

BY HAND / COURIER

6th 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

5th 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, 2nd 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 11th 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# 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 11th 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#.

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, reneging 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 11th April 2003 and the conversion of these financial statements in accordance with International Accounting Standards for the purpose of working capital adjustmentit would take approximately 5-6 weeks to complete. Accordingly, we wish to submit a draft Report by 15th 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. 2nd 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 3rd 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-À-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 4th 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 5th 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 6th 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 7th , 8th , 9th ,10th , 11th , 12th 13th , 14th , 15th , 16th , 17th , 18th 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 divestiture of Shares of SLIC had been under the joint-names of PricewaterhouseCoopers, Sri Lanka, and PricewaterhouseCoopers, Indonesia

12. At the 12th 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. Aneela 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[#] 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[#] 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. Jayasundera, 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:

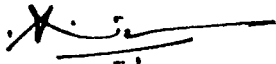
- integrity, duties *vis-a-vis* window dressing of accounts;
- professional negligence and careless approach of accountants and auditors;
- auditors duty when suspicion and fraud is aroused and their duty when put upon inquiry 'to probe to the bottom';
- in respect of implied terms which the law imports 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.

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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*