understand had been submitted to the Ethics Committee.
13. 31st Respondent, President, ICASL established by ICASL Act No. 23 of 1959, as amended, has filed Affidavit admitting the foregoing Inquiry, **but had made statements without any documents annexed to his Affidavit in proof of his statements made therein, and suppressing from Your Lordships' Court the relevant documents.**
14. The 31st Respondent ought be directed by Your Lordships' Court to submit all relevant documents pertaining to the said Inquiry.
15. The ICASL is an Institute statutorily established, and to which the Government has made / makes grants from public funds, and to the Council of which, the Government appoints nominees; with the Auditor General being an ex-officio member thereof.

16. Upon the 10-Member Ethics Committee having reported that a *prima-facie* case of misconduct has been established against Member/s of the Institute, in terms of Section 17 of the said ICASL Act No. 23 of 1959, as amended, the Council of the ICASL, is statutorily mandated to appoint a Disciplinary Committee for the purpose of conducting an Inquiry – viz ICASL Act No. 23 of 1959, as amended, Section 17 (2)(a) and 17(2)(b)

“(a) Where the Council has reasonable cause to believe, whether on complaint made to it **or otherwise**, that any person who is a member of the Institute has been guilty of professional misconduct, the Council may appoint an investigating committee to inquire into and report to the Council, whether a prima-facie case of professional misconduct has been made against such member” (*Emphasis added*)

“(b) Where an investigating Committee appointed under paragraph (a) reports to the Council that a prima-facie case of professional misconduct has been made out against a member, the Council **shall appoint** a disciplinary Committee for the purpose of inquiring into the conduct of such member.” (*Emphasis added*)

The **First Schedule** to ICASL Act No. 23 of 1959, as amended, stipulates the ‘**Rules as to Inquiries by Disciplinary Committees**’ and the **Second Schedule** thereto defines, as to what constitutes ‘**professional misconduct**’.

17. The COPE Report to Parliament in January 2007 in relation to the Sale of 90% Shares of SLIC had *inter-alia* reported as follows:

- “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”
- “Ernst & Young auditors and PWC consultants were directly involved in the said fraudulent conduct”
- “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”
- “Director PERC and Secretary Steering Committee, who handled this transaction for PERC, Aneela de Soysa joined PWC as a Partner in March 2003”.
- “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.”
- “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”.
- “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”
- “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. “

18. In terms of Section 17(2)(a) of the ICASL Act No. 23 of 1959, as amended, the Council ought to have expeditiously taken action in the face of the aforesaid castigations contained in the COPE Report to Parliament in January 2007.
19. It would appear that the ICASL has failed and neglected to take action, as it ought to have, on the initial Complaint made by a member of public, as far back as August 2005, and in the face of the above castigations in the COPE Report to Parliament in January 2007.
20. In terms of Section 19 of the said ICASL Act No. 23 of 1959, as amended, any person aggrieved by a decision of the Council under Section 16 or Section 18 thereof could Appeal to the Supreme Court.
21. **'Dicta'** from relevant **Judgments** on **'duties and responsibilities'** of **'Accountants and Auditors'** are attached hereto, together with, for easy reference, a copy of my said Letter dated 5.10.2006 **(P20(b))** forwarded to the Panel of the Ethics Committee of the ICASL, setting out the salient facts, pertaining to the conduct and actions of PWC and E&Y in relation to this 'transaction put in issue', and Letters of the Hon. Attorney General forwarded to PWC and E&Y **(P21(a)), (P21(b)), (P22(a)), (P22(b))** and Cabinet Memorandum **(P24)**

ADDITIONAL NOTE – 6

OBSERVATIONS ON AFFIDAVIT DATED 21.11.2007 OF 7TH RESPONDENT, SECRETARY TO THE TREASURY AND FORMER CHAIRMAN, PERC *[WITH PARA REFERENCES TO THOSE IN 7TH RESPONDENT'S AFFIDAVIT]*

1. Has not denied any of the averments in my (13th Respondent) Affidavit filed previously on 2.8.2007, whereby averments in my Affidavit stand admitted by the 7th Respondent.
2. At para 5A dishonestly states he is **unaware** of statement in para 2(n) of the Petition, **that PWC, Indonesia acted in concert with PWC, Sri Lanka !**
3. At para 5B **does not admit** statement in para 2(t) of the Petition **that Ernst & Young rendered Special Audit Services in preparing Financial Statements for the transaction in issue.**
4. At para 12 does not admit statements in
 - Para 2(m) of the Petition that the **16th Respondent, who was a Director PERC and Secretary, Steering Committee, later became Partner of PWC, Sri Lanka.**
 - Paras 5(d) and 20(b) of the Petition that the 16th Respondent having been so involved in the process of privatization of SLIC, **just one month prior to the execution of Sale Agreement (P13) on 11.4.2003, had in March 2003 joined PWC, Sri Lanka as a Partner.**
5. At para 13 **does not admit** statement in para 2(p) of the Petition, that the **19th Respondent, then Senior Partner PWC, Sri Lanka acted in concert with the 17th Respondent, PWC Indonesia.**
6. At para 14 **does not admit** statement in para 2(q) of the Petition, that the **20th Respondent, Senior Partner, PWC Sri Lanka acted in concert with PWC, Indonesia.**
7. At para 14A dishonestly **pleads unawareness** of statement in para 2(r) of the Petition, that the 21st Respondent, Partner, PWC, Sri Lanka acted in concert with 17th Respondent, PWC Indonesia and had acted as PWC 'Sri Lanka Team Leader'.
8. At para 15 **does not admit** statement in paras 2(aa) and 13(j) of the Petition, that the 30th Respondent, **as a Member of PERC, ought to have been concerned in the investigation of the transaction in issue** and as Director General of SEC, could not have turned a 'blind eye' to the investigations of this transaction before COPE.
9. At paras 16 and 17 **admits** statement in para 2(bb) of the Petition, **that Government made contributions from the Consolidated Fund to the Institute of Chartered Accountants of Sri Lanka established under ICASL Act No 23 of 1959 and that the Council thereof to which Government appoints members, conducts disciplinary inquiries into the professional misconduct of members in terms of Section 17 of the said Act, and an Appeal therefrom could be proffered to the Supreme Court in terms of Section 19 of the said Act, thereby making the ICASL Council a quazi judicial body.**

10. At para 18 **does not admit** statement in para 2(cc) of the Petition, that the 32nd Respondent, a very Senior Chartered Accountant of the Ethics Committee of the ICASL had investigated into the conduct and actions of Ernst & Young and PWC on the transaction in issue, **whereas the 7th Respondent as the Secretary to the Treasury being an *ex-officio* member of PERC ought to have been aware of the said investigation since on the direction of the 3rd Respondent Minister, the 14th Respondent then Chairman PERC had issued Letter dated 25.4.2006 13R6(b) to the ICASL in such regard**
11. At para 19 **does not admit** statement in para 2(dd) of the Petition, that COPE had carried out investigation into the transaction in issue, **whereas the 7th Respondent had been summoned to be examined by COPE on the said matter and PERC had submitted an Investigative Report dated 25.10.2006 to COPE, whilst the 7th Respondent was *ex-officio* member of PERC.**
12. a) At para 23 **evades** the statement in para 5(b) of the Petition, that Steering Committee had been appointed without Cabinet Approval, but admits that approval was sought to appoint Internal Advisors and to re-state the SLIC Accounts, as per International Accounting Standards, and International Advisors were to be contracted on the advice of the Technical Evaluation Committee.
 - b) It is disclosed by documents **7R2B, 7R2C and 7R2D** that the proposal from Financial Advisors had been received on **11.4.2002** and a purported TEC had given a report also dated **11.4.2002** and PWC Indonesia had been awarded the Contract for Financial Advisory Services on **12.4.2002**, whilst **7R1B** discloses that the Cabinet Approval had been communicated only on **18.4.2002**.
 - c) Appointment of the TEC and a purported CATB is by **(P5)** dated **8.7.2002**. **No documents adduced in proof of appointment of the above TEC, which had given a report on 11.4.2002 7R2C.**
 - d) Pointedly Cabinet Paper **(P3)** dated **28.2.2002** for which approval was communicated on **18.4.2002** **(P4)** discloses, to authorize SLIC to make payments in connection with the transaction (presumably fees) not exceeding **US 2 million**, and the Government to pay a Success Fee to Financial Advisors not exceeding **US \$ 2 million**, **whereas as disclosed by 7R2B the financial proposals i.e. bids of the Financial Advisors had been opened on 11.4.2002. and a pre-bid conference for Financial Advisors had been had on 22.3.2002 vide - Annex I to (P16d)**
13. At para 24 **evades** the statement in para 5(c) of the Petition, that **PWC, Indonesia acted in concert with PWC, Sri Lanka.**
14. At para 25 **admits** statement in para 6(b) of the Petition, that the **CATB had to be appointed by the Cabinet.**

15. a) At para 27 evades the statement in para 6(d) of the Petition that the CATB had to be appointed by the Cabinet itself, and has annexed a very short Affidavit (**7R3**) from the then Secretary to the Treasury, 4th Respondent, also evasively stating that a permanent CATB had been assigned to handle the tender, without any explanation, whatsoever, as to why the Cabinet Decision had been blatantly flouted.
- b) The 4th Respondent then Secretary to the Treasury an *ex-officio* Member of PERC, had curiously failed to file an Affidavit as the 4th Respondent.
- c) **The above discloses the collusive action by and between the 7th Respondent and 4th Respondent to have subverted the Cabinet Decision.**
16. a) At para 28 **evades** the statement in para 6(e) of the Petition, that the Steering Committee had been aware of the Cabinet Decision to appoint a CATB by itself but that the Steering Committee had chosen to act otherwise.
- b) The 7th Respondent states that the Steering Committee ceased to function from 5.12.2002, **whereas at the 13th Meeting of the Steering Committee on 14.8.2002 (P25(c)) the appointment of TEC and the CATB by Letter dated 7.8.2002 had been minuted and the Steering Committee had continued to have 6 more Meetings thereafter, the final Meeting admittedly had been on 5.12.2002.**
17. a) At para 29 **admits** the statement in para 6(g) of the Petition, that **(P5) dated 7.8.2002 appointing the TEC and the purported CATB had drawn specific attention to Government Tender Procedure Guidelines and Public Finance Circulars. (Which however had been blatantly flouted amongst others by the 7th Respondent)**
- b) Also **admits** statement in para 7(b) of the Petition that 17 parties had submitted EOIs by **23.8.2002 (P6)**
18. a) At para 29(A) **evades** the issue in para 7(a) of the Petition, that PERC had not received EOIs, but had been received by PWC, Indonesia and PWC, Sri Lanka.
- b) Contradicting the foregoing stance taken at paras 2, 6, 7 above *vis-à-vis* PWC, Indonesia acting in concert with PWC, Sri Lanka, the 7th Respondent states – ‘I state that the agreement for Financial Advisory Services on this transaction of the Government was with PWC, Indonesia, **and PWC, Sri Lanka assisted in the said transaction?**
19. At para 30 in response to statement in para 7(c) of the Petition, the 7th Respondent has stated thus:
- (a) On the recommendation of Financial Advisors i.e PWC and the TEC, the (purported) CATB had decided to consider 5 Technical Proposals received by the stipulated closing time i.e. **5.00 p.m. on 17.9.2002 to move forward into the Final Bidding Stage** - *vide* CATB Meeting Minutes 23.9.2002 **7R4A** and TEC Meeting Minutes of 17.9.2002 **7R4B**.

At both the above TEC and CATB Meetings, Officers of PWC, Indonesia and PWC Sri Lanka had been present.

As per 7R4B i.e. the Minutes of the Technical bids Opening Meeting at 5.00 p.m. on 17.9.2002 it had been noted that the following 5 firms had submitted preliminary technical proposal for the privatization of SLIC:

- (i) Commercial Bank of Sri Lanka Ltd.
- (ii) Eagle Insurance Company Ltd.
- (iii) Janashakthi Insurance Company Ltd.
- (iv) CTC Stock Brokers
- (v) Asia Capital Ltd.

(b) As per the purported CATB Meeting Minutes of 23.9.2002 **it had been decided to allow the following 5 parties who had submitted the basic information required to move forward into the Final Bidding Stage.**

- (i) CBC and DFCC
- (ii) CTC Stock Brokers and Aitken Spence Insurance
- (iii) Eagle Insurance
- (iv) Asia Capital and Asian Alliance Insurance
- (v) Janashakthi Insurance and National Insurance Company

It had been noted at Item 3 of the said CATB Minutes of 23.9.2002 that AMCO Group proposals were received after closing time of 5.00 p.m. on 17.9.2002. (It is clear that they had been rejected for such late submission)

(c) The above purported CATB decision had been based on the TEC recommendations attached to 7R4B dated 22.9.2002.

(d) Curiously, the 7th Respondent states at para 30(b) and (c) that though the closing date of the Final Bids had been extended on two occasions since only 3 bids had been received on 29.11.2002 that the Financial Advisors PWC had recommended that the **Government accepts the bid from the Distilleries Consortium, and quickly move to execute the Share Sale and Purchase Agreement and reach final closure.** (Now after 5 years 'final closure' had not been reached)!

(e) Vide - 7R5 PWC Report

On 21.1.2003 revised Final Bids for SLIC had been received from:

- (i) CBC / DFCC Consortium – revised technical and financial bids
- (ii) Distilleries Consortium – revised technical bid only. Financial bid remained as per that submitted on 29.11.2002.
- (iii) Janashakthi Insurance – revised technical and financial bids

(f) It is this recommendation that had been acted upon by the TEC at **9.30 a.m.** on **25.3.2003 7R6A** and by the purported CATB on **25.3.2003 at 10.00 a.m. Meeting at another location 7R6B**

20. At para 31 **admits** the statement in para 7(d) of the Petition that 24th and 25th Respondents were well known financially strong Companies and that ING Institutional Government Advisory Services BV Holland were associated with the entire consortium.

21. a) At para 32 **admits the statements as advised** in the following paras 7(e), 8(a), 8(b) and 8(c) of the Petition

“7(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’.”

“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.”

b) Being an Economist, and having handled the transaction in issue, it is indeed ‘intriguing’, that the 7th Respondent has stated that he had admitted the foregoing **as advised, thereby he admitting that the aforesaid statements in the Petition give rise to serious questions.**

22. a) At para 32A admits the following statement in para 8(d) of the Petition

“8(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”	

b) **But 7th Respondent had stated that PWC Indicative Valuation had been on the basis of a ‘net present value of a discounted cash-flow’.**

23. a) At para 33 again **evades** the statement in para 9 of the Petition, of the core issue that the CATB had been constituted in violation of the Cabinet Decision.
- b) The 7th Respondent states that the CATB gives reasons for its decisions as per Minutes **7R8** and **7R9** (7R9 is the identical Minute marked **7R4A**)
24. a) At paras 35, 36, 37, 38, 39, 40, 41, 42 and 43 the 7th Respondent endeavours to respond to statements in paras 11(a), (b), (c), (d) (e), (f), 12(a), (b), (c) and 13(a), (b), (c), (d), (e), (f), (g), (h), (i) of the Petition essentially on the above ‘perverse and highly irregular process’ and further on the questionable substitution of Milford Holdings (Pvt) Ltd. (**incorporated on 31.3.2002**) and Greenfield Pacific EM Holdings Ltd., Gibraltar (**incorporated on 28.3.2002**), whilst at the same time at para 40 stating that the Cabinet Memorandum (P10) dated 27.3.2002 had specifically authorized to execute the Share Sales and Purchase Agreement to divest 90% SLIC Shares to the Distilleries Consortium.
- b) What is stated by the 7th Respondent in paras 35(a) and 35(b) –
- ‘that it is usual in transactions of this nature for bidders to form consortium and for the composition of consortium to change during the process of a bid - and that the final bidding process could provide for well credential financial / insurance parties to join the process, - and leave open the opportunity for new parties, who have not submitted EOIs of possibly joining, with parties who had submitted EOIs’**
- is indeed is most appallingly shocking !**
- c) **The foregoing perverse explanation alone admits the manipulative dishonesty that had been practised in carrying out this transaction.**
- d) **Such shocking statements defeat the very purpose of calling for EOIs and ranking on a ‘point awarding evaluation system on given criteria’.**
- e) **Such ‘back door entrance’, circumventing the due process, is in blatant violation of Government Tender Guidelines and Procedure and Public Finance Circulars, expressly stipulated as a condition (P5) in appointing the TEC and a purported CATB.**
- f) **The foregoing appallingly shocking process is perverse and renders the entire transaction fraudulent, and *ab-initio* null and void.**
- g) Furthermore, CATB having been irregularly constituted in violation of Cabinet stipulation, renders the transaction invalid and renders the purported explanations proffered by 7th Respondent to be mysteriously questionable.

25. a) At paras 44, 45 and 46 in relation to statement in paras 14(a), (b), (c), (d), (e) of the Petition, **admits** the SLIC audited Accounts as at 31.12.2001 (P14) and un-audited Accounts as at 31.3.2002 (P15) and **misleadingly states** that the Accounts (P15) had to be updated to 31.3.2002 a date closer to bidding as its commonly done, **whereas final bidding had been on 21.1.2003.**
- b) **Admits that PWC had advised to prepare the SLIC Accounts based on International Accounting Standards, and that Ernst & Young being the Auditors of SLIC were entrusted with this task, for a fee of around US \$ 81,000. This contradicts his statement referred to at para 3 above.**
- c) **States that the above was done to target international bidders on a worldwide basis.**
- d) **Admits that the Freeze Letter (P18) required the prior approval of PERC for unusual transactions of SLIC.**
26. At paras 47A and 48 in response to statements in paras 15 (a), (b), (c), (e) of the Petition, **evades** the important issue of the non-statement of Current Assts and Current Liabilities separately on the Balance Sheet or even in a Note thereto, deviating from the accounting policy of SLIC and in contravention of the International Accounting Standards, **and admits that PWC were responsible for structuring the transaction and drafting the Agreement (P13).**
27. a) At paras 49, 50 and 51 in relation to statement in paras 15 (d), 16 (c), (d), (e), (f), (g), (h) of the Petition, **admits** Clause 4A of Agreement (P13) provided for the adjustment of purchase price consideration, based on the increase or decrease in the Net Working Capital, between 31.3.2002 and 11.4.2003, as defined in (P13).
- b) **States that Clause 4A had been incorporated in Agreement (P13) solely on the advice of PWC and pleads that same was approved by the Attorney General.**
- c) **Admits that the figures of 31.12.2001 had been re-stated in the Balance Sheet of 31.12.2002 retrospectively by re-stating Fixed Assets as Current Assets by over Rs. 3000 million.**
- d) **States that the Government obtained the services of PWC to advise and guide on the transaction.**
- e) On the matter of Investment portfolio of Rs. 22,716.7 million as at 31.12.2002 readily realizable in cash under the management and control of SLIC, the 7th Respondent **misleadingly states that total liabilities exceeded the said 22,716.7 million.**
28. At paras 55 and 56 in relation to statements in paras 17(a), (b), (c), (d) of the Petition, in relation to non-conclusion by 11.6.2003 of the 'purchase price adjustment', **the 7th Respondent had admitted that the Balance Sheet that was furnished is inadequate to conclude the Net Working Capital difference and that further extensions were given to furnish required information and that the matter is still pending; but does not state what action has been taken in the interest of the Government.**

29. At para 57 in relation to statement in paras 18(a), (b), (c), (d), (e) of the Petition, the 7th Respondent **pleads unawareness** whereas the 7th Respondent being an *ex-officio* member of PERC, **ought to have been aware** of the Ethics Committee Inquiry by the Institute of Chartered Accountants of Sri Lanka against PWC and Ernst & Young since the 14th Respondent then Chairman PERC on the directions of the 3rd Respondent Minister, had given Letter dated 25.4.2006 **13R6B** to the Institute of Chartered Accountants of Sri Lanka.
30. At para 58 in relation to statement in para 19 of the Petition, evasively answers that action had been pursued on the Cabinet Memorandum of 3rd Respondent Minister **without disclosing what those actions had been.**
31. a) At paras 59, 60 and 61 in relation to statements in paras 20(a), (c), (d) of the Petition, the 7th Respondent admits that Marina Dharmaratnam resigned from the Steering Committee citing conflict of interests; and covers up for the 19th Respondent, then Senior Partner PWC, Sri Lanka, stating that he declared his interest and excused himself from discussion at the Steering Committee, whereas the PWC work and payments to PWC had been supervised by the Steering Committee.
- b) Admits that Ernst & Young were Auditors of SLIC of which the Government was 100% owner and even thereafter; **which however the 7th Respondent had not considered to be improper.**
- c) Admits that he was Senior Policy Advisor to Ernst & Young on a part-time basis, but puerilely endeavours to explain that there was no conflict of interest, and that he did not render any services in any local transactions, whereas in **7R13A** it is admitted that 7th Respondent's operation will be 'home based' meaning Sri Lanka, and he had not denied that he had dealings with Ernst & Young Sri Lanka; though stating that he had not rendered services in any local transactions !
- d) Whilst stating that he always carried out his duties to the best interest of the Government, he has failed to disclose what actions he had taken against Ernst & Young on this transaction in issue, whereas it is disclosed that he had prevented action being taken misusing and abusing his position, as the Secretary to the Treasury.
- e) He had failed to disclose the other several assignments PERC had given Ernst & Young, whilst he was Chairman PERC, or its Senior Policy Advisor *de-facto* Chairman, disclosing the period of time of those assignment and the corresponding fees.
32. At para 62 and 63 in relation to statements in para 21(a) and (b) of the Petition, desperately like a 'drowning man clutching to a straw' has undermined the COPE Report to Parliament on 12.1.2007 relying on a statement made to Parliament 6 weeks thereafter on 21.6.2007 by one Member thereof, whilst none of the other 29 Members of COPE had disassociate themselves with such COPE Report which had been given wide publicity.
33. At paras 64 and 65 in relation to statement in paras 22(a), (b), (c), (d), (f), (g), (h) of the Petition, has desperately and futilely denied or pleaded unawareness.

**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
Rilaulla
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 Appartments
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.
- Also at
C/o D.H.S. Jayawardhene
C/o Milford Holdings (Pvt) Ltd.
110, Norris Canal Road
Colombo 10.
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, 2nd Floor, YM.B.A. Building
Sir Baron Jayatilleke Mawatha
Colombo 1.
33. Wijeyadasa Rajapakshe 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
4th 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.
38. D.H.S. Jayawardhene
C/o Milford Holdings (Pvt) Ltd.
110, Norris Canal Road
Colombo 10.

Respondents

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

Further to the Oral Submissions of 13th Respondent

Having orally dealt with some of the important matters set out in my Notes Nos. 1 to 6, tendered to Your Lordships' Court, not wanting to take more time of Your Lordships' Court, at the end I only adverted to some of the matters in my said Notes, particularly Note No. 5, and I sought the permission of Your Lordships' Court to submit copies of certain relevant and pertinent Notes and Documents.

Accordingly, I respectfully tender herewith, copies of the following Documents

1. a) Certified copy of SLIC Accounts for the Year 2005 obtained from the Registrar General of Companies, marked “A”
 - b) The Registrar General of Companies informed my staff that Accounts for the Years 2006 and 2007 had not yet been filed by SLIC.
 - c) I respectfully draw the kind attention of Your Lordships’ Court to:
 - (i) Page 4 of the said Accounts, wherein it is revealed that the Net Profits after Tax for the Year 2005 has been **Rs. 1,020.3 million**, whereas the Net Profit after Tax reckoned in the PWC ‘Indicative Valuation’ (P8) for the Year 2005 had been only **Rs. 386.4 million**.
 - (ii) Page 3 of the said Accounts, wherein the total Assets as at 31.12.2005 had been given as **Rs. 46,558.5 million**, whereas the total Assets as at 31.3.2002 (P15) had been **Rs. 28,582.5 million**.
 - (iii) Page 9 of the said Accounts, where the ‘Gross Written Premium’ has been **Rs. 10,172 million**, whilst the PWC ‘Indicative Valuation’ had reckoned Rs. 9,136 million; however the Net Written Premium has been **Rs. 8,049 million**, whereas the PWC ‘Indicative Valuation’ had reckoned only **Rs. 4,349 million**.
 - (iv) Page 9 of said Accounts, where Income from Investments has been Rs. 3,224 million, whereas the PWC ‘Indicative Valuation’ had reckoned only Rs. 872 million; and Other Income has been Rs. 539 million, whereas PWC ‘Indicative Valuation’ it has been questionably reckoned as a (Loss) of **Rs. 457 million** ?.
 - d) The foregoing demonstrates the unreliability of the PWC ‘Indicative Valuation’.
2. a) ‘Excerpts’ of submissions made to COPE by Mr. Suhada Gamalath, Secretary, Ministry of Justice, as a Member of PERC, giving his opinion on the issue of ‘**Conflict of Interest**’ marked “B”.
 - b) Such Opinion on ‘**Conflict of Interest**’ was requested by COPE, in view of several serious instances of ‘**Conflict of Interest**’ involved in this ‘transaction in issue’.
 - c) Paragraph 20 of the Petition giving the several instances of ‘**Conflict of Interest**’ is quoted below for easy reference of Your Lordships’ Court.
 - “20. a) 19th 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).
 - b) 16th 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) 7th 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**".
- d) The 7th Respondent at paragraph 61 of his Affidavit has admitted that he had served, **as a Senior Policy Advisor to Ernst & Young**, on a part-time basis, but has not disclosed during which period/s he had provided such services, **as a Senior Policy Advisor to Ernst & Young**, whereas **Ernst & Young** had been given several lucrative 'consultancy assignments' on privatizations by PERC, whilst the 7th Respondent was Chairman, PERC / Secretary to the Treasury, and in respect of some of which, there had been serious 'lapses' on the part of Ernst & Young, in addition to this transaction in issue, on LIOC, one issue in which had to be rectified saving the Government billions of rupees, and some other issues involving billions of rupees are yet to be dealt with.
- e) In this transaction in issue, there has been and there is a 'serious dispute' between the Government and Ernst & Young, and also a '**Conflict of Interest**' on their part *vis-à-vis* the Government, which had warranted action being taken by the Government against Ernst & Young, as had been advised and acted upon by the Hon. Attorney General *vide* - **(P21(a)), (P22(a))** and Cabinet Memorandum **(P24)**.
- f) Action by the Government against Ernst & Young had to be taken by the 7th Respondent, as the Secretary to the Treasury. **Clearly he had been unable to so act**, since he had been compromised by having been in the pay of Ernst & Young, **as a Senior Policy Advisor**.
- g) Ernst & Young also had compromised the 7th Respondent, a Senior Public Servant, by engaging him as **Senior Policy Advisor**, whilst they had received lucrative 'consultancy assignments' from PERC of which the 7th Respondent was the Chairman / the Secretary to the Treasury, and also he had to deal with Ernst & Young in his official capacity, as a Senior Public Servant i.e. Chairman PERC / Secretary to the Treasury, on issues pertaining to such assignments.
- h) The other '**Conflict of Interest**' referred to above pertaining to PWC, causes much concern in that, Senior Partner of PWC 19th Respondent had been a Member of the Steering Committee supervising and approving payments to PWC, whilst the Secretary of the Steering Committee and Director of PERC, 16th Respondent had questionably joined PWC in March 2003, **just one month before April 2003**, which fact, the 7th Respondent in his Affidavit had curiously evaded to admit !
3. a) Schedule marked "C" of some of the relevant and pertinent Letters, which have been compendiously marked as **(P19)**, together with copies of the Letters with the relevant sections '**highlighted**' disclosing that **Ernst & Young**, with **the knowledge** of **PWC**, had obtained several extensions to prepare the 'Net Working Capital Computation', which had to be completed by 11.6.2003 and **disclosing that Ernst & Young had undertaken to make such computation on the basis of audited Accounts**.
- b) As disclosed by the 'extracts' of Steering Committee Minutes given in my **Note No. 2**, Ernst & Young had well and truly been aware, and had been 'involved' from the very beginning, with the 'Steering Committee' **to re-state** the SLIC Accounts, according to International Accounting Standards.
- c) In fact, Ernst & Young had undertaken to carry out an **audit** thereof, as per International Accounting Standards as evidenced by the 'extracts' of Steering Committee Minutes given in Note No. 2.

- d) PWC as Consultants were well and truly aware of the foregoing.
4. a) Copy of PERC Report dated 25.10.2006 to COPE marked “**D**”, ‘Annexures’ from which PERC Report to COPE had been annexed to the Affidavit of 7th Respondent, who had therefore knowingly **suppressed** the said Report from Your Lordships’ Court.
- b) In view of the said PERC Report to COPE being voluminous, seeking the permission of Your Lordships’ Court, I am tendering only **one copy** thereof.

Supplementary Submissions

In endeavoring to expeditiously conclude my submissions, without taking too much time of Your Lordships’ Court, I could not deal with certain important matters, and I seek the permission of Your Lordships’ Court to place the following matters before Your Lordships’ Court, for the due and proper adjudication of the several issues pertaining to this ‘transaction in issue’, in addition to the very **validity** of the transaction, itself.

1. **Re – appointment of PWC, as Consultants to the Government**

- 1.1 Cabinet Paper (**P3**) dated **28.2.2002** at page 5 at 5.2 disclosed budgeted Professional Fees of US \$ 2 Mn. + Success Fee of US \$ 2 Mn., even before the ‘offers’ were closed for financial ‘bids’ on 8.4.2002 vide (P16(d) page 5) last para for the consultancy, awarded to PWC, who thus had prior knowledge of the budgeted fees. It is intriguing, as to how such budget was fixed, and by whom ?
- 1.2 PERC Internal Audit Report by SJMS Associates, Chartered Accountants marked “**X**” to my Motion dated 13.12.2007 at page 4 *inter-alia* states - ‘**Appointment letters of the Transaction Evaluation Committee to evaluate the financial advisory services was not given in the Finance Ministry’s (Treasury) letter head**’
- 1.3 I understand, subject to verification by the Deputy Solicitor General, that the Legal Fees alone essentially for structuring Agreement (**P13**) (30 pages) had been in the range of Rs. 40 million. If so, such Agreement alone which has been a diabolical disaster had cost around Rs. 1.3 million per page !

2. **Re – the wrongful ‘inclusion’ and ‘selection’ of the ‘Distilleries Consortium’ through a perverse process, as disclosed by the Affidavit of the 7th Respondent, together with the Documents marked therewith**

- 2.1 a) It is indeed quite a diametrical ‘turn-around’ by Milford Holdings (Pvt) Ltd., 28th Respondent who was demanding **Rs. 2.1 billion back from the Government, even sending a Letter of Demand** and who, amongst other parties of the consortium, had ‘prevented’ Ernst & Young from computing the ‘Net Working Capital Computation’ for the ‘purchase price adjustment’, now in the face of disclosures made before Your Lordships’ Court’, is pleading **not to cancel and annul the transaction, and that they would pay more money to the Government !.**
- b) This alone ‘discloses’ that they were not a ‘*bona-fide*’ Purchaser, and had been well and truly aware of the ‘*mala-fides*’ involved, and now in the face of exposures are ‘pleading’ to cover-up by paying **more money to Government**.
- c) Surely, a ‘party’, ‘who has misappropriated’ or robbed public property, i.e valuable Shares of Government, cannot ‘cure’ such ‘illegality’ and ‘offence’ by proposing to pay the correct value of the property ‘misappropriated’, **in a dubious and illegal bidding process.**

- d) **A party who has misappropriated public property cannot be heard to say that they would be poorer, if such misappropriated public property is restored to the rightful and legitimate owner, in this instance, the Government i.e. the public.**
- 2.2 a) It was well and truly demonstrated that the purchaser / consortium having taken possession and control of SLIC on 11.4.2003 had knowingly and deliberately '*retrospectively re-classified*' in the 31.12.2002 Balance Sheet dated **28.11.2003 (P17)** Investments as at 31.12.2001 from 'Fixed Assets' to 'Current Assets' **with the sole intention of defrauding the Government**, with such knowingly **falsified** Accounts.
- b) Ernst & Young, Auditors of SLIC had aided and abetted and/or colluded with the aforesaid fraud attempted to be perpetrated on the Government, **totally disregarding their professional duty, loyalty and obligation to the Government as the sole Shareholder of SLIC**, as at the said Balance Sheet dates 31.12.2001 and 31.12.2002.
- c) The foregoing are punishable offences under and in terms of the Offences Against Public Property Act No. 12 of 1982, attracting fines of 3 times the amount attempted to be defrauded from the Government and imprisonment upto 20 years.
- d) All persons are equal before the law, regardless of the socio-political status and standing, and no person can be socio-politically powerful, to be above the rule of law.
- e) On the contrary, the law ought be enforced most stringently against the social politically influential and powerful, than against the helpless poor.
- 2.3 a). In the face of disclosures in **7R4A** and **7R4B** produced by the 7th Respondent *vide* paragraphs 19 and 24 of my Additional Note No. 6, **'Distilleries Consortium' is not disclosed, as a party selected by the TEC and the unlawfully appointed CATB.**

'As per 7R4B i.e. the Minutes of the Technical Bids Opening Meeting at 5.00 p.m. on 17.9.2002 it had been noted that the following 5 firms had submitted preliminary technical proposals for the privatization of SLIC:

- (i) **Commercial Bank of Sri Lanka Ltd.**
- (ii) **Eagle Insurance Company Ltd.**
- (iii) **Janashakthi Insurance Company Ltd.**
- (iv) **CTC Stock Brokers**
- (v) **Asia Capital Ltd.'**

'As per the purported CATB Meeting Minutes of 23.9.2002 it had been decided to allow the following 5 parties, who had submitted the basic information required to move forward into the Final Bidding Stage.

- (i) **CBC and DFCC**
- (ii) **CTC Stock Brokers and Aitken Spence Insurance**
- (ii) **Eagle Insurance**
- (iii) **Asia Capital and Asian Alliance Insurance**
- (iv) **Janashakthi Insurance and National Insurance Company'**

It had been noted at Item 3 of the said CATB Minutes of 23.9.2002 **that AMCO Group proposals were received after closing time of 5.00 p.m. on 17.9.2002.** (*It is clear that they had been rejected for such late submission*)'

- b) (i) Therefore, grave doubts arise of the ‘genuineness’ of the ‘Preliminary Technical Proposal’ **28R3**, where the first name is given as **Distilleries Company of Sri Lanka Ltd.**
- (ii) If this was the case, then documents **7R4A** and **7R4B** would have disclosed the name of Distilleries Company of Sri Lanka Ltd., since their name is the first name.
- (iii) **28R3** is an unauthenticated document and one can only rely on what is recorded in Minutes **7R4A** and **7R4B**.
- c) The 28th Respondent, Milford Holdings (Pvt) Ltd., curiously has not produced the **EOI Application of Distilleries Company of Sri Lanka Ltd.** which had to be tendered before **23.8.2002**, which alone demonstrates that Distilleries Company of Sri Lanka Ltd., had not submitted an ‘Expression of Interest’, as disclosed by the List of 17 names, parties who had submitted EOIs as per PERC Report to COPE “D” at page 13, given below:
1. **Commercial Bank of Ceylon Ltd**
 2. **Eagle Insurance Co. Ltd (a member of the Zurich Financial Services Group)**
 3. **Manulife Financial(The Manufactures Life Insurance Company)**
 4. **DFCC Bank**
 5. **National Insurance Corporation**
 6. **AMP Financial Services (Asia) Pvt Ltd.**
 7. **Janashakthi Insurance Co. Ltd.**
 8. **Aitken Spence Insurance (Pvt) Ltd.**
 9. **American International Assurance Co. and American International Underwriters Ltd.**
 10. **The Amco Group**
 11. **CT Smith Stock Brokers (Pvt) Ltd. And Asiabox Consultancy Services (Pvt) Ltd.**
 12. **Ceylinco Insurance Company Ltd.**
 13. **Union Assurance Limited**
 14. **National Development Bank**
 15. **S-Lon Lanka Private Limited**
 16. **Santosh Kurup Associates**
 17. **Asia Capital Limited**
- d) **The above List does not disclose the name of Distilleries Company of Sri Lanka Ltd.**
- e) The above names had been questionably suppressed in the Cabinet Memorandum (**P10**), which states that 17 parties had expressed interest at page 5 thereof, **why ?**
- f) Among the above names are CT Stock Brokers (Pvt) Ltd. and Asia Box Consultancy Services (Pvt) Ltd. and separately Aitken Spence Insurance (Pvt) Ltd. **Had Distilleries Company of Sri Lanka Ltd. submitted an EOI**, then their name would have been in the list of the names of parties who had submitted EOIs.
- g) Therefore, **there is no evidence before Your Lordships’ Court** that Distilleries Company of Sri Lanka Ltd., had submitted an EOI, alone or together with another party and therefore **they could not have entered the process thereafter.** (*The list of 17 names, include 2 names together in some instances*)

- 2.4 a) In my additional **Note No. 6** at para 24 on page 6, **I quoted from paragraphs 35(a) and 35(b) of the Affidavit of the 7th Respondent**, who had disclosed the '**actual story**', obviously clearly remembering, what had happened in 2002, well over 5 years ago !

What is stated by the 7th Respondent in paras 35(a) and 35(b) of his Affidavit, is indeed '**revealing**' – viz

'that it is usual in transactions of this nature for bidders to form consortium and for the composition of consortium to change during the process of a bid - and that the final bidding process could provide for well credentialed financial / insurance parties to join the process, - and leave open the opportunity for new parties, who have not submitted EOIs of possibly joining, with parties who had submitted EOIs'

- b) Very clearly new parties, who had not submitted **EOIs or Preliminary Technical Proposals** had been wrongfully permitted to join the process. It refers to well '**credentialed financial**' and/or insurance parties - obviously the reference is to the Distilleries Company of Sri Lanka Ltd. which had been the only new party.
- c) The 7th Respondent having remembered very well what had happened, whilst not directly admitting the **wrong-doing**, had tried to explain the **manipulation by the foregoing dicta in his Affidavit.**
- d) It is significant that CT Smith Stock Brokers (Pvt) Ltd., by Letter dated **29.11.2002** (Annex 1.26 to the PERC Report "**D**", copy attached hereto) had submitted the Final Bid (Technical Financial Proposal) for the privatization of SLIC on behalf of the consortium comprising Distilleries Company of Sri Lanka Ltd., Aitken Spence & Co. Ltd., and Aitken Spence Insurance (Pvt) Ltd.
- e) **The foregoing is not in conformity with the TEC recommendation and the purported CATB decisions disclosed by 7R4A and 7R4B referred to above, wherein the names of Distilleries Company of Sri Lanka Ltd., and Aitken Spence & Co. Ltd., were not included.**
- f) Furthermore, in the SJMS Associates Internal Audit Report, marked "**X**" to my Motion dated 13.12.2007 at page 4, they had reported that most of the **CATB Minutes had been unsigned.**
- g) CATB Minutes are normally prepared by PERC, and hence the finger points at the 7th Respondent, that he had manipulated and written the Minutes, which had been **unsigned** by the Members of the CATB. **This is not acceptable in Government Tender Procedure**
- 2.5 **If 'new parties' were to be entertained, then such opportunity, in the interest of the Government and the public, should not have only been known to a few, in this instance the 5 approved Bidders, as per 7R4A and 7R4B, but should have been made known publicly worldwide, since the intention was to attract international bidders, or the entire process should have been cancelled and re-started.**

- 2.6 a) Pointedly, at paragraph 70 (ix) on page 32 of the Affidavit of the 28th Respondent, Milford Holdings (Pvt) Ltd, **the present owners** of Milford Holdings (Pvt) Ltd. are

- (i) Distilleries Company of Sri Lanka Ltd. 98.08%, and
- (ii) Stassen Exports Ltd. 1.91%,

- b) **Therefore** even Aitken Spence Co. Ltd., whose insurance company, Aitken Spence Insurance Co. (Pvt) Ltd. had submitted an EOI, and which insurance company is listed among the 5 parties for final bidding in **7R4A** and **7R4B** are no more shareholders of **Milford Holdings (Pvt) Ltd.**
- c) Accordingly,
 - (i) Distilleries Company of Sri Lanka Ltd., and Stassen Exports Ltd., through Milford Holdings (Pvt) Ltd. are at present the **indirect owners** of SLIC, and
 - (ii) The other direct owner is Greenfield Pacific EM Holdings Ltd., Gibraltar.

all of whom were not parties, who had submitted EOIs and had not been listed for final bidding as per 7th Respondent's own documents 7R4A and 7R4B.

- d) **Hence, in the foregoing circumstances the 'transaction in issue', which had been carried out by an unlawful CATB, ought to be cancelled and annulled; and the wrong-doers dealt with in terms of the law.**
- 2.7 a) It ought to be pointed out, that the Shareholders of SLIC are Milford Holdings (Pvt) Ltd. and Greenfield Pacific EM Holdings Ltd.
- b) This must be considered in the context of the provisions of the Companies Act No. 7 of 2007, particularly Section 56, which provides for 'distribution of reserves', including dividends, by Directors, **subject to their opinion of solvency**, and Section 61, which provides for 'recovery of distributions' from Shareholders, where there has been 'over distribution' of reserves.
 - c) In this case, Milford Holdings (Pvt) Ltd., and Greenfield Pacific EM Holdings Ltd., being the Shareholders of SLIC, would pose a grave threat to SLIC, which was a valuable public asset belonging to the people.
- 2.8 a) There is no question of the State refunding any money, but on the contrary, these parties, who had wrongfully and unlawfully misappropriated unto themselves public property i.e. Shareholdings of the Government, stand liable to be fined upto 300%, in terms of the Offences Against Public Property Act No. 12 of 1982, together with sentences of imprisonment upto 20 years.
- b) The same applies to all those who had aided and abetted and/or assisted in the perpetration of the foregoing.
- 2.9 a) Is it a coincidence that CT Stock Brokers (Pvt) Ltd. forwarded the Final Bids (Technical and Financial Proposal) of Distilleries Consortium as per their Letter dated **29.11.2002** and the PWC 'Indicative Valuation' also being submitted by Letter dated **29.11.2002**, included in **(P8) providing for 'curious secrecy'**.
- c) Whereas, as per **Attachment 1** to **(P7)** on **21.1.2003 revised** financial bids had been submitted by Commercial Bank of Ceylon / DFCC Consortium and Janashakthi Insurance whilst Distilleries Consortium **had not revised their financial bids submitted on 29.11.2002.**
 - d) As per TEC Meeting on 24.1.2003 (part of P7 copy attached) Financial Bids had been opened together with PWC 'Indicative Valuation **(P8)** which had been in a 'sealed envelope'.
 - e) Whereas contrary to '**secrecy procedure**' as per page 2 of **Attachment 1** to **(P7)** parties had been afforded an opportunity to revise the bids after **24.2.2003.**

3. **Simulated ‘scenario’ of valuation of SLIC**
- 3.1 On the basis of the available information, I have attempted to impute ‘possible adjustments’ to be reckoned to the PWC ‘Indicative Valuation’ of SLIC as per attached Schedule, to demonstrate that the PWC ‘Indicative Valuation’ is **inadequate and cannot be relied upon**.
- 3.2 As per such imputed ‘possible adjustments’, the adjusted valuation is over **Rs. 30,000 million**. Given such scenario would not the valuation be in the range of **Rs. 20,000 million to Rs. 30,000 million ?**
4. **Conduct and actions of PWC and Ernst & Young and the ICASL**
- 4.1 Accountants and Auditors and other professionals, directly or indirectly, wittingly or unwittingly, have contributed to the perpetration of corporate fraud and corruption in our country, more particularly, the pillage and plunder of public resources, which belong to the people.
- 4.2 Society has a legitimate expectation that professionals, moreso particularly, Accountants and Auditors, would not act as aforesaid, but on the contrary, would combat fraud and corruption, as they are professionally bound and obligated to do.
- 4.3 This ‘transaction in issue’ is a ‘shocking exposure’ of blatant breach of professional duties and obligations and fiduciary expectations by society from Accountants and Auditors.
- 4.4 I respectfully urge Your Lordships’ Court to appropriately deal with the matter of the conduct and actions of the Accountants and Auditors involved in this transaction in issue, as a stringent deterrent to any such future conduct and actions by Accountants and Auditors and other professionals.
- 4.5 Many a privatizations in our country have been perpetrated by professional Accountants and Auditors, causing colossal losses and damages to the Government i.e. the public.
- 4.6 In this instant ‘transaction in issue’, the inaction on a public Complaint by the Institute of Chartered Accountants of Sri Lanka (ICASL), a *quazi* judicial body, coming under the jurisdiction of Your Lordships’ Court, is indeed appallingly shocking. What redress will the public have ?
- 4.7 The ‘indifference’ and ‘inaction’ of the ICASL had even continued, after the damning COPE Report to Parliament in January 2007, castigating both Ernst & Young and PWC, including exposing serious issues of ‘Conflict of Interest’.
- 4.8 In the given circumstances, I have cited with my Note No. 5, several ‘dicta’ of Judgments, which had dealt with professional duties and responsibilities of Accountants and Auditors.
- 4.9 I respectfully urge that Your Lordships’ Court be pleased to take note thereof, and deal with the conduct and actions of Ernst & Young, PWC and ICASL as Your Lordships’ Court shall seem fit and proper, so that it would be a severe deterrent for professional Accountants and Auditors and the ICASL to so act in the future.
5. **Is the non-performance of ‘public duties’ under Article 28 of the Constitution, an ‘injunction’ barring a person from enjoying fundamental rights ?**

5.1 In Judgment in SC (FR) Applications Nos. 10/07, 11/07, 12/07 and 13/07 Your Lordships' Court, *inter-alia*, observed thus:

"The relevant principle of interpretation with particular reference to the interpretation of provisions in a Constitution is set out in Bindra's Interpretation of Statutes – 9th Ed, page 1182 as follows:

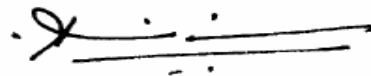
"The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that not one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument."

"In applying these principals of interpretation I am of the view that the broad phrase "National Policy" appearing at the top List II should be interpreted together with the relevant provisions in Chapter VI of the Constitution which contains the "Directive Principles of State Policy."

"The limitation in Article 29 which states that the provisions of Chapter VI are not justifiable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. Article 27 of Chapter VI lays down that the 'Directive Principles of the State Policy' contained therein shall guide "Parliament, the President and the Cabinet of Ministries in the enactment of 'laws and the governance of Sri Lanka for establishment of a just and free society.'" Hence the restriction added at the end in Article 29 should not detract from the noble aspirations and objectives contained in the Directive Principles of State Policy, lest they become as illusive as a mirage in the desert."

5.2 In the foregoing context, I most respectfully pose the question to Your Lordships' Court, as to whether, a person who has blatantly violated the fundamental duties obligated to be performed in terms of Article 28 of the Constitution, in this instance – 'to preserve and protect public property, and to combat misuse and waste of public property', could enjoy fundamental freedoms, in this instance – 'the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise' in terms of Article 14 of the Constitution, since Article 28 stipulates, that the exercise and enjoyment of rights and freedoms is **inseparable** from the performance of duties and obligations, and accordingly it being the duty of every person in Sri Lanka to duly perform the fundamental duties in terms of Article 28 of the Constitution ?

On this 14th day of July 2008



13th Respondent

SCHEDULE

Imputed 'possible adjustments' to be reckoned to PWC 'Indicative Valuation' as at 31.12.2001

	<u>Rs. Mn.</u>	<u>Rs. Mn.</u>
Value of General Insurance Business		
- Discounted 5-Year Cash Flow @ 17.5 p.a.	4,155	
- Value of Life Insurances Business	<u>1,086</u>	5,241
<u>Add</u> - Adjustment for General Insurance Business for <u>15-Years</u> , since reckoned only for <u>5-Years</u>	2,686	
10% increase, since above adjustment for <u>15-Years</u> , on basis of projected fixed level of operations	<u>269</u>	2,955
<u>Add</u> - Adjustment by as average of 'plus 2 times', the Discounted Cash Flow Value since profit projected <u>under-estimated</u> .		14,220
(i) PWC 'Indicative Valuation' (P8 Page 38) profit for 2002 Rs. 221 Mn., whereby profit for year ended 31.12.2002, as per draft Accounts (P10 Page 1 dated <u>27.3.2003</u>) Rs. 753 Mn. (i.e. 3.4 times the projected); *		
(ii) PWC 'Indicative Valuation' (P8 Page 38) profit for 2005 Rs. 386.4 Mn., whereas Accounts for 2005 (Document 'A') Rs. 1020.3 Mn. (i.e. 2.6 times the projected)		
<u>Add</u> - Market Value of Fixed Assets disclosed in Cabinet Memorandum (P10 Page 1) as at 31.12.2002 - Rs. 5,700 Mn.- less Book Value of Fixed Assets 31.12.2002 Rs. 329 Mn. = Rs. 5,371 Mn. - adjusted to 11.4.2003 by +5%		5,640
<u>Add</u> - Market Value of Investments, not recorded in the Accounts as at 31.12.2002 (<i>vide</i> Note 4, Page 4) - Rs. 4,856.7 Mn. <u>less</u> Rs. 2,808 Mn. = Rs. 2,048.7 Mn. - adjusted to 11.4.2003 by +5% **		2,151
<u>Add</u> - Net Assets <u>increase</u> as per Accounts between 31.12.2002 and 31.12.2002 - Rs. 25,633 <u>less</u> Rs. 21,390 = Rs. 4,243 (<i>vide</i> Note 3, Page 4) - adjusted to 11.4.2003 by +5%		4,466
<u>Add</u> - Adjustment for Life Insurance Business Outstanding Claims Rs. 1,921 Mn., Technical Reserves Rs. 1,628 Mn., Premium Awaiting Adjustments Rs. 626 Mn. - Total Rs. 4,175 Mn. - Excess Valuation written back reckoned at an estimated 10 % - (<i>vide</i> P8 , Appendix I, Page 2, 3, etc...)		418
		35,091
<u>Deduct</u> - Dividends distributed to Government - (Rs. 500 Mn. + 750 Mn.) ?		<u>1,250</u>
		<u>33,841</u>

Notes - * Audited Accounts to 31.12.2002 certified on 28.11.2003, i.e. after the Purchaser 'took over' SLIC on 11.4.2003, questionably discloses a 'net loss' of Rs. 418 Mn.

** May need reckoning in part as deemed attributed to Life Policy Holders.