

**BY HAND / COURIER**

23<sup>rd</sup> January 2007

Hon. Wijeyadasa Rajapakse, P.C., M.P.,  
Chairman, Committee on Public Enterprises (COPE)  
Parliament of Sri Lanka,  
Sri Jayewardenepura,  
Kotte.

Dear Sir,

**Issues pertaining to the Sale of 90% Shares of  
Sri Lanka Insurance Corporation Ltd. (SLIC)**

As per my Letter dated 5.1.2007, the 'key issues' pertaining to the above are set out below:

**STEERING COMMITTEE**

1. The following Steering Committee to 'oversee and facilitate' the Sale of 90% Shares of SLIC has been appointed on 21.1.2002 by Minister, Milinda Moragoda, without Cabinet Approval.

Chrisantha Perera, Chairman SLIC - *Chairman*  
P.B. Jayasundera, Chairman PERC - Member  
M. Kandasamy, General Manager, SLIC - *Member*  
Deva Rodrigo, Partner, PricewaterhouseCoopers - Member  
K. Kanagasabapathy, Addl. DG, Dept. of Public Finance - *Member*  
Merina Tharmaratnam, Executive Vice President, DFCC - *Member*  
Dayanath Jayasooriya, DG, Insurance Board of Sri Lanka - *Member*  
Rani Jayamaha, Asst. to Governor, Central Bank - *Member*  
Aneela de Soysa, Director, PERC - Secretary

2. The Steering Committee so appointed, without Cabinet Approval, has 'solicited' offers, for the selection on 11.4.2002 PricewaterhouseCoopers (PWC), Indonesia, in collaboration with PWC, Sri Lanka, as Consultants to the Government for 'Investment Banking and Legal Advisory Services' for this SLIC transaction, on a Fee of approximately US \$ 1.6 million.

**CABINET MEMORANDUM & APPROVAL**

3. Cabinet Memorandum has been subsequently submitted by Minister, Milinda Moragoda on 28.2.2002, *inter-alia*, notifying of the appointment of a Steering Committee, and had sought Cabinet Approval for the following:

"5.1 To appoint international advisors to advise and assist in the conduct of the transaction including an independent actuarial valuation of SLIC, a Business Valuation of SLIC, restate the accounts according to International Accounting Standards and to provide legal advice including the preparation of necessary documentation in connection with this transaction.

5.2 To authorise Sri Lanka Insurance Corporation Ltd., to meet payments in connection with the transaction of an amount not exceeding US \$ 2 million. To authorise the Government of Sri Lanka to pay a success fee to the Financial Advisors not exceeding US \$ 2 million upon the realisation of the sale proceeds.

5.3 To authorize the Secretary to the Treasury to appoint a Technical Evaluation Committee to evaluate the bids for Financial Advisory Services.

- 5.4 To authorise the Steering committee set up by me to invite 5 internationally reputed audit firms to submit proposals to provide Financial Advisory Services through their corporate advisory services divisions and to award the contract based on the advice of the Technical Evaluation Committee.
  - 5.5 To authorise the Secretary to the Treasury to appoint a Tender Board and Technical Evaluation Committee to evaluate the bids to purchase the shares of SLIC.
  - 5.6 To gift to the employees of the SLIC 10% of the shares of the company or an amount equivalent in value to 10% of the shares in cash and to divest the balance shares of SLIC to a strategic investor.
  - 5.7 To authorise Public Enterprises Reform Commission to facilitate and initiate action on this transaction."
4. Cabinet Approval has been notified and confirmed by the Secretary to the Cabinet only on 18.4.2002, subject, however, to the following:

"Approval was granted to the proposals from 5.1 to 5.7 in the Memorandum, subject to the amendment of proposal 5.5 to read, that the Tender Board to be appointed by the Cabinet. The Minister was requested to report to the Cabinet feasibility of divesting the ownership of the Sri Lanka Insurance Corporation Ltd., whilst retaining a minority share by the Government."

Therefore, Cabinet has not granted approval for the Secretary to the Treasury to appoint a Tender Board.

#### **VIOLATION OF CABINET DECISIONS – 'UNLAWFUL' TENDER BOARD**

5. Whilst the Cabinet, as per Cabinet Memorandum of 28.2.2002 has authorised to appoint a Technical Evaluation Committee (TEC) to evaluate the Bids for Financial Advisory Services, which Cabinet Decision has been confirmed and notified by the Secretary to the Cabinet on 18.4.2002, the Secretary to the Treasury, Charitha Ratwatte by Letter dated 27.3.2002 has appointed a TEC to evaluate the Bids for Financial Advisory Services; which Bids had already been solicited by the Steering Committee.

Consequently, an Agreement for 'Investment Banking and Legal Advisory Services' with PWC, who had been selected by the Steering Committee on 11.4.2002, had been signed on 6.5.2002

6. Though the Cabinet had not approved the appointment of a Tender Board by Secretary to the Treasury, disregarding such Cabinet disapproval, confirmed and notified by the Secretary to the Cabinet on 18.4.2002, the Deputy Secretary to the Treasury, N. Pathmanathan, in response to Letter dated 29.7.2002 from Chairman PERC, P.B. Jayasundera, has appointed a Tender Board on 7.8.2002, including himself, as Chairman, viz.

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

The above gives rise to the following pertinent questions;

- as to how the Deputy Secretary to the Treasury, N. Pathmanathan acted in violation of a specific Cabinet Decision ?

- as to whether the Secretary to the Treasury, Charitha Ratwatte authorised him to so act ?  
(Secretary to the Treasury is also an ex-officio Member of PERC)
- as to how Chairman PERC, P.B. Jayasundera required a Tender Board to be appointed, when the Cabinet disapproval had been noted by the Steering Committee of which he was a Member ?

By the same Letter dated 7.8.2002, Deputy Secretary to the Treasury, N. Pathmanathan has appointed another TEC to handle the divestiture of SLIC.

Deputy Secretary to the Treasury, N. Pathmanathan in his Letter dated 7.8.2002 has drawn specific attention to the Government Tender Procedure Guidelines and the relevant Public Finance Circulars.

#### TEC EVALUATION

7. As at 23.8.2002 the following 17 parties have submitted Expressions of Interest to purchase 90% Shares of SLIC
  - Commercial Bank of Ceylon Ltd.
  - Eagle Insurance Co. Ltd. (a member of the Zurich Financial Services Group)
  - Manulife Financial (The Manufacturers Life Insurance Company)
  - DFCC Bank
  - National Insurance Corporation
  - AMP Financial Services (Asia) Pvt Ltd.
  - Janashakthi Insurance Co. Ltd.
  - Aitken Spence Insurance Pvt.. Ltd.
  - American International Assurance Co. and American International Underwriters Ltd.
  - CT Smith Stock Brokers Pvt. Ltd. and Asia Box Consultancy Services (Pvt) Ltd.
  - The Amco Group
  - Ceylinco Insurance Co. Ltd.
  - Union Assurance Ltd.
  - National Development Bank
  - S-Lon Lanka Private Ltd.
  - Santosh Kurup Associates
  - Asia Capital Ltd.
  
8. The TEC after evaluation of Bids has recommended on 25.3.2003 the Sale of 90% Shares of SLIC to a Consortium comprising;
 

Distilleries Company of Sri Lanka Ltd.,  
Aitken Spence Co. Ltd.,  
Aitken Spence Insurance (Pvt) Ltd., with Technical Partner, ING Institutional &  
Government Advisory Services BV (Holland), together with institutional investors.

Distilleries Company of Sri Lanka Ltd.. and Aitken Spence Co. Ltd., are listed public companies with public Shareholders.
  
9. TEC evaluation has been on 'ranking' on a 'point awarding system' for factors – 'operational experience in life and general insurance industry', 'financial capacity to operate SLIC' and 'business plan to develop future business'.

## VALUATION OF SLIC

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

The above 'indicative valuation' has been based 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 has 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 Rs. 420 million only?

'Net tangible assets' of SLIC is said to have been taken into reckoning for checking, but had been based on the Net Assets Value as per the SLIC Accounts as at 31.12.2001 i.e. Book Values, which showed the Land, Buildings, Plant and Equipment only at Rs. 275 million.

Evidently the 'market values' of following valuable Freehold Properties of SLIC have not been taken into reckoning, in addition to the 'business valuation' of SLIC reckoned as above.

<u>Freehold Property</u>	<u>Extent</u>
- 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

In addition, condominium property at Kurunegala and 2 properties in Jaffna in extent 0A 1R 30P.

## ENDORSEMENT BY UNLAWFUL TENDER BOARD

11. On the same day as the TEC Report i.e. 25.3.2003 the 'unlawful' Tender Board has endorsed the TEC recommendation.

## CABINET APPROVAL

12. Cabinet Memorandum of 27.3.2003, noting that 5 parties had been short-listed in the 'bid evaluation process', submitted by Minister Milinda Moragoda, has recommended the Sale of 90% Shares of SLIC to the Consortium comprising;
  - Distilleries Company of Sri Lanka Ltd.,
  - Aitken Spence Co. Ltd.,
  - Aitken Spence Insurance (Pvt) Ltd.,  
with Technical Partner, ING Institutional & Government Advisory Services BV (Holland),  
together with institutional investors.

Cabinet Approval had been granted on 2.4.2003.

**SALE TO 'SUBSTITUTED' PARTIES IN VIOLATION OF CABINET DECISION  
& GOVERNMENT TENDER PROCEDURE**

13. Contrary to the foregoing procurement and evaluation process and Cabinet Decision, a Share Sale & Purchase Agreement for the Sale of 90% Shares of SLIC has been signed on 11.4.2003 with;

- Milford Holdings (Pvt) Ltd., and
- Greenfield Pacific EM Holdings Ltd., incorporated in Gibraltar on 28.3.2003. (*Not in existence on date of Cabinet Memorandum of 27.3.2003*).

Distilleries Company of Sri Lanka Ltd., Aitken Spence & Co. Ltd., and Aitken Spence Insurance (Pvt) Ltd., have signed the Share Sale & Purchase Agreement, as Guarantors, guaranteeing the payment consideration to the Government by the aforesaid substituted 'buyers'; thereby demonstrating the question of financial standing of the substituted 'buyers'. However, this could not in any manner, whatsoever or howsoever, regularise and/or legalise the substitution of 'non-evaluated' and 'non-existent parties', whomsoever, in place of the duly 'evaluated and selected parties' as per Government Tender Procedure.

Hence, the Sale of 90% Shares of SLIC to two private companies, Milford Holdings (Pvt) Ltd., and Greenfield Pacific EM Holdings Ltd., Gibraltar, has been contrary to the evaluation process by the TEC, recommendation by the 'unlawful' Tender Board and is in blatant violation of the Cabinet Decision.

14. These 2 private Companies, Milford Holdings (Pvt) Ltd., and Greenfield Pacific EM Holdings Ltd., Gibraltar, had not tendered 'Bids' in terms of the RFP, and therefore could not have been qualified.

These 2 private Companies had not been recommended, after evaluation with the other several parties, by the TEC and the 'unlawful' Tender Board, and are not the parties who had been approved by the Cabinet.

Would this not be an infringement of the fundamental rights guaranteed under the Constitution of the other parties, who had been evaluated on a 'point awarding system' on the basis of certain specific criteria ?

In fact, Greenfield Pacific EM Holdings Ltd., Gibraltar, had not even been in existence during the entire process, and had been incorporated on 28.3.2003 i.e. a day after the date of the Cabinet Memorandum of 27.3.2003. Its ownership, standing, credentials were not known to the TEC, 'unlawful' Tender Board and the Cabinet, i.e. the Government.

15. These 2 private Companies have been 'strangers' to the entire arrangement.

Is it not against all norms of government tender evaluation process and a violation of government tender procedure, to allow an 'unevaluated party', who had not even bid, to be substituted in place of an 'evaluated and selected party', that too, who had been approved by the Cabinet ? *Otherwise, would it not make a mere 'mockery' of the entire Government 'tender evaluation process' on specific criteria ?*

## FRAUD ON THE SELECTED COMPANIES AND THEIR SHAREHOLDERS ?

16. Furthermore, the evaluated and selected approved parties, namely,

- Distilleries Company of Sri Lanka Ltd., and
- Aitken Spence & Co. Ltd.

are 2 listed public companies, with public Shareholders.

Hence, could the entitlements and rights of said 2 listed public Companies and their other Shareholders have been 'expropriated' by only one of the Shareholders (if Milford Holdings (Pvt) Ltd., is one), of the said 2 Companies and/or by any other party, Greenfield Pacific EM Holdings Ltd., Gibraltar, aided and abetted by 'wrong-doers in control' ?

Would this not tantamount to a 'fraud' on the said 2 listed public Companies and their other Shareholders by one of the Shareholders (if Milford Holdings (Pvt) Ltd., is one), and/or by another party, Greenfield Pacific EM Holdings Ltd., Gibraltar, aided and abetted by 'wrong-doers in control' ?

The following persons had been nominated to be Directors of SLIC after the purchase by the substituted 'buyers'.

D.H.S. Jayawardene  
R.K. Obeyesekere  
G.K. Dayasri  
J.M.S. Brito  
L.U.D. Fernando

Could the Director General, SEC, who is statutorily mandated to protect the interests of Shareholders of listed public companies, being an 'ex-officio' Member of PERC, have permitted such expropriation of the entitlements and rights of 2 listed public companies and their Shareholders, by only one of the Shareholders (if Milford Holdings (Pvt) Ltd., is one), and/or by any other party, Greenfield Pacific EM Holdings Ltd., Gibraltar ?

## QUESTIONABLE RE-STATEMENT OF UN-AUDITED SLIC ACCOUNTS

17. The prevalent SLIC 'accounting policy' of disclosing Current Assets & Current Liabilities on its Balance Sheets had been questionably changed, without disclosure of reasons therefor, on the pretext of 're-stating' SLIC Accounts, as per International Accounting Standards.

18. As per Cabinet Approval of Cabinet Memorandum of 28.2.2002 such re-statement of SLIC Accounts were to have been done by PWC. However, evidently Ernst & Young, the Auditors of SLIC have been involved in such re-statement of the SLIC Accounts and has been so stated by PWC.

In any case, evidently both Ernst & Young, Auditors of SLIC and PWC Financial Advisors of the Government on this SLIC transaction had collaborated and/or colluded in re-stating the SLIC Accounts, 'purportedly' as per International Accounting Standards, without a separate disclosure of the Current Assets & Current Liabilities on the Balance Sheet of SLIC or in Notes thereto.

19. The International Accounting Standards Board has confirmed that SLIC Accounts ought to have disclosed separately the Current Assets and Current Liabilities as per the International Accounting Standards, thereby putting in issue the credibility of what had been hitherto misleadingly held out to the Government and raising the intriguing question, as to why it has been so construed ?.

#### **BASIS OF TRANSACTION INTRIGUINGLY QUESTIONABLE**

20. This SLIC divestiture transaction had been 'intriguingly' carried out on the basis of 'un-audited' Accounts of SLIC without the separate disclosure of the Current Assets and Current Liabilities of SLIC as at 31.3.2002, whilst the audited Accounts of SLIC as at 31.12.2001 disclosing the Current Assets and Current Liabilities separately had been available.

Accordingly, this transaction had been attempted to be concluded as per 'un-audited' Accounts of SLIC, without the separate disclosure of the Current Assets and Current Liabilities as at 11.4.2003, without any co-relation to the audited Accounts of SLIC as at 31.12.2002 which has disclosed the Current Assets and Current Liabilities.

The disclosure of Current Assets and Current Liabilities between the two dates 31.3.2002 and 11.4.2003 was a pre-requisite to compute the movement in the Net Working Capital i.e. the Net Current Assets between these two days, to compute the correct 'purchase consideration' as per the Share Sale & Purchase Agreement formulated by PWC, **which computation had to be completed by 11.6.2003.**

21. The audited Accounts of SLIC as at 31.12.2001 had been 're-stated' in the 'comparative figures' given in the SLIC audited Accounts as at 31.12.2002, reducing Fixed Assets by Rs. 3 billion and increasing the Current Assets by Rs. 3 billion, without the Auditors, Ernst & Young, adducing any reasons therefor.

This adjustment would have a material impact on the computation of the movement of Net Working Capital i.e. the Net Current Assets of SLIC between 31.3.2002 and 11.4.2003.

22. How could such a Government transaction ever be concluded on 'un-audited' Accounts ?

What was the inability on the part of Ernst & Young to have audited and certified the Accounts of SLIC as at 31.3.2002 and 11.4.2003, when in fact, they had audited and certified the SLIC Accounts as at 31.12.2001 and 31.12.2002 ?

23. PWC Financial Advisors of Government on this transaction, by their Letter dated 1.10.2004, in endeavouring to identify separately the Fixed Assets & Current Assets and Long Term Liabilities & Current Liabilities of SLIC as at 31.3.2002, **have confirmed that both the General Fund and the Life Fund of SLIC is to be taken into reckoning to conclude the Net Working Capital i.e. Net Current Assets movement between 31.3.2002 and 11.4.2003.**

Ernst & Young, with the knowledge and concurrence of PWC, having undertaken to provide the Government the movement of the SLIC Net Working Capital i.e. Net Current Assets between 31.3.2002 and 11.4.2003 on the basis of audited Accounts (which had to be completed by 11.6.2003), having obtained 16 extensions therefor from the Government expressly holding out that the matter had reached a finality of being concluded, thereafter questionably renegeq thereon.

#### **ERNST & YOUNG AND PWC UNABLE TO ANSWER OR CLARIFY**

24. Letter dated 17.11.2004 from PERC to Ernst & Young, Auditors of SLIC (copy attached) setting out all relevant material issues and calling for clarifications and explanations thereon, remain unanswered.
25. A similar Letter also dated 17.11.2004 from PERC to PWC Financial Advisors of Government (copy attached) setting out all relevant material issues and calling for clarifications and explanations thereon remain unanswered.

#### **TRANSACTION FRUSTRATED AND LOSS TO GOVERNMENT ?**

26. Have the aforesaid questionable substituted 'buyers' of SLIC, thwarted and/or prevented the SLIC Auditors, Ernst & Young and Financial Advisors of Government PWC, from computing correctly, the requisite Net Working Capital i.e. Net Current Assets movement to determine the correct purchase consideration to conclude this transaction, which thereby remains non-concluded and frustrated, raising also the question of loss caused to the Government ?
27. Causing loss to the Government and fabricating records and documents for such purpose are non-bailable, punishable criminal offences in terms of the Offences Against Public Property Act No. 12 of 1982.

#### **CONFLICTS OF INTEREST**

28. In addition, there have been several instances of serious conflicts of interest;
  - Deva Rodrigo, Senior Partner of PWC has been a Member of the Steering Committee selecting PWC as Consultants to the Government for (investment banking and legal services), 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, as 'Transaction Manager' Aneela de Soysa has joined PWC as a Partner in or about March 2003, just prior to the conclusion of the transaction in April 2003.
  - Ernst & Young, who has been Auditors of SLIC, whilst the Government was 100% Shareholder, continued as SLIC Auditors after the Sale of Shares of SLIC to the substituted 'buyers', and have been compromised and/or inhibited not to discharge their statutory responsibilities to the Government, as the then sole Shareholder of SLIC.
  - Chairman PERC, P.B. Jayasundera, who handled this SLIC transaction and later Secretary to the Treasury, reportedly has been a Senior Policy Advisor to Ernst & Young, and had questionably been unenthusiastic in taking warranted action to protect the interest of the Government in this matter. *The Secretary to the Treasury is also an ex-officio Member of PERC.*

## INQUIRY BY THE INSTITUTE OF CHARTERED ACCOUNTANTS

29. On a Complaint made by a member of the public, the Ethics Committee of Institute of Chartered Accountants, coming under the purview of the Minister of Trade, after a preliminary investigation by a Panel of the Ethics Committee, upon the establishment of a *prima-facie* case, has recommended that a Disciplinary Committee be appointed by the Council of the Institute of Chartered Accountants, to inquire into the matter of professional negligence and/or misconduct by Ernst & Young and PWC, *vis-à-vis*, this SLIC privatisation transaction.

Copy of Letter dated 5.10.2006 addressed to the Chairman, Panel of Ethics Committee, Institute of Chartered Accountants setting out the salient facts pertaining to the financial aspects of this SLIC transaction, forwarded to you under cover of Letter dated 6.10.2006 is attached.

## TRANSACTION FRUSTRATED AND INVALID ?

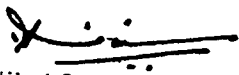
30. In the foregoing facts and circumstances, would not this transaction be frustrated, and also be *ab-initio* fraudulent, unlawful and invalid, and therefore ought be cancelled, annulled and made void ?

Ought not the Government take steps immediately to takeover SLIC and take action in terms of the Offences Against Public Property Act No. 12 of 1982 against all persons, who had caused loss to the Government and who had attempted to cause loss to the Government ?

In the context of a Sub-Committee of COPE probing into this matter, copies hereof are being forwarded to the Members of the Sub-Committee, to facilitate such probe.

Since Newspapers have reported (*without any denial*), that the Secretary to the Treasury, P.B. Jayasundera has made representations to H.E. the President on the 'probes' being conducted by COPE, and that H.E. the President has sought clarifications from you in that regard, copies hereof are being submitted also to H.E. the President and the Secretary to the President, so that they may be apprised of the facts contained herein, which pertain to the subject of only one matter being probed by COPE.

Yours truly,



Nihal Sri Ameresekere



## PUBLIC ENTERPRISES REFORM COMMISSION OF SRI LANKA

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November 17, 2004

M/s. Ernst & Young  
Chartered Accountants  
101, De Saram Place  
Colombo 10.

Dear Sirs,

**Re: Divestiture of 90% Shareholding held by the Government of Sri Lanka in Sri Lanka Insurance Corporation Ltd (SLIC)**

We refer to the Audited Accounts of SLIC as at 31.12.2001 and 31.12.2002, audited and certified by you on 11.6.2002 and 28.11.2003, respectively.

PERC has recently set-up a Monitoring & Evaluation Unit headed by a Director, a professional Accountant, and supported by a Consultant.

In comparing the aforesaid Audited Balance Sheets as at 31.12.2001 and 31.12.2002, it has been noticed that the "comparative figures" as at 31.12.2001 re-stated on the Balance Sheet as at 31.12.2002, are *materially* different with the figures in the Audited Balance Sheet as at 31.12.2001, as per *Annexure 1*, with no reasons given therefor.

The foregoing comparison as per *Annexure 1*, reveals that the Net Working Capital as at 31.12.2001, re-stated for comparison in the Balance Sheet as at 31.12.2002, reflects an increase of Rs.3,001,786,000/-, whilst the identical amount is shown as a decrease in the Non Current Assets.

We also refer to the Accounts as at 31.3.2002 of SLIC reported by you on 9.8.2002, more particularly to the Balance Sheet as at 31.3.2002. As per *Annexure 2*, it has been revealed that both, the Total Assets and Total Equity & Liabilities have been understated by Rs. 688,420,000/- in the Total column, when the figures in the two sub-columns titled *General Insurance* and *Life Insurance* are added.

It is, *inter-alia*, based on the Balance Sheet as at 31.3.2002, reported by you to have been prepared in conformity with International Accounting Standards, that Bids for the divestiture of 90% of the Government Shareholding in SLIC had been called for, Bids received and Agreement dated 11.4.2003 between the Government and the Purchasers had been executed, with a further "Adjustment of Consideration", *i.e.* purchase price, as per Clause 4A of the said Agreement.

PERC has also endeavoured to compare as per *Annexure 3*, the Audited Balance Sheet as at 31.12.2001 of SLIC and the un-Audited Accounts as at 31.3.2002, reported by you to have been prepared as per International Accounting Standards. This comparison reveals that during the 3 Months, *i.e.* 31.12.2001 to 31.3.2002, the Net Working Capital had increased by Rs.3,226,517,000/-, whilst the Non Current Assets had decreased by Rs.3,064,356,000/-, and the total Non Current Liabilities had decreased by Rs.426,321,000/-

The categorization of Current Assets and Current Liabilities as at 31.3.2002, in *Annexure 3*, has been in conformity with opinion expressed by PricewaterhouseCoopers, Sri Lanka, whose Principals, PT PricewaterhouseCoopers FAS, Indonesia, are the contracted Consultants to PERC on this divestiture.

As per your respective Reports dated 9.8.2002 and 26.3.2004 in respect of the aforesaid Accounts as at 31.3.2002 and 11.4.2003, you have stated thus - "We have not performed an audit, and accordingly do not express an opinion".

The aforesaid Accounts as at 31.3.2002 and 11.4.2003, stated to be prepared in accordance with International Accounting Standards, and signed as aforesaid by you, do not *ex-facie* categorize Current Assets and Current Liabilities on the said respective Balance Sheets, even though such categorization is a pre-requisite for the computation of the Net Working Capital for the Adjustment of Consideration, i.e. purchase price, as provided in Clause 4A of the Agreement dated 11.4.2003.

Though the aforesaid un-Audited Accounts as at 31.3.2002 and 11.4.2003 do not *ex-facie* reflect the Current Assets and Current Liabilities on the respective Balance Sheets, the Audited Accounts of SLIC as at 31.12.2001 and 31.12.2002, have been certified by you, on 11.6.2002 and 28.11.2003, respectively, specifically categorizing the Current Assets and Current Liabilities on the respective Balance Sheets. Thus the Balance Sheets as at 31.3.2002 and 11.4.2003 have been in *variance* with such policy.

As per the Audited Balance Sheets of SLIC as at 31.12.2001 and 31.12.2002, the increase in Net Working Capital between the said two dates is computed to be Rs.3,466,505,000/-. *Annexure 4*; the Current Assets and Current Liabilities having been expressly categorized on the said Balance Sheets.

Also, as per Letter addressed by PERC on 9.10.2002 to SLIC, certain transactions itemized therein were not to be committed, without the *prior* consent of PERC. I am made to understand that SLIC had not sought and obtained any concurrence of PERC in respect of any of the items referred to in the said Letter. Nevertheless, as per *Annexure 5*, it is disclosed that Property, Plant and Equipment had increased by Rs.1,917,904,000/- between 31.3.2002 and 11.4.2003 (*essentially during the 9 Months, 31.3.2002 to 31.12.2002*).

Your clarifications and explanations in regard to the foregoing are solicited urgently, particularly in view of the materiality, and the need to conclude this long outstanding matter.

Yours faithfully,



Nihal Sri Ameresekere  
Chairman

Encls: Annexures.

cc. - Dr. P.B. Jayasundera  
Secretary to the Treasury.

## SRI LANKA INSURANCE CORPORATION LTD

In Rs. '000	As per Balance Sheet as at 31 December 2001 (Signed 11-June-2002)		As per Balance Sheet as at 31 December 2002 (Signed 28-November-2003)		Differences in Totals
	Shareholders Rs.'000	Long Term Rs.'000	Shareholders Rs.'000	Long Term Rs.'000	
Current Assets					
Trade and other receivables	1,405,308	2,000,323	1,425,065	1,942,700	3,368,045
Amounts due from related parties	5,072,333	4,405,073	5,948,521	7,578,214	59,533
Other investments			21,036	11,001	3,957,320
Other assets	126,806	161,871	126,806	151,071	32,037
Cash and bank balances	21,036	11,001			
Inventories	6,705,483	7,656,268	7,679,641	9,583,066	3,001,708
<b>Total Current Assets</b>					
Current liabilities					
Re-insurance and insurance balances payable					
Other creditors including accrued expenses					
Amounts due to related parties	320,146	401,197	320,146	461,197	781,343
Income tax liabilities	1,920,705	821,183	1,920,705	621,152	2,541,858
Net outstanding claims	2,009,651	819,330			
Trade and other payables	222,391	65,928			
Interest bearing loans and borrowings	4,649,893	1,957,311	4,649,893	1,957,311	6,607,204
<b>Total Current Liabilities</b>					
<b>Net Working Capital</b>					
	2,165,660	5,593,957	3,029,748	7,726,555	10,766,303
	6,705,483	7,656,268	7,679,641	9,683,866	17,263,607
<b>Total Current Assets (As Stated Above)</b>					
	274,901	54,360	274,901	54,360	329,201
<b>Non Current Assets</b>					
Property, Plant & Equipment	91,888	91,888	91,888	91,888	91,888
Investments in Subsidiaries	2,357,208	9,383,530	1,483,018	6,300,389	7,783,407
Other investments		1,475,592			
Loans to Policy Holders					
Loans Receivable from Policy Holders					
Other Loans	2,723,895	10,813,482	1,849,807	8,785,884	1,870,097
<b>Total Non Current Assets</b>					
	9,429,448	18,489,760	9,429,448	18,469,760	552,430
<b>Total Assets</b>					
	4,649,893	1,957,311	4,649,893	1,957,311	3,001,786
<b>Total Current Liabilities (As Stated above)</b>					
	178,260	161,781	178,260	161,781	340,011
<b>Non Current Liabilities</b>					
Provisions and Other Declared Liabilities	56,607	14,800	58,607	14,800	73,407
Deferred Tax Liabilities	1,620,100	1,620,100	1,620,100	1,620,100	1,620,100
Technical Reserves					
Long Term Insurance Fund					
<b>Total Non Current Liabilities</b>					
	1,865,017	16,417,760	1,865,017	16,417,760	10,282,777
<b>Total Liabilities</b>					
	8,414,910	18,375,071	9,414,910	18,375,071	24,789,891
<b>Total Capital and Reserves</b>					
	3,014,538	94,679	3,014,538	94,679	3,109,217
<b>Total Equity and Liabilities</b>					
	9,429,448	18,469,760	9,429,448	18,469,760	27,899,188

# SRI LANKA INSURANCE CORPORATION LTD - Annexure 2

The Balance sheet was understated by Rs. 688.4 Million(M) in the accounts of 31<sup>st</sup> March 2002 thereby undervaluing the company

Assets  
 Cash and Cash Equivalents  
 Investment Securities  
 Amounts due from related parties  
 Premiums and Insurance Balances Receivable  
 Other Receivables  
 Loans Receivables from Policy Holders  
 Other Assets  
 Deferred Tax Assets  
 Property Plant and Equipment  
 Total Assets

Equity and Liabilities  
 Total Equity  
 Unearned Premium  
 Net Outstanding claims  
 Reinsurance and Insurance Balance Payable  
 Other creditors including accrued expenses  
 Income Tax Liabilities  
 Borrowings  
 Amounts Due to Related Party  
 Life Assurance Fund  
 Title Insurance Fund  
 Deferred Tax Liabilities  
 Other Deferred Liabilities  
 Total Assets

	Published Accounts - 31 March 2002		Corrected Total	Difference
	Published Insurance	Life Assurance		
General Insurance	534,764	1,955,556	2,490,320	
	7,610,620	14,007,923	21,618,543	
	64,246	-	64,246	
	1,180,589	-	1,180,589	
	43,802	1,386,590	1,430,392	(688,420)
	-	1,974,010	1,974,010	
	22,607	11,282	33,889	
	106,057	49,718	155,775	
	265,715	57,494	323,209	
	9,828,401	19,442,573	28,582,554	
			29,270,973	(688,419)

	Published Accounts - 31 March 2002		Corrected Total	Difference
	Published Insurance	Life Assurance		
General Insurance	3,697,701	-	3,697,701	
	1,374,916	-	1,374,916	
	1,914,095	559,697	2,473,792	
	865,529	555,258	1,420,787	
	863,051	293,320	1,156,371	
	399,599	449,375	848,974	
	218,992	61,203	280,195	
	161,784	-	161,784	
	-	17,285,379	17,285,379	
	94,384	-	94,384	
	81,614	96,292	177,906	
	156,737	142,050	298,787	
	6,130,700	19,442,573	28,582,554	
			29,270,976	(688,422)



## SRI LANKA INSURANCE CORPORATION 'D'

in Rs. '000	As per Balance Sheet as at 31 December 2001 (Signed 11-June-2002)			As per Balance Sheet as at 31 December 2002 (Signed 28-November-2003)			Differences in Totals
	Consolidated Rs.'000	Long Term Rs.'000	Total Rs.'000	Shareholders Rs.'000	Long Term Rs.'000	Total Rs.'000	
Current Assets	1,485,398	2,888,323	4,303,721	1,103,846	1,876,765	2,900,611	(1,403,110)
Trade and other receivables							
Amounts due from related parties	5,072,333	4,495,073	9,567,406	5,120,998	8,273,141	13,394,139	3,826,733
Other investments				29,338	16,738	46,076	46,076
Other assets	126,686	151,871	278,557	263,100	203,226	466,326	187,769
Cash and bank balances	21,036	11,001	32,037	6,517,282	10,369,870	16,007,152	2,625,431
Inventories	6,705,453	7,556,268	14,261,721				
Total Current Assets							
Current Liabilities				753,941	390,098	1,144,037	1,144,037
Re-insurance and insurance balances payable				1,151,067	400,443	1,552,310	1,552,310
Other creditors including accrued expenses	320,146	461,197	781,343				
Amounts due to related parties	1,920,705	621,153	2,541,858	200,275	196,085	396,360	(304,983)
Income tax liabilities	2,086,651	819,335	2,905,986	1,992,166	581,257	2,573,423	31,565
Net outstanding claims	222,391	55,626	278,017				
Trade and other payables	4,549,893	1,957,311	6,507,204	4,098,249	1,567,881	5,666,130	(278,017)
Interest bearing loans and borrowings							
Total Current Liabilities	2,155,560	6,598,957	7,754,517	2,419,033	8,001,989	11,221,022	3,466,505
Net Working Capital							
Non Current Assets	274,801	54,360	329,161				
Property, Plant & Equipment	91,888		91,888	2,197,623	52,951	2,250,574	1,921,313
Investments in Subsidiaries	2,357,206	9,383,530	11,740,736	1,306,730	7,915,869	9,222,607	(2,518,129)
Other investments		1,475,592	1,475,592				
Loans to Policy Holders							
Loans Receivable from Policy Holders							
Other Loans	2,723,995	10,913,482	13,637,477	3,504,361	10,909,402	14,413,763	776,286
Total Non Current Assets	9,429,448	18,469,750	27,899,198	10,021,643	21,279,272	31,300,916	3,401,717
Total Assets							
Non Current Liabilities	178,250	161,761	340,011				
Provisions and Other Deferred Liabilities	58,607	14,800	73,407	193,123	175,403	368,526	28,515
Deferred Tax Liabilities	1,628,160		1,628,160	56,778	17,005	73,783	376
Technical Reserves				1,491,861		1,491,861	(130,209)
Long Term Insurance Fund	1,865,017	16,241,199	16,241,199	19,476,883	19,476,883	19,476,883	3,235,684
Total Non Current Liabilities	6,414,910	18,375,071	24,789,981	1,741,762	19,669,291	21,411,053	3,128,276
Total Liabilities				5,840,011	21,237,172	27,077,183	2,207,202

SRI LANKA INSURANCE CORPORATIC LTD

in Rs. '000	As per Balance Sheet as at 31 March 2002 (Signed 9-August-2002)			As per Balance Sheet as at 11 April 2003 (Signed 26-March-2004)			Differences in Totals
	Shareholders Rs. '000	Long Term Rs. '000	Total Rs. '000	Shareholders Rs. '000	Long Term Rs. '000	Total Rs. '000	
<b>Current Assets</b>							
Trade and other receivables	64,246		64,246				(64,246)
Amounts due from related parties				17,360	7,725	25,085	(0,795)
Other investments	22,607	11,202	33,809				
Other assets							
Cash and bank balances	534,784	1,955,550	2,490,320	1,220,832	3,209,257	4,438,089	1,947,769
Cash and Cash Equivalents	1,100,506		1,180,589	837,838		837,838	(342,751)
Premiums and Insurance Balances Receivable	43,802	1,306,090	1,430,392	162,661	1,700,565	1,863,226	432,834
Other Receivables	6,859,335	6,030,002	13,498,417	5,876,324	7,996,782	13,783,106	204,689
Investment Securities	8,705,343	9,992,510	18,697,853	6,133,023	12,824,329	20,947,352	2,249,499
<b>Total Current Assets</b>							
Current liabilities							
Re-insurance and insurance balances payable	865,529	555,250	1,420,787	941,026	401,554	1,342,580	(78,207)
Other creditors including accrued expenses	863,051	233,320	1,156,371	1,175,728	301,469	1,477,197	320,826
Amounts due to related parties	161,704		161,704				(161,704)
Income tax liabilities	399,599	449,375	848,974	341,620	2,072	343,692	(505,282)
Not outstanding claims	19,140,992	559,697	2,473,792	2,833,444	655,057	3,488,501	1,014,709
Trade and other payables	1,374,916		1,374,916	1,514,752		1,514,752	139,836
Unearned Premiums	218,992	61,203	280,195	74,004	54,585	129,389	(150,806)
Borrowings							
Interest bearing loans and borrowings	6,787,960	1,918,663	7,715,919	6,850,774	1,414,737	8,265,511	549,592
<b>Total Current Liabilities</b>							
1,242,249	8,073,657	10,981,034	1,242,249	11,409,592	12,651,841	1,670,807	
<b>Net Working Capital</b>							
2,907,377			10,981,034				
<b>Non Current Assets</b>							
Property, Plant & Equipment	265,715	67,484	323,209	2,187,358	49,755	2,241,113	1,917,904
Investments in Subsidiaries							
Other investments							
Loans to Policy Holders		1,974,010	1,974,010		1,852,171	1,852,171	(121,839)
Loans Receivable from Policy Holders		7,350,842	8,120,127		8,004,713	8,687,728	567,601
Investment Securities	751,285			683,015			
Other Loans	106,057	49,718	155,775	96,569	55,550	152,119	(3,656)
Deferred Tax assets	1,123,057	9,450,084	10,573,121	2,970,942	9,962,189	12,933,131	2,360,010
<b>Total Non Current Assets</b>							
9,828,400	19,442,574	29,270,974	11,093,965	22,786,518	33,880,403	4,609,509	
<b>Total Assets</b>							
<b>Non Current Liabilities</b>							
Provisions and Other Deferred Liabilities							
Deferred Tax Liabilities	81,614	96,282	177,906	165,741	208,424	454,165	276,259
Technical Reserves							
Life Assurance Fund	94,304	17,285,378	17,285,378		20,872,614	20,872,614	3,587,235
Title Insurance Fund	168,737	288,787	457,524	81,978	168,642	250,620	(2,406)
Other Deferred Liabilities							
Long Term Insurance Fund	332,735	17,623,721	17,956,456	441,693	21,329,680	21,771,373	3,014,917
<b>Total Non Current Liabilities</b>							
6,130,701	19,442,574	26,673,275	7,322,467	22,744,417	30,056,084	4,403,009	
<b>Total Liabilities</b>							

November 17, 2004

Ms. Aneela de Soysa  
Partner  
M/s.PricewaterhouseCoopers  
Chartered Accountants  
100, Braybrooke Place  
Colombo 2.

Dear Madam,

*Vis-à-vis* the Agreement  
Re: Divestiture of Sri Lanka Insurance Corporation Ltd (SLIC)

We thank you for your Letter dated 28.10.2004.

PERC has recently set-up a Monitoring & Evaluation Unit headed by a Director, a professional Accountant, and supported by a Consultant.

The Contract for Consultancy in respect of the above divestiture has been entered into on 6.5.2002 between PT PricewaterhouseCoopers FAS, Indonesia and the Government of Sri Lanka. Thus the Consultant to the Government of Sri Lanka in respect of the above divestiture has been PT PricewaterhouseCoopers FAS, Indonesia.

Hence, could you kindly clarify the status of M/s. PricewaterhouseCoopers, Sri Lanka and PricewaterhouseCoopers (Pvt) Ltd., Sri Lanka, since correspondence had also been received from the said Partnership and the said Company, in connection with the abovementioned divestiture, in addition to correspondence from PT PricewaterhouseCoopers FAS, Indonesia.

Since the above Contract for Consultancy dated 6.5.2002 had been between the Secretary to the Treasury on behalf of the Government of Sri Lanka and PT PricewaterhouseCoopers FAS, Indonesia, PERC could not have given an undertaking under and in terms of the said Agreement - vide PERC's Letter dated 12.6.2003 you cited, when clarifications and explanations were sought *vis-à-vis* the aforementioned divestiture, more particularly in relation to the interpretation of the un-Audited Balance Sheet as at 31.3.2002, *based upon which the said divestiture had been carried out.*

Reference your Letter dated 28.10.2004, I wish to ascertain from the Consultant, on whose behalf you have been corresponding, as to whether the said Balance Sheet as at 31.3.2002 is in accordance with International Accounting Standards ?

Particularly in the context of Clause 4A of the Agreement dated 11.4.2003, pertaining to the abovementioned divestiture, which Clause provides for the Adjustment of Consideration, i.e. purchase price, the reason as to why the available Audited Accounts as at 31.12.2001 were not relied upon for this divestiture, but an un-Audited set of Accounts as at 31.3.2002 had been relied upon, is not quite clear, and this has resulted in an inordinate delay in finalizing and concluding this matter.

Ernst & Young, Chartered Accountants in their respective Reports dated 9.8.2002 and 26.3.2004 in respect of the aforesaid Accounts as at 31.3.2002 and 11.4.2003, have stated thus - "We have not performed an audit, and accordingly do not express an opinion".

The aforesaid Accounts as at 31.3.2002 and 11.4.2003, stated to be prepared in accordance with International Accounting Standards, and signed as aforesaid by Ernst & Young, Chartered Accountants, do not *ex-facie* categorize Current Assets and Current Liabilities on the said respective Balance Sheets, even though the same is a *pre-requisite* for the computation of the Net Working Capital for the Adjustment of Consideration, i.e. purchase price, as provided in Clause 4A of the Agreement dated 11.4.2003.

The un-Audited Balance Sheet as at 31.3.2002 had *not categorized* the Current Assets & Current Liabilities, which admittedly is very relevant and cogent for the computation of Net Working Capital as at 31.3.2002 for effecting the Adjustment of Consideration, provided for in the Agreement dated 11.4.2003, whereas the said categorization was available as per the Audited Balance Sheet as at 31.12.2001. Thus the un-Audited Balance Sheet as at 31.3.2002 had been in *variance* with the accounting policy adopted in the Audited Balance Sheet as at 31.12.2001

In the given facts and circumstances, PERC has endeavoured to compare as per *Annexure A*, the Audited Balance Sheet as at 31.12.2001 of SLIC and the un-Audited Balance Sheet as at 31.3.2002, reported by Ernst & Young Chartered Accountants, to have been prepared as per International Accounting Standards.

The above comparison reveals that during the *3 Months*, i.e. 31.12.2001 to 31.3.2002, the Net Working Capital had increased by Rs.3,226,517,000/-, whilst the Non Current Assets had decreased by Rs.3,064,356,000/-, and the total Non Current Liabilities had decreased by Rs.426,321,000/-

The categorization of Current Assets and Current Liabilities as at 31.3.2002, in *Annexure A*, has been in conformity with opinion expressed in the Letter dated 1.10.2004 submitted by PricewaterhouseCoopers (Pvt) Ltd.

We require to have clarification from the Consultant, on whose behalf you have been acting, as to the correctness of *Annexure A*, and on the matter of the *material* increase in the Net Working Capital over a period of 3 months between 31.12.2001 and 31.3.2002, which is pertinent to this divestiture, particularly in the context of Clause 4A of the Agreement dated 11.4.2003 for the Adjustment of Consideration i.e. purchase price; the Consultant reportedly having also carried out a Business Valuation of SLIC in connection with this divestiture.

We also require clarification, as to whether the Adjustment of Consideration, i.e. purchase price, set out in Clause 4A of the Agreement dated 11.4.2003 was to be computed on the basis of un-Audited Accounts of SLIC as at 31.3.2002 and 11.4.2003 ? Would this also not be relevant *vis-a-vis* the contents of your Letter dated 14.10.2004 ?

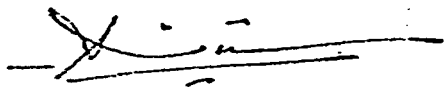
In examining the Report forwarded to Parliament on the above divestiture, PERC's Internal Auditors, SJMS Associates, Chartered Accountants, *inter-alia* have made the following observation;

*"PricewaterhouseCoopers (PWC) was selected as a financial advisor. Mr. Deva Rodrigo, Partner of PWC was one of the members of Steering Committee, which selected PWC as financial advisor, the conflict of interest was not considered"*

Consequently, the Parliamentary Committee on Public Enterprises (COPE) at the Meeting held on 3.11.2004 queried this matter in connection with this divestiture. We shall be grateful for your clarifications and explanations in this regard, to be submitted to COPE.

Your clarifications and explanations in regard to the foregoing are solicited urgently, particularly in view of the materiality, and the need to conclude this long outstanding matter.

Yours faithfully,



**Nihal Sri Ameresekere**  
Chairman

cc. Dr.P.. Jayasundera  
Secretary to the Treasury.

SRI LANKA INSURANCE CORPORATION LTD

Annexure A

	As per Balance Sheet as at 31 December 2001 (Signed 11-June-2002)		As per Balance Sheet as at 31 December 2001 (Signed 11-June-2002)		As per Balance Sheet as at 31 March 2002 (Signed 9-August-2002)		Differences in Totals
	Consolidated Rs.'000	Long Term Rs.'000	Total Rs.'000	Generals Rs.'000	Life Assu. Rs.'000	Total Rs.'000	
<b>Current Assets</b>							
Trade and other receivables	1,485,300	2,908,323	4,393,623			64,240	(4,393,623)
Amounts due from related parties	5,072,333	4,409,073	9,481,406			33,808	(9,481,406)
Other investments							
Other assets							
Cash and bank balances	120,000	151,871	271,871				
Cash and Cash Equivalents							
Other Receivables							
Premlims and Insurance Balances Receivable							
Investment Securities	21,030	11,001	32,031				
Inventories	6,705,453	7,550,200	14,255,653				
<b>Total Current Assets</b>							
Current Liabilities							
Re-insurance and Insurance balances payable							
Other creditors including accrued expenses							
Amounts due to related parties	320,140	401,107	721,247				
Income tax liabilities	1,920,705	921,153	2,841,858				
Net outstanding claims	2,000,051	810,335	2,810,386				
Trade and other payables							
Unearned Premiums							
Borrowings	222,001	85,070	307,071				
Interest bearing loans and borrowings	4,849,493	1,667,311	6,516,804				
<b>Total Current Liabilities</b>							
<b>Net Working Capital</b>							
<b>Total Current Assets (As Stated Above)</b>	8,705,453	7,850,200	16,555,653	8,705,453	9,992,510	19,097,863	4,230,192
<b>Non Current Assets</b>							
Property, Plant & Equipment	274,001	64,300	338,301				
Investments in Subsidiaries	91,068		91,068				
Other Investments	2,557,200	9,303,530	11,860,730				
Loans to Policy Holders		1,470,002	1,470,002				
Loans receivable from Policy Holders							
Investment Securities							
Deferred Tax assets							
Other Loans	3,723,995	10,913,482	14,637,477				
<b>Total Non Current Assets</b>	3,420,448	18,409,780	21,830,228	9,828,400	19,442,574	29,270,974	1,371,276
<b>Total Assets</b>	4,449,803	19,579,311	24,685,881	19,579,311	29,435,084	48,368,837	2,283,615
<b>Total Current Liabilities</b>							
Non Current Liabilities							
Provisions and Other Deferred Liabilities	170,250	101,761	272,011				
Deferred Tax Liabilities	60,907	14,000	74,907				
Technical Reserves	1,026,100		1,026,100				
Life Assurance Fund							
Title Insurance Fund							
Other Deferred Liabilities		10,241,109	10,241,109				
Long Term Insurance Fund	1,055,017	18,417,760	19,472,777				
<b>Total Non Current Liabilities</b>	6,414,910	19,375,071	24,790,081	6,414,910	19,442,574	26,573,275	783,294
<b>Total Liabilities</b>	6,414,910	19,375,071	24,790,081	6,414,910	19,442,574	26,573,275	783,294
<b>Total Capital and Reserves</b>	3,014,538	94,670	3,109,208	3,014,538		3,097,701	609,484
<b>Total Equity and Liabilities</b>	9,429,448	19,409,760	27,899,198	9,429,448	19,442,574	29,270,970	1,371,778

**BY HAND / COURIER**

6<sup>th</sup> October 2006

Hon. Wijeyadasa Rajapakshe PC., MP.  
Chairman, Committee on Public Enterprises,  
Parliament of Sri Lanka,  
Sri Jayewardenepura,  
Kotte,

Dear Sir,

**INVESTIGATION ON THE DIVESTITURE OF  
SRI LANKA INSURANCE CORPORATION LTD. [SLIC]**

I refer to the COPE Meeting had on 22.8.2006, whereat information and clarifications in relation to the aforementioned matter was sought from me by COPE, and my subsequent Letter dated 20.9.2006 addressed to the Secretary, COPE.

Since COPE has constituted a Sub-Committee to investigate into the aforementioned matter, I enclose copy of my Letter dated 5.10.2006 addressed to the Chairman, Panel of the Ethics Committee, Institute of Chartered Accountants of Sri Lanka, which is also conducting, as you are aware, an investigation into the conduct of Ernst & Young and PricewaterhouseCoopers, *vis-à-vis*, the aforementioned matter.

My said Letter sets out the evidence, as authorized by the Hon. Minister of Skills Development & Public Enterprise Reform, I gave before the said Committee, which would facilitate the investigations being carried out by the Sub-Committee of COPE.

Yours faithfully,



Nihal Sri Ameresekere

c.c. Mr. M.N. Peiris, Secretary, COPE, Parliament of Sri Lanka

*[I enclose 5 Copies to be given to the Sub-Committee Members]*

Hon. Sripathy Sooriyarachchi, Minister of Skills Development & Public Enterprise Reform

Mr. F.H. Puvimanasinghe, F.C.A., Chairman, Panel of the Ethics Committee,  
Institute of Chartered Accountants Sri Lanka

*[I enclose copy of Letter sent. without the names of the 2 Members.  
who required further clarifications after you had finalised the Report]*

BY COURIER

5<sup>th</sup> October 2006

**CONFIDENTIAL**

Mr. F.H. Puvimanasinghe  
Chairman  
Panel of the Ethics Committee  
Institute of Chartered Accountants of Sri Lanka

Senior Partner, F.H. Puvimanasinghe & Co.  
126-2/1, 2<sup>nd</sup> Floor, Y.M.B.A. Building  
Sir Baron Jayatillake Mawatha  
Colombo 1.

Dear Sir,

**INVESTIGATION ON THE DIVESTITURE OF  
SRI LANKA INSURANCE CORPORATION LTD. [SLIC]**

**PREAMBLE**

I write with reference to the Meeting had with your Committee on 2.10.2006, together with the presence of Mr. E Arumugam, Director (Monitoring & Evaluation), Public Enterprises Reform Commission of Sri Lanka (PERC).

Consequent to the Meeting had on 25.4.2006, whereat your Committee, in the absence of one Member, was fully briefed by me and Mr. Arumugam, handing over copies of relevant Documents.

Subsequently, as per your request by Letter dated 5.5.2006 (copy attached), the Steering Committee Minutes and the TEC Report was forwarded by Mr. Arumugam (PERC).

Thereafter, by Letter dated 8.8.2006 (copy attached), as per your request, Mr. Arumugam (PERC) forwarded 4 Files referred to therein. Since these Files had not been forwarded to you by the Secretary of the Institute, as per your request, by Letter dated 22.8.2006 (copy attached), I forwarded further copies of the same to you.

The Meeting on 2.10.2006, as intimated by you, was for two Members (one of whom was not present previously) to seek certain clarifications.

*I regret that I was not aware that the absent Member was a Member of the Committee, and hence I am enclosing copies of the aforesaid correspondence and the Letter dated 25.4.2006 addressed to you by PERC on the direction of the Hon. Minister of Skills Development & Public Enterprise Reform.*

At the very outset on 2.10.2006, I intimated to you that the Parliamentary Committee on the Public Enterprises (COPE) had summoned me on this very subject for a briefing on the facts; and that a Sub-Committee of COPE had been appointed to inquire into this. In the context of the foregoing, COPE was made aware that the Institute was also conducting an investigation, under your Chairmanship.

It was accepted, without demur, by all present at the Meeting 2.10.2006 that Auditors were accountable and responsible to the Shareholders.

**CLARIFICATIONS SOUGHT BY ONE OF THE MEMBERS, VIS-À-VIS, ERNST & YOUNG.**

The said Member cited certain Letters of Ernst & Young, I recollect, dated 15.12.2003 and 15.6.2004, and sought clarifications thereon.

Since such Letters could not be 'taken out of context', I made a complete presentation, citing the Correspondence pertaining to the 16 Extensions, which had been requested, directly and indirectly [through SLIC] by Ernst & Young, from 9.6.2003 and granted up to 28.10.2004 for the preparation of the 'net working capital computation' for which admittedly, the SLIC Accounts as at 11.4.2003 (i.e. date of divestiture) were necessary. I adduced copies of Correspondence relating to these 16 extensions, which had already been submitted to you previously, contained in one of the Files aforesaid.

As regards Ernst & Young's Letter dated 15.12.2003 addressed to PERC and copied to SLIC titled – "Audit of Financial Statements for the period ended 11<sup>th</sup> April 2003, and Review and Report on these Financial Statements in accordance with *International Accounting Standards*", it was evident that the information required from SLIC referred to in the said Letter had been forwarded, in that, after several extensions, requested directly and indirectly [through SLIC] by Ernst & Young, having been granted, SLIC by Letter dated 26.3.2004<sup>#</sup> had submitted the Accounts as at 11.4.2003 signed by Ernst & Young. PERC by Letter dated 17.12.2003 addressed to Distilleries - Spence Consortium [Buyers of SLIC] had promptly forwarded Ernst & Young's Letter dated 15.12.2003 to PricewaterhouseCoopers [Indonesia & Sri Lanka] and Ernst & Young

SLIC by Letter dated 20.1.2004 addressed to PERC titled – "Audit of Financial Statements for the period ended 11<sup>th</sup> April 2003, and Review and Report on these Financial Statements in accordance with *International Accounting Standards*" had confirmed that SLIC had received [from Ernst & Young] Draft Financial Statement on 19.1.2004<sup>#</sup>.

As regards Ernst & Young's subsequent Letter dated 15.6.2004 addressed to SLIC titled – "Sri Lanka Insurance Corporation Limited – Review of Net Working Capital Computation", PERC by Letter dated 16.6.2004 had promptly forwarded the same to PricewaterhouseCoopers. Thereafter, Ernst & Young, through SLIC, having requested further time to complete the said work, - *vide* SLIC Letters dated 19.7.2004 [ *quote* -"Ernst & Young had informed that they required time to complete their work" ] and 16.8.2004. [ *quote* -"According to M/s. Ernst & Young, they have completed their review and need few more days to complete their report" ]. *Both the said Letters had been copied to Ernst & Young, who had not denied same.*

Ernst & Young by Letter dated 30.8.2004 addressed to SLIC forwarded to PERC had confirmed – ".....We have now completed most of the necessary field work with regard to the above assignment. We will submit the Report to you upon completion of the technical review by our Technical Committee within a few days", which was also confirmed by SLIC's Letter dated 30.8.2004 stating that – "M/s. Ernst & Young has informed ..... that they need few more days to forward their Report on the Review of NWC Adjustment", *and the said Letter had been copied to Ernst & Young, who had not denied same.* It is thus unambiguously clear that the "net working capital adjustment" indeed had been completed and no further information had been required - *vide* Ernst & Young Letter dated 15.6.2004 cited by the said Member !

In fact, late last year, Ernst & Young had refused to provide the 'Net Working Capital Computation', when requested by the Hon. Minister of Skills Development & Public Sector Reforms, in the presence of PERC Director General, renegeing on their aforesaid undertaking, having consistently held out that they in fact were processing the same, and requesting for several extensions of time therefor, thereby having led the Government 'up the garden path' ! Ernst & Young had not intimated that they had required any further information. This has resulted in the Hon. Minister forwarding a Cabinet Paper setting out the deplorable state of affairs of this debacle, and which, I understand, *is pending before Cabinet.*

It is also amply evident from the Correspondence between 9.6.2003 and 15.10.2004 pertaining to 16 extensions, that PricewaterhouseCoopers, both Indonesia & Sri Lanka, had been consistently kept aware of the foregoing delay and informed of the need to have the same completed, for which 16 extensions had been granted, as had been requested, directly and indirectly through [SLIC] by Ernst & Young, and further that Ernst & Young, as Auditors of SLIC, particularly during the period up to 11.4.2003, where the Government was the sole Shareholder of SLIC, and PricewaterhouseCoopers, as Consultants to the Government, were to have acted in co-ordination to have the aforesaid matter concluded.

Furthermore, as amply evidenced by the aforesaid Correspondence, PERC Officials had consistently, promptly and diligently dealt with and responded to Correspondence, and clearly had relied on the professional integrity, duty of care and responsibility of both, Ernst & Young and PricewaterhouseCoppers known to be reputable firms of Chartered Accountants !

Attention was drawn to Ernst & Young's Letter, as far back as 11.11.2003 addressed to PERC titled – "SLIC Working Capital Adjustment", which stipulated *quote* - "Audit / Review of SLIC Accounts as at 11<sup>th</sup> April 2003 and the conversion of these financial statements in accordance with *International Accounting Standards* for the purpose of working capital adjustment .....it would take approximately 5-6 weeks to complete. Accordingly, we wish to submit a draft Report by 15<sup>th</sup> December 2003.....Ernst & Young will make its best efforts to complete within the above time frame.....". The said Letter had been copied to SLIC.

Thus it is unambiguously and amply clear that Ernst & Young had undertaken to process the foregoing, and in fact, time and again from 9.6.2003 to 15.10.2004, '16 Extensions' had been requested for, directly and indirectly [through SLIC] by Ernst & Young, for the completion of the same; which as per the Agreement dated 11.4.2003 for the Sale of the 100 % SLIC Shares owned by the Government, had to be completed by 11.6.2003, which fact both Ernst & Young and PricewaterhouseCoopers had been fully aware of.

Ernst & Young were well and truly aware of the Agreement dated 11.4.2003 for the Sale of the 100 % SLIC Shares owned by the Government, and in conformity with which said Agreement, Ernst & Young had forwarded the SLIC Accounts as at 31.3.2002, as further corroborated by the several Minutes of the Steering Committee Meetings, which were cited – *quote* - "It was noted that Ernst & Young had sent a proposal to SLIC for re-stating the Financial Statements according to International Accounting Standards" ..... "IAS Audit of SLIC which amounted to around US \$ 81,000/-" ..... "The Auditors, Ernst & Young have submitted a revised proposal for the IAS Audit"

Thus having well and truly been aware of the said Agreement, in conformity with which the SLIC Accounts as at 31.3.2002 signed by Ernst & Young were said to have been re-stated according to International Accounting Standards, 'it does not lie in the teeth' of Ernst & Young, as the Auditors of SLIC, who had been intimately involved from the very inception of the SLIC privatisation to have asked for information over one year thereafter, by their Letter dated 15.6.2004, which information they ought to have known, since they were so involved in the privatisation process from its very inception, submitting the SLIC Accounts as at 31.3.2002 said to be as per the International Accounting Standards in conformity with the aforesaid Agreement

Had the said Member, as asserted, examined all the relevant Correspondence aforesaid, and as admitted by him, was conversant therewith, then it is beyond comprehension, as why he required 'in isolation' to seek clarifications *vis-à-vis* Ernst & Young's Letters dated 15.12.2003 and 15.6.2004 [both of which had been promptly acted upon by PERC] without having comprehended the totality of the facts aforesaid!

The said Member, as a senior practising Auditor, admitted that he was not conversant with the International Accounting Standards. I too admitted, that since I did not practise as an Auditor since 1982, I was unaware of the same, until a few days back!

A few days back, I accessed the 'Web-Sites' of the 'International Accounting Standards Board' and 'The International Financial Reporting Standards' and the 'International Accounting Standards' at the Deloitte 'Web-Site', where very specifically it has been stipulated in IAS 1 re - 'Presentation of Financial Statements' that - 'current assets' and 'non-current assets', and 'current liabilities' and 'non-current liabilities', have to be presented as separate classifications on the face of the Balance Sheet; and where the said classifications, in certain instances are omitted on the face of the Balance Sheet, then the said classifications are required to be disclosed in Notes to the Balance Sheet. *Down-loaded from the respective web-sites, I attach copies of the aforesaid, with the relevant Sections highlighted.*

Hence, it would appear that, what Ernst & Young had purported, as Accounts of SLIC, both as at 31.3.2002 and 11.4.2003, as presented in accordance with 'International Accounting Standards', without disclosure of the said classifications of 'current assets' and 'non-current assets' and 'current liabilities' and 'non-current liabilities' in the said Accounts, as per the aforesaid IAS Standards, is indeed appalling. *Would this not warrant investigation by law enforcement authorities, for having knowingly and intentionally misleading the Government, and thereby causing loss and detriment to the Government? PricewaterhouseCoopers too, having been a party thereto, stand equally accountable and responsible in their role as Consultants to the Government.*

Furthermore, contrary to what has been undertaken and held out as aforesaid by Ernst & Young, no audit of the SLIC Accounts as at 31.3.2002 and 11.4.2003 had been completed by Ernst & Young, even up to date!  
Why?

Your Committee on 2.10.2006 unanimously accepted that this transaction could not be completed and concluded by the Government on the basis of unaudited accounts, which had in fact had also changed the prevalent accounting policy of SLIC, which had shown in its Statutory Accounts audited by Ernst & Young the aforesaid classification of 'current assets' and 'non-current assets', and 'current liabilities' and 'non-current liabilities' on the face of the Balance Sheet!

Ernst & Young having audited the statutory Annual Accounts of SLIC as at 31.12.2001 and 31.12.2002, ought not have had any difficulty, whatsoever, in classifying the 'current assets' and 'non-current assets' and 'current liabilities' and 'non current liabilities' on the face of the SLIC Balance Sheets as at 31.3.2002 and 11.4.2003. Why did they not do so ?

Ernst & Young having been involved in the privatisation process of SLIC from its very inception, and having well and truly been fully aware, that in terms of the Agreement dated 11.4.2003 for the Sale of the 100 % SLIC Shares owned by the Government, that the 'current assets' and the 'current liabilities' of SLIC as at 31.3.2002 and 11.4.2003 were mandatorily required to compute by 11.6.2003 the 'Net working capital' for the adjustment of the purchase price consideration, ought to have exercise due and reasonable care to have ensured that the said requisite classifications were made available to the Government, as the sole Shareholder of SLIC up to 11.4.2003.

Therefore, even if the International Accounting Standards did not mandate the disclosure of 'current assets' and 'non-current assets' and 'current liabilities' and 'non current liabilities', (which is not conceded) the conditionalities in the said Agreement 11.4.2003 warranted the said disclosure to conclude this transaction, without any ambiguity and confusion; and the non-disclosure or the concealment of the same has caused the problem faced by the Government now !

After assuming office as Chairman, PERC, I was compelled to go into this matter, with a view to concluding the same. Hence I forwarded Letter dated 17.11.2004 to Ernst & Young, annexing data as per the Balance Sheets as at 31.12.2001 [audited], 31.3.2002 [unaudited], 31.12.2002 [audited] and 11.4.2003 [unaudited], all signed by Ernst & Young, and sought certain specific clarifications and explanations, as a matter of urgency, which said matters were clearly explained to members of your Committee, who admitted as aforesaid, my right on behalf of the Government to have sought such clarifications and explanations in respect of the said Accounts, as they had been signed by Ernst & Young up to the time the Government was the sole Shareholder of SLIC, it having been admitted as aforesaid that the Auditors are accountable and responsible to the Shareholders, and in this instance, the sole Shareholder was the Government, who held public property in trust for the people ! I had no response, whatsoever, from Ernst & Young, notwithstanding being a senior member of the Institute myself ! Would this be acceptable ? I attach a copy of my said Letter dated 17.11.2004 for easy reference and specifically draw your attention to the contents therein. The said Letter was copied to Dr. P.B. Jayasundera, Secretary to the Treasury.

Consequently, the Hon. Attorney General having examined and setting out the facts by Letter dated 9.2.2005, put Ernst & Young on notice of professional negligence. There being no denial thereto, on the presumption of admission, the Hon. Attorney General on 11.4.2005, put Ernst & Young on notice, that legal action would be instituted for wrongful conduct, without further notice.

I trust that in the context of the contents herein, the said Member, *in like manner and demeanour*, will have the strength of courage, to query from his fellow professional colleagues, as to what they did, with their professional integrity, reasonable duty of care and responsibility they owed, inasmuch as, he curiously queried the responsibility that PERC had discharged in this matter ! *If he does not, then it would indeed be a 'mystery' !*

Though I had intended to, I overlooked to bring to your attention on 2.10.2006, a pertinent matter of serious conflict of interest and / or undue influence compromising a senior public official, who in my view was 'unenthusiastic' in dealing with the foregoing serious matter of grave national and public importance ! Though I heard of this first hand at one public occasion, I could not believe it at that time ! However, the said matter has been further disclosed by an Advertisement, which appeared in the *The Sunday Times* of 1.10.2006 [copy attached]. Dr. P.B. Jayasundera, held office, as Secretary, Ministry of Finance & Secretary to the Treasury and also as a Statutory Member of PERC, whilst I was Chairman thereof investigating into this matter. He had been Chairman of PERC and Senior Advisor of PERC at the relevant time of the privatisation of SLIC and had played an active role therein. From the profile of Dr. P.B. Jayasundera in the attached Advertisement, which I have to presume he had provided, he had been a Senior Policy Advisor, Ernst & Young.

There were other large privatisation transactions, such as in the petroleum retail sector, i.e. 2<sup>nd</sup> Player 'LIOC' [with a questionable 'policy formula', unacceptable 'subsidy claims' from the Government, the 'breach of a basic condition', and the 'conferment of a valuable right without any consideration'] and 3<sup>rd</sup> Player, which Ernst & Young had handled for PERC with lucrative fees, whilst Dr. P.B. Jayasundera had been actively involved in the said re-structuring / privatisation processes on behalf of the Government !

CLARIFICATIONS SOUGHT BY THE OTHER MEMBER, *VIS-A-VIS*, PRICEWATERHOUSECOOPERS, SRI LANKA.

The said Member *who was not present at the previous presentation on 25.4.2006*, of the relevant facts and Documents, on 2.10.2006 sought to clarify the status and role of PricewaterhouseCoopers, Sri Lanka .

Hence attention was drawn to the following facts and Documents:

1. Mr. Deva Rodrigo, Partner, PricewaterhouseCoopers, Sri Lanka, was a Member, appointed at the very outset, on 21.1.2002, to the Steering Committee to 'oversee and facilitate the re-structuring and privatisation of SLIC'.
2. On 30.1.2002 he had informed Ms. Aneela de Soysa, Director PERC, who was appointed Secretary, of the Steering Committee that - ' in the event PricewaterhouseCoopers bids for the financial advisory, then he will be abstaining from all decisions relating to the evaluation process' [*This is a Note in the Steering Committee Minutes File forwarded to you and was not cited at the Meeting on 2.10.2006*]
3. The Steering Committee had finalised the proposed action plan and time table - 'the way forward'.
4. Mr. Deva Rodrigo therefore, was privy to the facts known to the Steering Committee, including the Cabinet Approval, the budgetary allocation for Financial Advisory Services and the formulation of the Request for Proposals [RFP] for Financial Advisory Services [*Incidentally, the RFP Documents stipulate an IAS Audit Report*].
5. PricewaterhouseCoopers' proposal for Financial Advisory Services had been short-listed by the Steering Committee, and it had been decided that the services to be obtained should be 'Investment Banking and Financial Advisory Services'.
6. At the 4<sup>th</sup> Steering Committee Meeting, - 'Mr. Deva Rodrigo had disclosed that he was a Partner of PricewaterhouseCoopers, Sri Lanka, and would be an interested party in terms of the Financial Advisory Services. Therefore, he had asked to be excused from any discussions relating to selection of Advisors'.
7. At the Pre-Bid Conference for Financial Advisory Services, a person from PricewaterhouseCoopers, Indonesia, and a person from PricewaterhouseCoopers, Sri Lanka, had been present.
8. At the 5<sup>th</sup> Steering Committee Meeting in relation to the issue of Tender Documents 'the Steering Committee had noted that Mr. Deva Rodrigo had declared an interest in the assignment for Financial Advisory as the firm in which he was Partner, PricewaterhouseCoopers, Sri Lanka had been short-listed and was interested in bidding for the contract' .
9. At the 6<sup>th</sup> Steering Committee Meeting it had been decided to award the contract for Financial Advisory Services to PricewaterhouseCoopers. After the matters relating to the award of the Financial Advisory Contract had been concluded Mr. Deva Rodrigo had joined the Meeting.
10. At the 7<sup>th</sup> , 8<sup>th</sup> , 9<sup>th</sup> ,10<sup>th</sup> , 11<sup>th</sup> , 12<sup>th</sup> 13<sup>th</sup> , 14<sup>th</sup> , 15<sup>th</sup> , 16<sup>th</sup> , 17<sup>th</sup> , 18<sup>th</sup> Steering Committee Meetings, PricewaterhouseCoopers, Indonesia, and / or Personnel from PricewaterhouseCoopers, Sri Lanka, had been present, as 'Financial Advisors'; *whilst Mr. Deva Rodrigo, Partner, PricewaterhouseCoopers, Sri Lanka, had continued to be a Member of the Steering Committee, which was responsible for directing and supervising the work of the Financial Advisors, including approving the payments to them, in 'overseeing and facilitating the re-structuring and privatisation of SLIC ! Directing and supervising his own firm ?*.
11. The Advertisements published inviting expression of interests for the divesture of Shares of SLIC had been under the joint-names of PricewaterhouseCoopers, Sri Lanka, and PricewaterhouseCoopers, Indonesia

12. At the 12<sup>th</sup> Steering Committee Meeting, Ms. Marina Dharmaratnam, Member of the Steering Committee had resigned due to the fact that DFCC of which she was a Director, had expressed interest in the SLIC transaction. Even this had not prompted Mr. Deva Rodrigo to have resigned as a Member of the Steering Committee.

13. Significantly, the Agreement signed by the Government of Sri Lanka had been for Consultancy Services, which had included 'Investment Banking Services' and 'Legal Advisory Services'. [Legal Advisory Services had specifically included the preparation of the Share Sale and Purchase Agreement i.e. the Agreement dated 11.4.2003 for the Sale of 100 % Shares of SLIC owned by the Government].

14. The 'Consultancy Contract' has defined personnel as persons hired by the Consultant or by any Sub-Consultant.

A Sub-Consultant had been defined as an entity to which the Consultant sub-contracts any part of the services in accordance with the 'Consultancy Contract'.

Taxes and Duties in the 'Consultancy Contract' refers to the Consultant, Sub- Consultants and their Personnel.

Consultants 'Key Personnel' have been given in Appendix 'C' to the 'Consultancy Contract', and includes persons from PricewaterhouseCoopers, Indonesia, and PricewaterhouseCoopers, Sri Lanka. In fact, Roger de Montfort has been designated as 'Project Co-ordinator,' and Channa Manoharan has been designated "PricewaterhouseCoopers Sri Lanka Team Leader".

Professional Fees had been stipulated in the 'Consultancy Contract' per hour separately for 'International' Personnel and separately for 'Sri Lankan' Personnel.

The 'Consultancy Contract' stipulates that neither Consultants, nor the Sub-Consultant shall engage directly or indirectly in business or professional activities, which would conflict with the activities under the Contract.

15. The File of PricewaterhouseCoopers Correspondence forwarded to you as aforesaid, would reveal that there had been exchange of several correspondence with PricewaterhouseCoopers, Sri Lanka, specifically on this SLIC divestiture.

16. Letter dated 4.3.2005 addressed to the Hon. Attorney General by PricewaterhouseCoopers, Indonesia, has stated thus:

*"As promised, we now set out below our response, on behalf of both ourselves and PwC Sri Lanka, to the issues raised by you and PERC in the two latter mentioned letters.*

**2. What is the status of M/s. PricewaterhouseCoopers, Sri Lanka and PricewaterhouseCoopers (Pvt.) Ltd., Sri Lanka?**

*The contract for Financial Advisory Services was signed between the Government of Sri Lanka and PT PricewaterCoopers FAS, a limited liability company incorporated in Indonesia. The latter mentioned was contracted to provide assistance regarding the divestiture of SLIC. In assembling the team, PT Pricewaterhouse Coopers FAS also involved personnel with relevant expertise from a variety of other independent PwC firms, including Sri Lanka which provided important local resources, expertise and liaison throughout the project.*

*The PricewaterhouseCoopers firm in Sri Lanka is a partnership registered in Sri Lanka. PricewaterhouseCoopers (Pvt.) Ltd., Sri Lanka is a limited liability company incorporated in Sri Lanka.*

17. Does Mr. Deva Rodrigo, admit and/or concede that there has been a grave and serious professional wrongdoing, *but as implied by the said Member that it was PricewaterhouseCoopers, Indonesia, who was responsible and not PricewaterhouseCoopers, Sri Lanka – ‘The case of “not I Sir, but he Sir” !. On the other hand,* what would be the position of Mr. Deva Rodrigo, a professional, on the Steering Committee responsible to protect the interests of the Government ?
18. ‘A’ can bid for himself and on behalf of ‘B’, but it actual fact ‘A’ and ‘B’ acted in concert, either as Principal / Agent or Consultant / Sub-Consultant, or as a Consortium as in this case, with ‘a PricewaterhouseCoopers, Sri Lanka Team Leader’ !
19. Questionably, Director PERC, Ms. Aneela de Soysa who had handled the SLIC privatisation transaction and had also been Secretary of the Steering Committee, had left PERC, and joined, as a Partner of PricewaterhouseCoopers, Sri Lanka, shortly after the Agreement dated 11.4.2003 had been entered into transferring the ownership and management of SLIC to the ‘buyers’ consortium’.
20. ***Ironically, SLIC transaction having not been concluded as yet, with the foregoing grave and serious wrong-doings having arisen, it has been Ms. Aneela de Soysa, who had come forward to protect the interests of PricewaterhouseCoopers, whereas she had previously handled this very transaction on behalf of the Government !***
21. On a very specific question posed by my Letter dated 15.10.2004 addressed to PricewaterhouseCoopers, Sri Lanka, as to “*whether such Balance Sheet is in conformity with the International Accounting Standards ?*”; the response dated 28.10.2004 from PricewaterhouseCoopers, Sri Lanka, *signed by Ms. Aneels de Soysa had significantly stated that – “According to M/s. Ernst & Young the Balance Sheet as at 31.3.2002 was prepared in accordance with International Accounting Standards.” !*
22. ***Hence PricewaterhouseCoopers had not admitted that the aforesaid Accounts were in conformity with International Accounting Standards. This raises the question, as to whether PricewaterhouseCoopers had been aware of the actual factual position and had knowingly deliberately suppressed the same from the Government, intentionally misleading the Government ?***
23. In response to my Letters dated 20.9.2004 and 29.9.2004, PricewaterhouseCoopers forwarded their reply dated 1.10.2004<sup>#</sup> identifying and/or on commenting with reference to the *International Accounting Standards*, the ‘current assets’ and ‘current liabilities’ in relation to the total Balance Sheet of SLIC, which included both the ‘General Fund’ and the ‘Life Fund’.
24. Hence as Consultants to the Government, who handled this transaction and drafted the Agreement dated 11.4.2003 PricewaterhouseCoopers have thereby confirmed that the intention of the ‘price adjustment’ based on ‘net working capital’ referred to in the Agreement dated 11.4.2003 for the Sale of 100 % Shares of SLIC owned by the Government, was in respect of the movement in total current assets and current liabilities. i.e. including both the ‘General Fund’ and the ‘Life Fund’. The said Agreement dated 11.4.2003 had not excluded the ‘Life Fund’, as some interested parties are now purporting to propound to cause loss and detriment to the Government i.e. the public.
25. It was accepted at the Meeting on 2.10.2006 that the ‘Life Fund’ belonged to the Company and is of value, inasmuch as the deposits and investments of a Bank belong to the Bank, and are reckoned in a valuation of a Bank. The take over of the Apollo Hospital by SLIC, utilising the ‘Life Fund’ investment portfolio, was cited as an example of value acquired by ‘the Buyers Consortium’.

As stated previously, after assuming office as Chairman, PERC, I was compelled to go into this matter, with a view to concluding the same. Having exchanged certain correspondence with PricewaterhouseCoopers contained in the File forwarded to you, and based on PricewaterhouseCoopers Letter dated 1.10.2004<sup>#</sup> referred to at 23 above. I forwarded Letter dated 17.11.2004 to PricewaterhouseCoopers annexing data as per the Balance Sheets as at 31.3.2002 [unaudited], and 11.4.2003 [unaudited], both signed by Ernst & Young, and sought certain specific clarifications and explanations, as a matter of urgency, from PricewaterhouseCoopers, *as Consultants of the Government,* who had handled this privatisation transaction, pointing out also that COPE had questioned the conflict of interest of Mr. Deva Rodrigo (*PERC’s Internal Auditors SJMS Associates and the Auditor General had questioned the same*). and had queried this divestiture, which had not been concluded, intimating to PricewaterhouseCoopers that clarifications and explanation are required to be submitted to COPE.

I had no response, whatsoever from PricewaterhouseCoopers, notwithstanding being a senior member of the Institute, myself. Would this be acceptable? I attach a copy of my said Letter 17.11.2004 for easy reference and specifically draw your attention to the contents therein. The said Letter was copied to Dr. P.B. Javasundera, Secretary to the Treasury.

Consequently, the Hon. Attorney General having examined and setting out the facts by Letter dated 9.2.2005 put PricewaterhouseCoopers on notice of professional negligence. PricewaterhouseCoopers, Indonesia, responded to Hon. Attorney General by Letter dated 4.3.2005. [Copy available in File submitted]

Refuting and rejecting the assertions made by PricewaterhouseCoopers, and pointing out that PricewaterhouseCoopers had failed to address the 'key issues' which pertained to them as Consultants to the Government to render 'Investment Banking' and 'Legal Advisory Services' to the Government, and the Government having already paid fees and disbursements totalling US \$ 1.14 Million and SL Rupees 45.83 Mn., and PricewaterhouseCoopers having failed to respond to Letters dated 17.11.2004, 9.12.2004 and 13.1.2005, the Hon. Attorney General on 11.4.2005 put PricewaterhouseCoopers on notice, that legal action will be instituted for recovery of the damages on account of negligent acts and for wilful misconduct.

### CONCLUSION

In relation to the foregoing, I cited the following 'dicta' of well-known judgments:

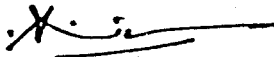
- > integrity, duties *vis-a-vis* window dressing of accounts;
- > professional negligence and careless approach of accountants and auditors;
- > auditors duty when suspicion and fraud is aroused and their duty when put upon inquiry 'to probe to the bottom';
- > in respect of implied terms which the law imports into an contract, which terms the parties have left unstated because they considered them too obvious to express;
- > duty to take care in word as well as in deed is not limited to contractual relationship or to relationship of fiduciary duty, but include also relations which are 'equivalent to contracts', that is where there is an assumption of responsibility and the onus of the auditors to show that damage had not resulted from any want of duty on their part;
- > an auditor who gives shareholders means of information instead of information does so at his peril, particularly in relation to something that is seriously wrong;
- > action in negligence will lie against the auditor when there is a lapse of duty of care owed and the failure to discharge that duty given the foreseeable damage resulting from that failure;
- > auditor owes a duty of care to shareholders in tort, as well as in contract;
- > in the case of a professional man the duty to use reasonable care arises not only in contract, but also imposed by the law apart from contract, therefore actionable in tort;
- > accountants, surveyors, valuers, and analysts, whose professional occupation is to examine records and other things and to make reports which their clients and other people rely in ordinary course of business, owe a duty of care;
- > professional men have a duty use care in their work which results in their reports;
- > accountants owe a duty to their clients, who take some actions on their reports:
- > a document may be false, not because of what it states, but because of what it does not state or what it conceals or omits;
- > a party seeking information and advice trusting the other to exercise such degree of care as the circumstances required and when he "ought to have known" that the party was relying on what a responsible man could have done, owed duty of care;
- > there is no good reason why accountants should not accept legal responsibility to parties who rely on financial statements submitted by them;
- > there is no reason why this duty to disclose should not be imposed upon an accounting firm, which makes representations it knows will be relied upon;
- > the elements of 'good faith and common honesty' which govern the businessman should also apply to public accountants

Since I stopped practising as an auditor in 1982, the foregoing 'dicta' are from judgments prior to 1982 ! You being one of most senior practising auditors, together with two other Members of your Committee, senior practising auditors, I am sure would be far more knowledgeable of the more recent cases and the stringent standards expected by the contemporary world from auditors and accountants in the wake of shocking 'corporate failures' due to fraud by the highest levels of management, enabled by diabolical acts of accountants and auditors acting in collusion, with one leading international audit firm 'putting up shutters' in shame !

I draw your kind attention to my 2 Letters, both dated 17.11.2004, addressed respectively to Ernst & Young and PricewaterhouseCoopers, and reiterate the contents therein. *I addressed the said Letters as Chairman, PERC, acting in the right and to protect the interest of the Government, which holds public property in trust for the people. I had no response, whatsoever, from both the Ernst & Young and PricewaterhouseCoopers; and there has been no response even to date. Why ? The obvious presumption therefore was that they were unable or wilfully unwilling to answer the issues raised and queries posed by me, also a member of the Institute.* Would your Committee condone such conduct and actions on the part of Ernst & Young and PricewaterhouseCoopers, in the light of the standards of conduct the Institute expects from its members ?

I trust that you and your Committee, regardless of the personalities concerned, and any socio-political pressures that may be brought to bear, would in the public interest, act firmly and rightfully, to uphold the name and reputation of the Institute and the profession, in the face of the erosion of public confidence ! It is in fact a truism, that public confidence in much needed privatisation processes for the economic development of the country, has got completely eroded, due to the scandalous and questionable manner, some even deemed fraudulent, in which such privatisation transactions have been mishandled, even by members of our own Institute !

Yours faithfully,



Nihal Sri Ameresekere

- cc: Mr. Lincoln C. Piyasena, Partner, B.R. De Silva & Co. 22/4, Vijaya Kumaranatunga Mawatha, Colombo 5.  
Mr. M. Nissanka Gunasekera, CEO / Director, Lee Hedges & Co. Ltd., Shaw Wallace Distributors Ltd.,  
353, Kollupitiya Road, Colombo 3  
Mr. Joe Muttupulle, Precedent Partner, Joe Muttupulle & Co., 252A, 2<sup>nd</sup> Floor, Galle Road, Colombo 4.  
Mr. E. Arumugam, Director, [Monitoring & Evaluation] Public Enterprises Reform Commission of Sri Lanka, 11-01 West Tower, World Trade Centre, Echelon Square, Colombo 1

\* Note:- *Emphasis added where necessary*