

US \$ 500 Mn. Bonds / Exchange Rates / Cost of Living

Export Proceeds & Foreign Exchange 'Leakage'

Why was no action taken on COPE Report of 2005 ?

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INACTION ON 2005 COPE & AUDITOR GENERAL'S REPORTS ?

The Parliamentary Committee on Public Enterprises (COPE) in its Report to Parliament in 2005, *inter-alia*, reported as follows:

"The Committee was seriously concerned over the activities of the CBSL (*Central Bank of Sri Lanka*) and wishes to report to the Parliament on **matters that need immediate attention of the house**" (*emphasis added*)

"The Auditor General and the Department of Public Enterprises have highlighted the following in their reports"

- **"Decline in the remittances of export earnings to the country as the Bank did not monitor the remittances of such export proceeds to the country and the foreign exchange loss to the country."** (*emphasis added*)

"Your Committee in conclusion recommends the following:"

- **"Carry out investigations on the nonrepatriation of export proceeds to Sri Lanka and take corrective action appropriately to avoid drain of foreign resources."** (*emphasis added*)

Consequently a Statement titled - "*Central Bank says monitoring in place*", was published in the '*Financial Times*' section of the '*Sunday Times*' of July 10, 2005, as attributed to the Central Bank, it would appear to 'camouflage and cover-up' the foregoing findings by the Auditor General and COPE. However, the statement did not curiously disclose the name/s of the Official/s, who has/have taken the responsibility for the issuance of such a Statement. Given the contents of the Statement, it has to be presumed that the hierarchy of the Central Bank, the then Governor, the Deputy Governors and the Members of the Monetary Board, do take full responsibility therefor.

Given the above findings and recommendations made by COPE in its Report to Parliament, **as matters that needed the immediate attention of Parliament**, (COPE Chairman then was Minister Rohitha Bogollagama), **specifically recommending, the carrying out of investigations, and to take corrective action to avoid the 'drain of foreign resources'**, the cogent question arises, as to whether this unauthorised Statement issued and caused to be published by the Central Bank, tantamounts to the contempt of COPE and Parliament ? If so, ought not those who were responsible, be held accountable and answerable ?

In fact, the above findings on the decline in the remittances of export earnings to the country, and the consequent foreign exchange loss to the country, due to the non-monitoring of remittances of export proceeds by the Central Bank, had been reported by COPE, as a matter, which had been highlighted, by none other, than the Auditor General of the country, and the Department of Public Enterprises, which gives credence to such findings, thereby having warranted independent investigations, as had been recommended by COPE.

Nevertheless, intriguingly no such investigations have been carried out to date, on such a matter of national economic and public importance. The significant question arises, as to why ?

It is patently clear, that the Statement attributed, as made by the Central Bank, with no author thereto, had endeavoured to ‘camouflage and cover-up’, casting a ‘smoke screen’, with deliberate intent to pre-empt the very investigations from being carried out, as had been recommended in the COPE Report of 2005 to Parliament, **as matters that needed immediate attention**. Ought this be the ‘attitude and/or response’ of a responsible Central Bank, on such a matter of ‘national economic and public importance’ ? Surely, ought not the Central Bank have taken prompt action ? Why did they not do so ?

'REVELATIONS' OF 'SURVEY' BY THE CONTROLLER OF EXCHANGE SUPPRESSED

The then Controller of Exchange, H.A.G. Hettiarachchi, had previously reported on May 5, 2005, the findings on the basis of responses received to a Questionnaire, laboriously circularised, as a voluntary ‘survey’ to 3054 exporters, who had exported during the quarter ended September 30, 2004, disclosed as per the data of the Customs Department. Only 1554 exporters i.e. 51% had responded, whilst in respect of 194 exporters i.e. 6% the Questionnaire had been returned undelivered, and a further 136 exporters i.e. 4% had stated they had not exported, which is a total of 330 exporters i.e. 10.1%.

Since the exporters data had been extracted from the Customs Department data of exports effected during the quarter to September 30, 2004, then are these 330 exporters, ‘ghost exporters’ ? Would this alone have not warranted investigation ? Surely, one cannot believe that there was a 10% error made by the Controller of Exchange !

Furthermore, the Questionnaire circularised by the Controller of Exchange merely required the exporters to voluntarily report information, without any proof or bank certification, whatsoever, to confirm the correctness of the repatriation of export proceeds ! In such circumstances, the exporters were at 'liberty' to have indicated whatever data ! Furthermore, there was no ‘compulsion’ imposed on the exporters to respond either indeed was this not an 'incredible manner' of verifying the extent of export proceeds ‘leakage’ ?

The multi-billion dollar question is, as to why the Central Bank, in its unauthored Statement subsequently released in the media on July 10, 2005, knowingly and deliberately suppressed the findings of its own ‘survey’, carried out by none other than the then Controller of Exchange and reported on May 5, 2005, of remittances of export proceeds received by December 31, 2004, of the exports made during the quarter ended September 30, 2004, which had revealed that only 81.07% of the export proceeds for the quarter ended September 30, 2004, had, in fact, been repatriated to the country by December 31, 2004. The balance 18.93% reportedly had been accounted as follows:

	US\$	%
Repatriated to Sri Lanka	958,640,082	81.07%
Used Abroad for Foreign Expenditure	121,111,158	10.24%
Used Abroad for Foreign Loan Repayments	4,302,571	0.36%
Retained in Commercial Banks Abroad	878,392	0.07%
Value of Short Shipments	8,620,554	0.73%
Defaults by Foreign Buyers	1,439,411	0.12%
Export Proceeds due from Foreign Buyers	<u>87,531,779</u>	<u>7.40%</u>
Total	<u>1,182,523,947</u>	<u>100.00%</u>

In view of the 'value volume' of exports, one must not be misled into 'complacency' by mere percentages, in that, it had, in fact, been ‘admitted’ by the exporters that US \$ 121.1 Mn. has been used abroad for ‘unauthorised’ expenditure from the exports of one quarter i.e. 3 months alone, that too, on the basis of

responses from only 51% of the exporters ! Similarly, foreign loan repayments during the quarter and monies retained in Commercial Banks abroad had admittedly amounted to US \$ 5.2 Mn. The export proceeds reported, but yet to be received had amounted US \$ 87.5 Mn.

All these are in respect of exports during just one quarter i.e. 3 months in 2004, and that too, only on the basis of 'volunteered' information by only 51% of the exporters, who had responded to the above 'survey', and not all the exporters ! Can a general average over 10% as 'overseas expenditure' be conceded, as permissible, in respect of traditional exports, such as bulk tea, which is a cognisable component of the total exports ?

Ought not one compare the foregoing quantum of foreign exchange, so utilised during a mere quarter, i.e. 3 months in 2004, with the foreign exchange borrowings by the Government, ranging in the regions of US \$ 3 Mn. to 50 Mn. and more ? Comparatively, the CEB re-structuring was to borrow US \$ 60 Mn.! The sale of the 'pick' of the best 100 Petrol Filling Stations to IOC, without any competitive 'bids' being called, was to raise US \$ 75 Mn., of which too, only US \$ 40 Mn. actually came ! It is beyond comprehension, as to why, one cannot simply understand the significant comparison ? How could one, with any responsibility, endeavour to cast a 'smoke screen' to 'camouflage and cover-up' the foregoing ?

Has not the above '**foreign exchange drain and loss**', alone been 'one of the major contributory factors' to have precipitated the desperate need for the proposed borrowing of US \$ 500 Mn. in foreign commercial bonds ? Has this need to borrow US \$ 500 Mn. in foreign commercial bonds, surfaced suddenly, or was it anticipated as planned, if so, when was it planned for and anticipated, and for what purpose ?

'REVEALINGS' IN 'SURVEY' OF EXCHANGE CONTROLLER !

As a result of sustained representations and pressures, the Central Bank commenced an exercise in December 2004, to monitor the repatriation of export proceeds in respect of the exports effected during the 3rd Quarter of 2004 i.e. quarter ended September 30, 2004.

The Controller of Exchange circularised a Questionnaire to all exporters, who had exported during the 3rd Quarter of 2004, as per information collected from the Customs Department, requiring such exporters to voluntarily answer such Questionnaire, giving informations in respect of exports effected during the 3rd Quarter of 2004, to ascertain as to what extent exports proceeds had been remitted to Sri Lanka, in respect of the exports effected during the 3rd Quarter of 2004, by the end of the 4th Quarter of 2004 i.e. by December 31, 2004.

Notification to All Exporters

Central Bank of Sri Lanka (CBSL) will introduce an export proceeds monitoring mechanism to improve the foreign exchange management system. The information that the Central Bank will be collecting under this system will also help to improve the compilation of balance of payments statistics and analysis of external sector developments. All exporters are kindly requested to furnish details on exports and export proceeds to me on a quarterly basis.

This monitoring mechanism will be implemented with effect from 03 January 2005. The relevant forms with the necessary guidelines will be made available to all exporters.

H.A.G. Hettiarachchi
Controller of Exchange
H.M.P. Herath
Add. Controller of Exchange



Exchange Control Department
Central Bank of Sri Lanka
30, Janadhipathi Mawatha, Colombo 01.
Telephone : 2477244, 2477240 Fax : 2477716
E-mail: ecd@cbsl.lk
Website : <http://www.centralbanklanka.org>

The Controller of Exchange, H.A.G. Hettiarachchi consequently reported on May 5, 2005, the data of the survey to then Central Bank Governor, Sunil Mendis, Deputy Governor, Rane Jayamaha, Asst. to the Governor, R. Jayatissa and Director Economic Research, H.N. Thenuwara, giving the data separately for BOI and non-BOI exporters.

The data had been processed and reported, as per the 'voluntary' responses received to the circularised Questionnaire of the Controller of Exchange, forwarded to 3054 exporters, of which 2230 had been Non-BOI exporters, whilst 824 had been BOI exporters. The number of responses received, since there was 'intriguingly' no 'compulsion' to respond, amounted to only 51% and was analysed as follows:

	<u>Non BOI</u>		<u>BOI</u>		<u>Total</u>	
		%		%		%
No of Responses to the Questionnaire	1,247	56%	307	37%	1,554	51%
No of Questionnaires returned undelivered	161	7%	33	4%	194	6%
No of Responses stating that they had not exported	136	6%	0	0%	136	4%
No of Responses not yet received	686	31%	484	59%	1,170	39%
Total Number of Exporters	2,230	100%	824	100%	3,054	100%

The answers in respect of Non-BOI exporters, as per the responses to the Questionnaire circularised, as reported, had been as follows:

	(In US\$)	%
Repatriated to Sri Lanka	545,056,687	80.2%
Used Abroad for Foreign Expenditure	61,706,203	9.1%
Used Abroad for Foreign Loan Repayments	2,855,619	0.4%

Retained in Commercial Banks Abroad	445,354	0.1%
Value of Short Shipments	4,263,952	0.6%
Defaults by Foreign Buyers	434,842	0.1%
Export Proceeds due form Foreign Buyers	<u>64,513,075</u>	<u>9.5%</u>
Total	<u>679,275,733</u>	<u>100.0%</u>

The answers in respect of BOI exporters, as per the responses to the Questionnaire circularised, as reported, had been as follows:

	(In US\$)	%
Repatriated to Sri Lanka	413,583,395	82.2%
Used abroad for Foreign Expenditure	59,404,956	11.8%
Used abroad for Foreign Loan Repayments	1,446,952	0.3%
Retained in Commercial Banks abroad	433,038	0.1%
Value of Short Shipments	4,356,602	0.9%
Defaults by Foreign Buyers	1,004,569	0.2%
Export Proceeds due form Foreign Buyers	<u>23,018,704</u>	<u>4.6%</u>
Total	<u>503,248,214</u>	<u>100.0%</u>

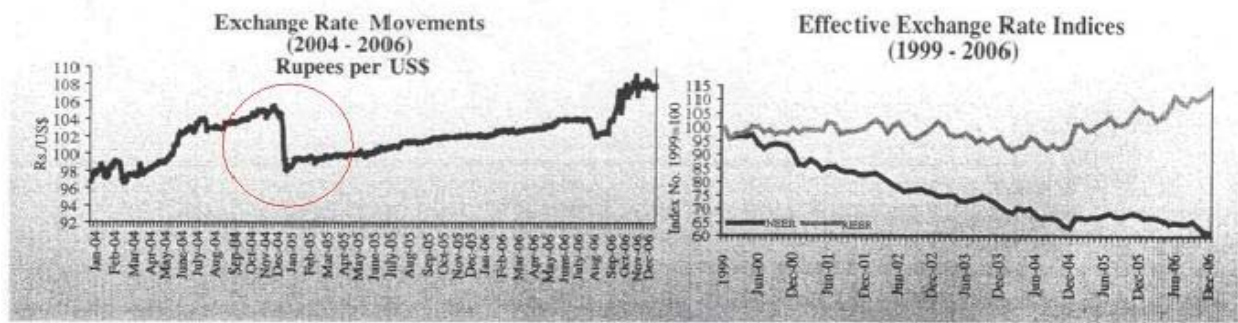
The totals in respect of both non-BOI and BOI exporters, as reported, had been as follows:

	(In US\$)	%
Repatriated to Sri Lanka	958,640,082	81.07%
Used Abroad for Foreign Expenditure	121,111,158	10.24%
Used Abroad for Foreign Loan Repayments	4,302,571	0.36%
Retained in Commercial Banks Abroad	878,392	0.07%
Value of Short Shipments	8,620,554	0.73%
Defaults by Foreign Buyers	1,439,411	0.12%
Export Proceeds due from Foreign Buyers	<u>87,531,779</u>	<u>7.40%</u>
Total	<u>1,182,523,947</u>	<u>100.00%</u>

Coincidentally, with this exercise being carried out by the Central Bank in December 2004, as per the annexed Schedule "A", the US Dollar exchange rate dropped sharply from over Rs. 105/- to below Rs. 97/- over a very short period of time !

Chart 5.10

Exchange Rate Movements



- Courtesy, Central Bank of Sri Lanka

Intriguingly, the question arises, as to whether not, this was as a result of the Questionnaire circularised in the 'survey' carried out by the Controller of Exchange, causing 'apprehensions' of 'consequences' ?

After having gathered informations in respect of each exporter from the data base of exports effected during the 3rd quarter of 2004 available with the Customs Department, and to have sent out 3054 Questionnaires, would have been a very 'tedious' task, subject also to human error, and the responses, in the absence of supportive proof or evidence, and without banks certifications, would be 'unreliable'. The processing of the responses too, would have been a further 'arduous' task, also subject to human error ! This impractical and unreliable exercise would be even more tedious and meaningless, lacking in credibility, in being repeated, on a quarterly basis, also with no action taken thereon to have investigated and arrested the 'leakage' !

Not only had the 'disclosures' made by this report of the Controller of Exchange, knowingly and deliberately been suppressed, but also ironically, the very 'leakage' of such report, disclosing such 'factual findings', had been 'inquired' into and the Officers 'berated' by the Central Bank hierarchy !

The legitimacy of 'squealing' in the public interest is recognised both in the developed and developing world ! The disclosure of the famous mega corporate failures, with 'startling fraud and corruption', were as a result of 'squealing' ! Such 'suppressed report' had been made available to none other than a Member of Parliament, who is elected by the people and thereby bound to uphold and protect public interest ! The information was not in respect of any particularly exporter, but the results of a 'survey' publicly carried out, with the public having every right to know the results thereof, inasmuch as the data published in the Central Bank Annual Reports ! Hence, what was the 'real motive' for such 'anxiety' to 'cover-up' ?

REPATRIATION REQUIREMENTS 'QUESTIONABLY' ABOLISHED IN 1993

The legitimate procedure, which had been in existence in terms of Section 22 of the Exchange Control Act, for the Controller of Exchange to enforce the requirement for the 'repatriation' of export proceeds, had been abolished by Gazette Notifications Nos. 759/15 and 813/14 published by then Minister of Finance, D.B. Wijetunga, respectively dated 25.3.1993, when R. Paskaralingam was the Secretary, Ministry of Finance, and dated 29.3.1994, when R.V.K.K. Weragoda was the Secretary, Ministry of Finance.

The said Gazetted Orders read as follows:

Order dated 25.3.1993

“Exemption is hereby granted from the provisions of Section 22(4) of the Exchange Control Act, No. 24 of 1953 as amended by the Exchange Control (Amendment) Law No. 39 of 1973, with regard to payment for goods exported from Sri Lanka.”

Order dated 29.3.1994

“The Order published in Gazette Extraordinary of the Republic of Sri Lanka No. 187/2 of 27.10.1975, by the Minister of Finance by virtue of powers vested in him under Section 22 (3) of the Exchange Control Act is hereby rescinded.”

Thereafter, General Elections were held in August 1994, and the Presidential Elections were held in November 1994; and consequently, there was a change of the Government, with a new President.

The question arises, as to whether these 'questionable' Gazette Notifications referred to above, published on 25.3.1993 and 29.3.1994, without full disclosure and debate in the public domain, had been approved and sanctioned by the then Monetary Board, realising the full implications and consequences thereof ? The question arises, as to whether it had been done 'surreptitiously', on the pretext of Sri Lanka then becoming an IMF Article VIII status country, just prior to the above elections, to facilitate the 'flight of capital', for those seeking 'refuge and haven' in foreign countries ?

Prior to the above Gazetted Orders, export proceeds had to be repatriated to the country, within 6-months of the exports, as had been required under Section 22 of the Exchange Control Act, which requirement had been 'curiously abolished' by the above 'questionable' and 'intriguing' Gazetted Orders, without any justifiable reasons, made known publicly !

From the analysis of the above responses to the Questionnaire circularised by the Controller of Exchange, would it not disclose that some of the exporters had 'admittedly' violated the provisions of the Exchange Control Act, warranting action to be taken, inasmuch as actions have been taken in respect of even Credit Card payments of comparatively insignificant and trivial values, with much pontification and publicity in the public domain by the Central Bank ?

Though the gazetted Orders had precluded the Controller of Exchange from enforcing provisions of Section 22 of the Exchange Control Act, the said Gazetted Orders, however, do not preclude the Controller of Exchange from enforcing provisions of Section 5, *inter-alia*, in relation to borrowing outside Sri Lanka, Section 6AA, *inter-alia*, in relation to opening and operating bank accounts outside Sri Lanka and Sections 7 and 8, *inter-alia*, in relation to payments made outside Sri Lanka. Why has action not been taken, as in the 'Credit Card' issue, of much less significance ? Why such 'duplicity' by the Central Bank ?

'PROCEDURES' IN IMF ARTICLE VIII STATUS COUNTRIES

IMF 'Article VIII Status' is essentially, *vis-à-vis*, the 'liberalisation' of imports and exports, that too, subject to, quotas, restrictions and sanctions, imposed even by several countries with 'free economies', and such 'status' does not prevent countries from 'monitoring and enforcing' the correct repatriation of export proceeds. Exports must necessarily result in proceeds being repatriated back to the country, within a stipulated period of time. Furthermore, exports ought not be permitted to be effected, without the export documentations being channelled through the banking system.

Given the ‘perilous’ state of the economy, Sri Lanka could ‘ill-afford’ the prevalent ‘lunacy’ ! Given the overall impact on the national economy, to avoid doing so, on the pretext that bank charges are prohibitive would be ‘nonsensical’ !. Where any exceptions are warranted due to emergencies and/or bank holidays, separate procedures and guidelines ought to be adopted. The banking system is not costly, as baselessly and curiously, ‘questionably’ so made out to be, by those interested in ‘tediously’ ‘siphoning out’ foreign exchange from the country !

As per the IMF Report 2004 on ‘Exchange Arrangements & Exchange Restrictions’, it is disclosed that 98 countries enforced exports proceeds ‘repatriation’ requirements, whilst 75 countries further enforced export proceeds ‘surrender’ requirements, where export proceeds are compelled to be ‘surrendered’ and ‘converted’ into the currency of that particular country.

Countries that had done away with export proceeds ‘repatriation’ and ‘surrender’ requirements, are those developed countries, with ‘considerable foreign exchange reserves’, and those attracting the ‘inflow of foreign capital’. Sri Lanka, on the other hand, is ‘begging’ for ‘foreign investments’ and ‘foreign borrowings’ !

To compare Sri Lanka, with practices in developed countries, who enjoy substantial foreign exchange reserves and attract foreign capital, is puerile, ill-logical and misleading ! On the other hand, to compare with those practices in countries, such as Indonesia and Philippines, is far worse ! To adduce that several countries are moving away from export proceeds ‘repatriation’ and ‘surrender’ requirements, is no ‘justification’ to cover-up, what had happened in Sri Lanka since 1993 ! Unlike Sri Lanka, those countries have now developed adequate foreign exchange reserves and foreign capital inflows ! The cogent question is, what were the procedures and practices in those very countries, during the years 1993 to 2004, and even upto 2006 ?

Among the countries in the region that enforce both exports proceeds ‘repatriation’ requirements and exports proceeds ‘surrender’ requirements, are India, Pakistan, China, Malaysia, Thailand and South Africa. Extracts of procedures enforced in these countries, as per the IMF Report 2004 on ‘Exchange Arrangements & Exchange Restrictions’, are set out in the annexed Schedule “**B**”.

All these countries, like Sri Lanka, are ‘Article VIII Status’ countries. Hence the question arises, as to how, and why, Sri Lanka had not and does not enforce export proceeds ‘surrender’ requirements, or in the least enforce exports proceeds ‘repatriation’ requirements ? Even the Republic of Korea enforces exports proceeds ‘repatriation’ requirements, whilst South Korea mainly transacts and deals in US Dollar terms. Are not the economies of these countries very much larger and stronger, than that of Sri Lanka ? Ironically, on the other hand, Sri Lanka in fact ‘borrows in foreign exchange’ from some of these very countries ! Whilst these countries have procedures to enforce exports proceeds ‘repatriation’ requirements and exports proceeds ‘surrender’ requirements, Sri Lanka, on the other hand, does not enforce such requirements, not even exports proceeds ‘repatriation’ requirements since 1993, consequent to the two ‘questionable’ gazetted Orders referred to above ! Sri Lanka could have ‘ill-afforded’ such liberty, warranting investigation and ‘rectification’ in the given crisis now !

‘CONTRACTUAL OBLIGATION’ TO REPATRIATE EXPORT PROCEEDS

The IMF Resident Representative in Sri Lanka in 2005, Jeremy Carter supportively concurred with the foregoing, and in fact, urged that the Government ought to monitor the ‘repatriation’ of export proceeds, at least where the Government had granted concessions to exporters, *vis-à-vis*, through the BOI, and other tax holidays and concessions, zero rated VAT, concessionary interest, etc. Such concessions granted by the Government foregoing ‘public revenue’, contractually obligated and bound the exporters to ensure the repatriation of export proceeds to Sri Lanka. If not, what is the purpose of having granted such ‘concessions’ to promote exports, foregoing valuable ‘public revenue’ ? *What is the basic logic ?*

Is not the realisation of exports proceeds, the very objective of the Government, in granting to exporters, such very concessions, foregoing 'public revenue' ? Sri Lanka is a 'foreign exchange seeking country', through 'earnings', 'investments' and 'loans' !

When concessions are afforded to promote exports by way of import duty exemptions, granted even prior to any exports being effected, with subsequent tax holidays, concessionary rates of interests, zero rated VAT, etc., thereby foregoing valuable 'public revenue', then would not there come into force and operation, a 'contractual obligation' on the part of the exporters, who had obtained such concessions, at the cost of valuable 'public revenue', to ensure that export proceeds are 'repatriated' into Sri Lanka ?

Central Bank concedes that export proceeds, not repatriated back to Sri Lanka, could not be used for the acquisition of properties or other capital assets outside Sri Lanka, and questionably 'conjectures' that such non-repatriation could have been to 'cover up exporters foreign currency expenditure, payment defaults, etc'. Without proper documentation and monitoring, how could there be any such postulation or conjecture ? Would not the 'export of goods', with no inward repatriation of foreign exchange therefor, tantamount to the 'outward remittance' of foreign exchange from the country, which is subject to the provisions of the Exchange Control Act, with heavy fines imposed ?

Ought not the expenditure incurred on exports, be necessarily 'monitored' by the Controller of Exchange, inasmuch as foreign exchange 'outward remittances' are monitored and controlled in terms of the Exchange Control Act, including those of overseas Offices, established with the permission granted by the Controller of Exchange ? Why the double standards ?

Would not the 'systematic non-repatriation' of exports proceeds tantamount to the 'export of capital', which is prohibited, without the approval of the Controller of Exchange. In certain instances, this has led to a number of industries crashing in the export sector, with investors having decamped, with considerable exports proceeds not repatriated back to Sri Lanka; leaving statutory and other debts, and the employees in the lurch; resulting in the appointment of a Cabinet Sub-Committee, chaired by the Minister of Labour, to deal with the consequential problems, 'saddled' on the Sri Lanka Government !

Ironically, on the other hand, 'importers are subject to strict supervision', with warnings of dire consequences, by the Controller of Exchange, including also on petty Credit Card payments ! Ought not exporters, who have been granted concessions and incentives foregoing valuable 'public revenue', also be similarly subjected to 'equal treatment before the law', as the importers are subjected to ? If not, why ?

Whilst a 'blind-eye', as it were, is turned on the exporters, high import duties, taxes and other conditions are imposed to restrict imports to 'prevent' and/or 'reduce' the 'outflow of foreign exchange', directly adversely impacting on the 'cost of living' !

There is no argument, whatsoever, for not mandating the export proceeds 'repatriation' requirements, particularly when exporters had been given import duty concessions, even before the commencement of exports, and thereafter several other tax and other concessions, foregoing 'public revenue'. This would be the Government's 'investment' to achieve exports, not mere 'reported figures', but the actual realisation of the export proceeds, to 'protect' the much needed foreign exchange requirements of the country.

One simply cannot understand, what is so 'sensitive' as 'purported' for mandating export proceeds 'repatriation' requirements and enforcing the same, when there is a 'contractual legal obligation' to have done so ? Whereas importers and Credit Card payments are being dealt with otherwise, without any such purported 'sensitivity' ! *Why such hypocrisy ?*

The Central Bank recently permitted 'indirect exporters' to maintain 'foreign currency accounts', 'strictly' for the purpose of utilising such foreign exchange for the purpose of importing 'input

requirements' of the 'indirect exporters', and the Central Bank stipulating that no cash or travellers cheques should be issued from such 'foreign currency accounts', and further stipulating that any excess at the end of each month, over US \$ 5000/-, should be 'surrendered and converted' into Sri Lanka Rupees at the end of each month !

Does it therefore not stand to logical reason, that the 'direct exporters', also necessarily must be subjected to the same restrictions and enforcement procedures, without any discrimination and 'unequal treatment before the law' ? What is the reason not to have done so, and not to do so ? Why such discrimination of the 'small indirect exporter entrepreneurs' ? Is it not 'unequal treatment before the law', violative of the fundamental right, to 'equal treatment before the law', guaranteed under the Constitution ?

CENTRAL BANK 'ADMITS' ONLY 80% REPATRIATION OF EXPORT PROCEEDS

Even prior to the voluntary 'survey' carried out by the Controller of Exchange, the then Governor, Central Bank, Sunil Mendis by Letter dated October 20, 2004, admitted that it is estimated that only 80% of export proceeds have been repatriated to Sri Lanka, *viz*

"The Central Bank has also done a special study on the receipt of export proceeds by matching Customs data with export proceeds of banks. This study has revealed that over 80 per cent of export proceeds have been brought into the country. In the case of garment exports where inputs (fabric and other accessories) are provided by the buyer, it is only the value addition that is derived at this end. Once the Customs export data is adjusted for this impact, it is estimated that 88 per cent of export proceeds are brought into the country. The balance could be due to holding of export proceeds abroad to cover up exporters' foreign currency expenditure; identification and categorization problems; and payment defaults by importers etc. These indicate that there is no large scale retention of export proceeds abroad."

The then Governor, Central Bank further baselessly 'postulated', that when 'adjusted' for 'exports, where no foreign exchange has been paid for corresponding imports of fabric and other accessories in the garment industry', that the 'non-repatriation' of export proceeds could be estimated to be 12% of exports ! What and where were the facts to support such 'postulation' ?

The then Governor, Central Bank further 'conjectured', that this balance '12% non-repatriation' of export proceeds' could be due to "holding of export proceeds abroad to cover up exporters' foreign currency expenditure; identification and categorization problems; and payment defaults by importers etc'" ! What and where were the facts for such 'conjecture' ?

Disregarding the baseless 'postulation' and 'conjecture' of the then Governor, Central Bank, the percentage of non-repatriation of export proceeds, reckoned by the Central Bank, as estimated to be 20%, is an 'average', where one exporter would have repatriated 100%, whilst another exporter would have not repatriated at all, thereby having, in effect, 'exported Capital' in the form of goods. Would not the 'export of capital' be a violation of the provisions of the Exchange Control Act, attracting penalties in such regard ? Why did the Central Bank turn a 'blind-eye' on such 'miscreant' exporters, whilst on the other hand, strictly probing Credit Card payments, comparatively of 'insignificant' amounts ?

As per the Central Bank Annual Reports, Exports since 1993 have been reported as follows:

	<u>US \$ Mn.</u>
1993	2,863
1994	3,209
1995	3,807
1996	4,095
1997	4,639
1998	4,798

1999	4,610
2000	5,522
2001	4,817
2002	4,699
2003	5,133
2004	5,757
2005	6,347
2006	<u>6,883</u>
	<u>67,179</u>

A 20% 'non-repatriation' would amount to US \$ 13,436 Mn., a '15% non-repatriation' would amount to US \$ 10,077 Mn., and a 10% 'non-repatriation' would amount to US \$ 6,718 Mn., for the years 1993 to 2006. This is several times the country's 'foreign reserves' !

On the other hand, foreign inward remittances since 1993 to 2006, essentially from the poor Sri Lankan employees working abroad, undergoing much hardship, with the sacrifice of family life, particularly working in the Middle East, as reported in the Central Bank Annual Reports, have been as follows:

	<u>US \$ Mn.</u>
1993	625
1994	706
1995	727
1996	832
1997	921
1998	999
1999	1,056
2000	1,160
2001	1,155
2002	1,287
2003	1,414
2004	1,564
2005	1,918
2006	<u>2,326</u>
	<u>16,690</u>

How could one 'freely' have permitted such cognisable 'leakage' of foreign exchange in the region of US \$ 6,718 Mn. to US \$ 13,436 Mn. on exports during the years 1993 to 2006, whilst poor immigrant workers have remitted US \$ 16,690 Mn. during the years 1993 to 2006, as per Central Bank Reports ? Is it not a fact that these 'foreign exchange remittances' from the poor Sri Lankan workers toiling abroad, contributed to sustain the economy ? In the absence of which, what would have been the state of the economy ?

Ironically, ought not these 'foreign exchange remittances' from poor Sri Lankan immigrant workers, be compared with the estimated 'leakage' of export proceeds ? If not for the 'foreign exchange remittances' from these poor workers toiling abroad, what would have been the resultant foreign exchange position today, *vis-à-vis*, financing of imports, foreign payments, and foreign loans ? Would not the economy of the country have been in a far worse, perhaps even a 'bankrupt' position today ?

CENTRAL BANK ESTIMATE OF ONLY 80% REPATRIATION 'CORROBORATED' BY 'SURVEY'

The summary of 'revelations' from the responses provided to the Questionnaires of the subsequent voluntary 'survey' carried out by the Controller of Exchange, without any supportive documentary proof

or evidence in support thereof, or certifications, as warranted, from banks, enabling the verification of the correctness of the informations contained in the responses, given by the exporters to the Questionnaires, were reported by the Controller of Exchange on May 5, 2005 to be as follows:

	US\$	%
Repatriated to Sri Lanka	958,640,082	81.07%
Used Abroad for Foreign Expenditure	121,111,158	10.24%
Used Abroad for Foreign Loan Repayments	4,302,571	0.36%
Retained in Commercial Banks Abroad	878,392	0.07%
Value of Short Shipments	8,620,554	0.73%
Defaults by Foreign Buyers	1,439,411	0.12%
Export Proceeds due from Foreign Buyers	<u>87,531,779</u>	<u>7.40%</u>
Total	<u>1,182,523,947</u>	<u>100.00%</u>

Quite significantly, even these ‘voluntary’ responses in respect of the 3rd Quarter of 2004, revealed that only 81% of the export proceeds had, in fact, been repatriated into the country by December 31, 2004. This indeed ‘corroborated’ the 80% estimate previously given by the then Governor, Central Bank on October 20, 2004 !

The balance 19% ‘non-repatriation’ by the exporters had specifically been accounted for by them, that too, by only 51% of the exporters, since ‘intriguingly’ there was no ‘compulsion’ imposed on the exporters to answer the Questionnaires.

There was no ‘disclosure’ by the said ‘survey’ by the Controller of Exchange, that 8% of the 20% leakage has been in respect of ‘garment exports, where fabric and other accessories are provided by the buyers’, as had been baselessly ‘postulated’ by then Governor, Central Bank. Surely, are not such garment exports invoiced for the ‘value addition’ of ‘cutting, making and trimming’ ? If the total value of the made garments is invoiced for, then would not there be the need to pay for the ‘import of fabric and other accessories’ ?

However, it was not intriguingly revealed that the balance 12%, after the above baselessly ‘postulated’ 8% ‘adjustment’, to a large extent is, in respect of “holding of export proceeds abroad to cover up exporters’ foreign currency expenditure; identification and categorization problems; and payment defaults by importers, etc”, as the then Governor, Central Bank had ‘conjectured’ ! Nevertheless, this is an ‘overall average’ and not specific to exporters, some of whom would have ‘swindled’ by expending well above such ‘overall average’ !

Therefore, the ‘revelations’ of the ‘survey’, ‘gives the lie’ to the purported ‘adjustment’ ‘postulated’ by the then Governor, Central Bank to explain the non-repatriation of the 20% ! Why did the then Governor, Central Bank, Sunil Mendis, purport to so ‘postulate’ and how did he so ‘conjecture’ ? Was it because, he too, was from the corporate sector, well involved in exports ?

In such circumstances, how could one ‘honestly and responsibly’ have ever stated, that the leakage is only 1%, as was stated by the then Governor, Central Bank, Sunil Mendis, knowingly ‘suppressing’ the aforesaid ‘survey’ findings by the Controller of Exchange, at a Meeting on or about May 15, 2005 chaired by the then Prime Minister, present President, in the presence of Lalith Weeratunga, P.B. Jayasundera, a Member of the Monetary Board, and several other Ministers ?

SALE OF PUBLIC ASSETS FOREIGN EXCHANGE REALISATION

Sales proceeds realised in foreign exchange, as per Central Bank Reports, as given below, had amounted cumulatively to Rs. 45,499 Mn., which today, comparatively, amounts to only US Dollars 400 Mn.

Name of Public Enterprise	Percentage Privatised (including Workers' Shares)	Date of Privatisation (First Sale)	Amount Realised in Foreign Exchange (Rs. million)
Thulhiriya Textile Mills	100	Feb - 90	200.0
Pugoda Textile Mills Ltd. (b) (c)	100	Jun - 90	30.0
Ceylon Oxygen Ltd.	100	Nov - 90	60.0
Dankotuwa Porcelain Ltd.	50	Dec - 90	102.0
Ceylon Oils and Fats Ltd. (c)	60	Jan - 92	174.5
Nylon 6 Plant	100	Feb - 92	227.7
Kelani Tyres (b)	100	Feb - 92	40.0
Distilleries Company of Sri Lanka	100	Mar - 92	169.4
Lanka Ceramics Ltd.	100	Jun - 92	56.3
Lanka Porcelain Pvt., Ltd.	n.a.	Sep - 92	95.4
Mattegema Textile Mills Ltd. (b) (c)	100	Oct - 93	9.2
Puttalam Cement Co., Ltd.	100	Dec - 93	1,113.8
Colombo Gas Co., Ltd.	51	Dec - 95	1,997.8
Ceylon Steel Corporation Ltd.	90	Dec - 96	849.5
Ceylon Glass Co., Ltd.	100	n.a.	44.7
Prima Ceylon Limited	100	Jun - 01	5,870.0
National Development Bank	57.8	Mar - 93	4,435.2
People's Merchant Bank Ltd.	100	Jun - 93	18.8
United Motors	100	Dec - 89	90.0
Asian Hotels Corporation Ltd.	91.4	Jan - 92	597.3
Sathosa Motors Ltd.	100	Aug - 92	49.5
Trans Asia Hotel (Ramada)	86.9	May - 93	562.2
Colombo International School (Sri Lanka) Ltd.	100	Nov - 93	90.3
Lanka Lubricants Ltd.	100	Jul - 94	697.9
Orient Lanka Ltd.	100	May - 96	1,740.0
Sri Lanka Telecom Ltd.	50.5	Aug - 96	13,902.1
Air Lanka Ltd.	40	Mar - 98	4,979.0
Ceylon Petroleum Corporation	33	Dec - 03	<u>7,296.7</u>
			<u>45,499.3</u>

It would be noted from the foregoing, that Rs. 41,335 Mn. (i.e. today equivalent to US Dollars 364 Mn.) alone had been realized on the sale of Puttalam Cement, Colombo Gas, Prima, NDB, Orient Lanka, SLT, Air Lanka and CPC (whereas that too, against US Dollars 75 Mn. reported for CPC only US Dollars 40 Mn. had been brought in)

Had the exports proceeds 'repatriation' and export proceeds 'surrender' requirements been in force in the country since 1993, without such requirements having been questionably abolished by the Gazetted Orders of 1993 and 1994, would not the foreign exchange reserves have been more than the present levels, the foreign borrowings levels much lower, and the foreign exchange rates, for instance, US \$ rate perhaps below Rs. 100/-, perhaps below Rs. 80/-, and the economy in a much better position; without having been compelled to desperately sell 'public assets' to raise foreign exchange, and desperately raise loans in foreign exchange on conditions imposed by lending agencies, and now in 'foreign commercial bonds' in an adhoc manner ?

If the countries in South Asia / South-East Asia enforce strict 'repatriation' and documentation regimes in respect of export proceeds, how could Sri Lanka, which desperately seeks foreign exchange 'earnings', 'investments' and 'loans', stand out alone not doing so, whilst at the same time, time and again, out of compulsion, having had to dispose of valuable public assets for the purpose of raising urgently required foreign exchange ? On the contrary, ought not the priority have been, first the enforcement of export proceeds 'repatriation' requirement and exports proceeds 'surrender' requirement ?

Would not such 'leakage' of foreign exchange *via* exports have had a 'cognisable impact cumulatively' since 1993, on the foreign exchange reserves of the country and the foreign exchange rates, directly adversely impacting upon the 'cost of living' ? Could the country, given its economic realities, have complacently afforded such 'leakage' ? What was the 'rationale' and 'logic' ?

On the contrary, had the export proceeds 'repatriation' and export proceeds 'surrender' requirements been continued to be in force in Sri Lanka since 1993, with all exports required to be channelled through the banking system, then what would have been the current foreign exchange position, *vis-à-vis*, the foreign exchange reserves, foreign loans, and the foreign exchange rates, in the country today ?

LEAKAGES ANTITHETIC TO THE RULE OF LAW

What is the pragmatic purpose of the BOI having signed agreements, granting concessions and approvals, in the belief that there would be direct foreign investments, when in actual fact, if such approvals only result in a 'net out-flow' and 'drainage' of valuable foreign exchange, by the 'non-repatriation' of export proceeds ?

Had not the investors signed agreements with the BOI, based upon representations made, *vis-à-vis*, their investments and exports ? Surely, BOI agreements cannot merely contractually obligate the Government, on one hand, without the reciprocal contractual obligations on the other hand, on the part of the investors to perform, as they had held out in their application and documentation, in seeking BOI 'approvals' and 'concessions' from the Government !

Ought not therefore, the achievement of the objective of 'foreign investment inflows', through BOI investments, and consequent export earnings, necessarily be monitored, verified and reported publicly ? Not only should this be applicable to BOI approved exporters, but also to all exporters, since it is a prohibition to 'export capital', without the express sanction of the Controller of Exchange.

International conventions and treaties, such as those in relation to corruption, drug peddling, money laundering, terrorism, etc., mandate the 'tracking' of the movement of flow of foreign funds, and for appropriate actions to be taken by the Government, where there is 'flouting' of such conventions and treaties. In the 'absence of the proper monitoring' of export proceeds, with the attendant 'leakages', how could the obligations under such conventions and treaties have been or be conformed to ?

With the enactment of Financial Transactions Reporting Act No. 6 of 2007, Prevention of Money Laundering Act No. 5 of 2006, and the convention on the Suppression of Terrorist Financing Act No. 25 of 2005, make such international obligations statutorily mandated to be applicable to transactions in Sri Lanka. Export or import of goods, without 'tracking' the monetary payment therefor, would indeed be a problem, in the effective enforcement of the provisions of these contemporary statutes, for the due achievement of the objectives such statutes had been enacted for !

One is aware of the 'stringent' manner in which the Controller of Exchange 'monitors' the accountability of and the repatriation of the profits of Sri Lankan companies, permitted by him to function abroad, and also how stringently foreign 'outward remittances' are monitored, to ensure that there is no 'repatriation of capital'. With such 'leakage' of export proceeds, have exporters been granted 'freedom and licence' to build-up empires and wealth abroad, at the cost of the national economy and the impoverishment of the people of the country ?

How can it be justified to have negligently or otherwise allowed a 'privileged few', the opportunity of building empires and accumulating wealth abroad, 'stashing away' foreign exchange, at the cost of the

national economy, to the detriment of the interest of the poor people of the country, in such questionable manner ? 'Privileges and benefits', without adherence to the Rule of Law cannot be arbitrarily conferred on a 'privileged few', to the loss and detriment of the interest of the broader spectrum of the impoverished people of the country, further eroding their legitimate right to a better quality of life, and the consequent 'unbearable rise in the cost of living'.

The cogent question arises, as to whether it was to 'regularise' such empire building and the accumulation of wealth abroad, at the cost of the national economy, that the perverse 'all encompassing Tax Amnesty' was sought to be granted under the 'guise' of the Inland Revenue (Special Provisions) Act No. 10 of 2003, including also for assets and cash 'surreptitiously' accumulated abroad ? The said perverse Act was determined by the Supreme Court as 'antithetic to the rule of law', and 'to have defrauded public revenue causing extensive loss to the State', and was consequently 'repealed' by the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, due to the public 'hue and cry' !

On such premise, that the Supreme Court had determined the said repealed 'Amnesty', as a fraud perpetrated on public revenue, no protection, right or entitlement, or any legitimate expectancy, whatsoever, flows from such 'Amnesty', to whomsoever. Thereafter, with no 'Amnesty' being afforded to 'hide' assets and cash, surreptitiously accumulated abroad, the Controller of Exchange in terms of Section 39(5) of the Exchange Control Act, directed the then Commissioner General, Inland Revenue to forward the particulars of those, who had declared assets and cash, surreptitiously accumulated abroad.

Questionably, due to 'unknown pressures and influences', then Commissioner General, Inland Revenue, failed and neglected to forward the same, disregarding reminders, in blatant violation of the provisions of the Exchange Control Act, thereby committing a punishable offence in terms of Section 51 of the Exchange Control Act. Incidentally, Secretary to the Treasury, P.B. Jayasundera intervened to have R.P.L Weerasinghe appointed as Tax Advisor, Ministry of Finance, having failed to get him a further extension, as the Commissioner General, Inland Revenue, due to opposition from all Unions of the Inland Revenue Department, who resorted to 'go-slows', as a protest.

As to whether, the succeeding Commissioner General, Inland Revenue, A.A. Wijepala had complied with such lawful direction of the Controller of Exchange, to forward particulars of assets and cash, surreptitiously accumulated abroad by persons, is not known !

Recently the Central Bank carried out a 'hue and cry', with much publicity and 'full page advertisements' and educational programmes, on alleged 'pyramid' scams, even enacting special statutory provisions therefor; and also, *vis-à-vis*, the abuse of Credit Cards to remit over US \$ 3000/-, and the monitoring by the Controller of Exchange of Credit Card payments over US \$ 3000/-. Such payments 'are deemed to be export of capital', unless proven that goods have been imported to such value.

As per media reports attributed to Central Bank sources, the total 'Credit Card issue' was reckoned to be in the region of a mere US \$ 30 Mn., which ought be compared with the estimated 'leakage of export proceeds' in the region of US \$ 6,718 Mn., to US \$ 13,436 Mn. during the years 1993 to 2006. In this context, one simply cannot comprehend the 'duplicity', and the evasive and 'lukewarm reaction', and the endeavour to cast a 'smoke screen' to cover-up the 'foreign exchange leakage' of 'far greater proportion' and such 'puerile' foreign exchange mismanagement !

Incredibly, the question arises, as to why there is no such 'similar reaction' by the Central Bank, to such a much 'larger issue' of 'national economic' importance ? Is it because, politicians and a privileged few,

craved to surreptitiously 'build empires' and 'accumulate wealth' abroad, at public cost, with 'miscreant' exporters 'lobbying' to prevent the enforcement of the 'Rule of Law' ?

Ironically, the Questionnaires to exporters sent by the Controller of Exchange, to report on the repatriation of export proceeds, was merely 'voluntary', with no compulsion, whatsoever, imposed on the exporters, 'to account for the repatriation of export proceeds', and with 'admitted' violations by the exporters of the Exchange Control Act, brazenly 'ignored' by the Controller of Exchange !

On the other hand, notifications by the Controller of Exchange on Credit Card payments, calling for explanations from the 'Credit Card holders' had to be 'compulsorily' replied, if not, resulting in action in terms of the Exchange Control Act. Why was there such blatant 'duplicity' ?

If repatriation is required immediately in respect of all exports over 180 days, then would not there be a cognisable 'inflow of foreign exchange', immediately impacting on the depreciating Sri Lanka Rupee against foreign currencies and the country's foreign reserves, thereby not necessitating the urgent borrowings in 'foreign commercial bonds' ?

Had there been a 'systematic enforcement' of export proceeds 'repatriation' and export proceeds 'surrender' requirement permitted to be continued since 1993, would not the country's foreign exchange reserves position have been much better and stronger, and the exchange rates much lower, and the 'cost of living' not escalated to 'unbearable levels', as it is today ?

The need to rectify the 'deplorable' and 'perverse' situation created by the questionable Gazetted Orders of 1993 and 1994 is of urgent and paramount importance. The Controller of Exchange would then be free from carrying out a tedious, meaningless and non-credible exercise of such voluntary 'survey' of export proceeds repatriation; and focus only on those, who do not adhere to the Rule of Law or transgress the law, as is the norm in other civilised regimes, who practice 'good governance', and not merely pontificate ! Can Sri Lanka afford not to do so, at this crucial juncture of 'perilous' economic crisis, without 'pragmatic management' ?

NEED FOR PRAGMATIC MANAGEMENT OF EXPORT PROCEEDS

What is the cogent pragmatic reason and rationale, as to why Sri Lanka should not have been and not be monitoring and enforcing the 'repatriation' of exports proceeds, whilst other IMF Article VIII Status countries do monitor the same, and ironically very countries from whom, Sri Lanka borrows in foreign exchange and expects foreign exchange investments ? Could Sri Lanka have afforded not to have done so, and not to do so ?

To enforce such requirements now, those affected and 'miscreant' parties, purport that it would be sending 'wrong signals' ! This is mere 'perception', and to whom are the 'wrong signals', in any case, being sent ? Is it not to the very perpetrators of such 'economic crime' of 'siphoning out of valuable foreign exchange from the country', regardless of the national and public interests of the country ?

Given the foregoing facts, how could one baselessly espouse that 'wrong signals' would be sent in enforcing export proceeds 'repatriation' requirements, whereas this is not a matter of sending 'wrong signals', perhaps to 'robber barons', but a grave matter of national and public importance of acting to 'protect' the interests of the broad spectrum of poverty stricken masses, whose rightful resources have been mismanaged, even permitted to be 'pillaged and plundered' ! On the contrary, ought not 'correct signals' be sent to these very masses, 'who are the real stakeholders', who vote governments into power, and action be taken to protect their very interests and future ? If not, why ?

On the contrary, what of the 'dismal result', with erosion of the economy, and impoverishment of the people, who voted governments into power to ensure 'good governance' ? Are they not 'key stakeholders' ?

and to them, in taking action to enforce the due and proper 'repatriation' of export proceeds, would it not be more than a mere 'good signal', but 'pragmatic action', taken in their own interest and their future, and the future generations of the country ?

There are those, who endeavour to 'mislead' by citing that countries, such as India and China, are now phasing out export proceeds 'repatriation' and export proceeds 'surrender' requirements. This is not so. These countries during 2004 have even enforced export proceeds 'surrender' requirements, partially, by permitting only certain percentage of export proceeds to be retained in 'supervised' foreign currency bank accounts, whilst enforcing fully, export proceeds 'repatriation' requirements. Sri Lanka did not even, 'phase out', but intriguingly did away with such 'good governance' practice 'abruptly' !

Nevertheless, the cogent issue is how did these countries manage their exports proceeds since 1993, and on the other hand, how did Sri Lanka not enforce exports proceeds 'repatriation' and export proceeds 'surrender' requirements since 1993 ? Who takes responsibility and who is accountable ? Prior to 1993, the Controller of Exchange did 'permit' exporters up to a maximum of around 5% on the incremental value of exports to be expended overseas, in relation to justifiable promotional costs of the exporters.

Also to be reckoned would be the total of US \$ 16,690 Mn., remitted since 1993 by poor Sri Lankan 'migrant labour' working particularly in the Middle East, undergoing untold hardship and trauma, which would have made a cognisable 'contribution' towards the foreign exchange requirements of the country, whereas the aforesaid export proceeds 'leakage' would have had a cognisable 'negative' impact thereon. Is this reasonable, equitable and justifiable ?

In the national economic interest, a requisite 'pragmatic procedure', examining practices prevalent in other countries, ought be put in place to ensure the 'good governance' of 'foreign exchange management', as per the specific current urgent particular needs of the country; even if it means, to take 'courageous' and bold decisions !

It is even more 'shockingly' significant, that the Central Bank was 'blissfully' unaware of this phatic position, until this matter was raised and queried in October 2004, consequent to investigations into 'defunct export industries'. Secretary Treasury, P.B. Jayasundera, a Central Banker and a Member of the Monetary Board, 'did not even know' of the export proceeds 'repatriation' and export proceeds 'surrender' requirements procedures prevalent in other countries, and requested an experienced senior *ex*-Central Banker to prepare a 'Note' on such prevalent procedures, and consequently, the Central Bank in 2005 provided him with the IMF Annual Report 2002 on 'Exchange Arrangements & Exchange Restrictions', whereas 2 years had passed since 2002 ! This is the 'blissful' reality !

Given the seriousness and gravity of the 'ground realities', it would be pertinent and necessary to Gazette forthwith, in the least, export proceeds 'repatriation' requirement, if not export proceeds 'surrender' requirement, and for documentation of exports to be channelled through the banking system, with immediate effect. The aforesaid estimated foreign exchange 'leakage' reckoned during the years 1993 to 2006 to be in the region of US \$ 6,718 Mn. to US \$ 13,436 Mn., plus interest thereon, is several times more than the foreign exchange reserves today, and ought to be compared with the Foreign Debt Level of US \$ 12,235 Mn., as at December 31, 2006 !

If the due and proper 'repatriation' of export proceeds had been in force, would not the Central Bank then have progressively purchased the foreign exchange 'repatriations' to increase the foreign exchange reserves, whilst at the same time stabilising the foreign exchange rates; whereas recently ironically did not the Central Bank 'off-load' over US \$ 400 Mn., from the Government reserves, with the 'puerile attempt' to bring down the rising foreign exchange rates ? The US Dollar rate in 1992 was Rs. 43/83, and today it is over Rs. 113/- ! What 'economic mismanagement' of the country; the first asian country to usher in a 'free and open' economy ?

'ENFORCEMENT' OF EXPORT PROCEEDS 'REPATRIATION' REQUIREMENT

Serious consideration ought be given, in the least, to enforce export proceeds 'repatriation' requirement, if not also the exports proceeds 'surrender' requirement, at least partially, inasmuch as such 'surrender' requirement is enforced on 'small time Sri Lankan entrepreneurs', who are 'indirect exporters' supplying to the 'direct exporters'; thereby raising the cogent question, as to why not on the 'direct exporters' ?

The Controller of Exchange could be empowered to do so, by the Minister of Finance publishing a Gazette Notification on the lines of the following, recommended by a former respected Controller of Exchange, subject, however, to being checked and confirmed by the present Controller of Exchange;

"Order made by the Minister of Finance by virtue of the power vested in him by Sub-sections (3) and (4) of Section 22 and Section 44 of the Exchange Control Act No. 24 of 1953, as amended by the Exchange Control (Amendment) Law No. 39 of 1973.

Order

1. Permission is hereby granted to export goods of any class or description for the purpose of sale from Sri Lanka to any destination outside Sri Lanka by a person in Sri Lanka, provided that the payment for such goods is made in convertible foreign currencies, except where payment is made in accordance with the provisions indicated in the paragraph (2) below, and that such a payment is repatriated to Sri Lanka within 120 days from the date of exportation, unless otherwise permitted by the Central Bank.
2. The provisions of any trade and payment agreements entered into by the Government of Sri Lanka with the government, or any person of a foreign country where payment to be made to a person resident in Sri Lanka in Sri Lanka Rupees from
 - a) an account of a foreign bank maintained with an Authorised Dealer in Sri Lanka, or
 - b) such an account of any other person resident in Sri Lanka as approved by the Central Bank and is maintained with an Authorised Dealer.
3. Goods not intended for the purpose of sale such as goods for personal use, trade samples, repairs etc., shall be exported without permission of the Central Bank subject to monitoring by the Sri Lanka Customs.
4. The orders made on 18.3.1973, 23.10.1975, 25.3.1993 and 29.3.1994 under Sub-sections (3) and (4) of Section 22 of the Exchange Control Act (Chapter 423) as amended by the Exchange Control (Amendment) Act No. 39 of 1973 and published in the Gazettes Extraordinary No. 81/9 of 19.10.1973, No. 187/2 of 27.10.1975, No. 759/15 of 26.3.1993 and No. 813/14 of 7.4.1994 respectively are hereby rescinded"

In addition, given the 'overall impact' on the national economy, consideration ought be given for all exporters to be required to submit export documentations through the banking channels, so as to enable the Controller of Exchange to effectively enforce exports proceeds 'repatriation' requirements. To avoid doing so, on the 'pretext' that bank charges are prohibitive would be 'nonsensical' ! Where any exceptions are warranted due to emergencies and/or bank holidays, separate procedures and guidelines ought be adapted. Communication systems today afford instant 'transmission' of documentation, unlike in the past era !

Documentations in respect of 30% of exports, as per Central Bank sources, are not channelled through the banking system, and hence the banking system cannot be expected to monitor the 'repatriation' of export proceeds in cases of such exports ! To suggest that perishables exports, such as vegetables, fruits, flowers, etc., in view of urgency, need to be exported, without the documentations being channelled through the banking system, could not be a plausible reason. If 30% of the country's exports are from this agricultural sector, would not then, such agricultural sector be thriving and booming today ? Is it really so ?

To entertain the logic that there is 'under invoicing' of exports, inasmuch as there is 'over invoicing' of imports, and that therefore it is 'futile' to enforce export proceeds 'repatriation' requirement and 'surrender' requirement, is simply 'illogical', 'nonsensical' and 'puerile', and only a questionable attempt to 'collude' to 'cover-up'; in which case, one might as well 'give up the very governance' of the economy of the country, due to admitted 'incompetence' !

The 'under invoicing' of exports and 'over invoicing' of imports is distinctly another issue, coming under the purview, supervision and control of the 'Customs Department', which is expected to deal with such 'under invoicing' and 'over invoicing', in terms of the law. Is it to be conceded that the Customs Department is totally inept and incapable of dealing with such offences ? Can that too be 'complacently' accepted, if one is to discharge the 'good economic governance' of the country ?

WARRANTS IMMEDIATE INVESTIGATION & ACTION

'The magnitude' and 'gravity' of the foregoing ought be reckoned in the context of the country's annual exports imports, worker remittances, and the year end foreign reserves and foreign debt levels, as per data published in the Central Bank Annual Reports:

	Exports	Imports	Worker Remittances	Official Reserves Year End	External Debt Year End
	<u>US \$ Mn.</u>	<u>US \$ Mn.</u>	US \$ Mn.	US \$ Mn.	US \$ Mn.
1993	2,863	4,014	625	1,675	7,602
1994	3,209	4,771	706	2,022	8,298
1995	3,807	5,311	727	2,063	8,694
1996	4,095	5,439	832	1,937	8,486
1997	4,639	5,864	921	2,029	8,197
1998	4,798	5,889	999	1,984	8,749
1999	4,610	5,979	1,056	1,639	9,088
2000	5,522	7,320	1,160	1,049	9,031
2001	4,817	5,974	1,155	1,338	8,372
2002	4,699	6,106	1,287	1,700	9,333
2003	5,133	6,672	1,414	2,329	10,647
2004	5,757	7,973	1,564	2,196	11,346
2005	6,347	8,863	1,918	2,735	11,354
2006	<u>6,883</u>	<u>10,253</u>	<u>2,326</u>	2,837	12,235
	<u>67,179</u>	<u>19,428</u>	<u>16,690</u>		

This whole 'episode' and continuance thereof, without 'heeding' the 'findings' reported by the Auditor General and COPE, warrants through investigation forthwith to ascertain the extent and volume of 'foreign exchange leakage', since the questionable gazetted Orders of 1993 and 1994, and 'stringent' corrective action taken in such regard.

The important question arises, as to why there has been no action, whatsoever, taken on the Auditor General's 'findings' and the COPE Report of 2005, on a matter of 'national economic proportion and significance', whereas, on the contrary, a huge 'hue and cry' is being made of the COPE Reports of 2007, which deal with certain 'individual cases' of alleged fraud and corruption, no doubt of significance ? Nevertheless, is not the foregoing of far greater national economic and public significance, reported as far back as 2005 by the Auditor General and COPE, as requiring the immediate attention of Parliament.

The COPE Report of 2005 to Parliament stated thus:

"The Committee was seriously concerned over the activities of the CBSL (*Central Bank of Sri Lanka*) and wishes to report to the Parliament on **matters that need immediate attention of the house**" (*Emphasis added*)

“The Auditor General and the Department of Public Enterprises have highlighted the following in their reports

- **“Decline in the remittances of export earnings to the country as the Bank did not monitor the remittances of such export proceeds to the country and the foreign exchange loss to the country.”**

“Your Committee in conclusion recommends the following:”

- **“Carry out investigations on the nonrepatriation of export proceeds to Sri Lanka and take corrective action appropriately to avoid drain of foreign resources.”**

To begin with, to examine this ‘malignant malady’ of national economic significance and proportion, ought not the top 100 exporters and ‘ghost exporters’ be promptly ‘investigated’, and ‘stringent corrective action’ taken in such regard, particularly given the current perilous state of the economy ?

Given the current situation, *vis-à-vis*, the position of foreign exchange reserves and the depreciation of the Sri Lanka Rupee against foreign currencies, would not this matter, in the national economic interest, need careful consideration. Malaysia in the recent past, rebutting academic, economic and theoretical opinions, took some bold pragmatic decisions to stabilise its economy, *vis-à-vis*, ‘foreign exchange management’, resulting in the current economic strength of Malaysia ! Ironically, Sri Lanka is today seeking ‘foreign investment flows’ from Malaysia !

H.E. the President

MEMO

I am aware of the onerous commitment and responsibility to steer the country in the face of the unprecedented natural disaster. Nevertheless, the endeavours to manage and develop the economy of the country must go on, with even greater commitment.

With much efforts over the last 3 months, the Central Bank finally relented and agreed to carry out the monitoring and surveillance of the repatriation of export proceeds.

The Controller of Exchange has sent out a Questionnaire to over 2500 exporters, who exported during the quarter ended 30.9.2004, requesting them to confirm whether remittances have been received in respect of such exports during the subsequent quarter ended 31.12.2004, and the outstandings. Notifications to all exporters were published in the Newspapers.

Even the above Questionnaire, I understand, was endeavoured by certain persons to be sent under the hand of the Director of Research or Statistics. However, the correct decision was made to send it under the hand of the Controller of Exchange, thereby sending out the correct signals !

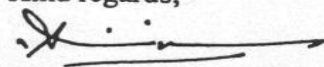
The Controller of Exchange has confirmed that there is the message given, that export proceeds must be repatriated, and exporters have begun repatriating, anticipating that fines might be imposed otherwise !

With the initial efforts, the US Dollar rate which reached a high of Rs. 105/- came down yesterday to Rs. 98.85. With sustained efforts this will come down further. It is not any Aid pledged that brought down the exchange rate, but the above endeavours, since cognisable Aid pledges are yet to be remitted !

The US Dollar rate (and also the other foreign currency rates) would have a direct impact on cost of living, since foodstuffs, including milk powder, rice, dhal, sugar, etc., are imported, so are also items such as fertilizer, fuel (impacts cost of power) and even wheat to make flour. In addition, it would improve the foreign reserves position.

Shall forward a Note and a requisite draft Gazette as discussed, to be published under the hand of the Hon. Minister of Finance, to further strengthen the hand of the Controller of Exchange, rectifying the questionable Gazettes published in March 1993 and March 1994

Kind regards,



Nihal Sri Ameresekere

6.1.2005

to the IMF. This reflects the government's continuous dominance in attracting foreign loan capital into the country and the limitations of the private sector in raising external debt. The financially sound private sector enterprises need to be encouraged to raise medium and long-term external capital for their investments. This would release domestic financial resources to private sector enterprises that are not capable of raising external debt. Of the government's external debt stock, concessional debt accounts for 96 per cent.

External Debt Service Payments

Debt service ratios reverted to pre-tsunami levels following the one-off reduction in debt servicing in 2005 due to the benefits of the debt moratorium. The total debt service payments, which consist of both amortisation and interest payments on all foreign debt, increased significantly by around 73.2 per cent to US dollars 1,079 million in 2006. The expiration of the debt moratorium offered by members of the Paris Club, G-8 countries and multilateral lending institutions in 2005 and the resumption of scheduled debt repayments in 2006, the increase in defence loan repayments, increased debt servicing costs of government's commercial borrowings, and the depreciation of the US dollar against the SDR had contributed to the increase in Sri Lanka's external debt service payments in US dollar terms, during 2006. However, debt service ratios, which measure the country's capacity to service its external debt still remains at comfortable levels despite a relatively high external debt stock, mainly due to the large stock of concessional debt with long repayment periods.

5.7 Exchange Rate Regime and Exchange Rate Movements

Sri Lanka continued to follow an independently floating exchange rate regime during 2006, allowing market forces to determine the exchange rate with limited intervention by the Central Bank to mitigate excessive

volatility in the market. This regime has served well for Sri Lanka since its adoption in 2001. The rupee, which appreciated during 2005 against major international currencies in the wake of the massive aid pledges by the international donors and the higher tsunami related foreign inflows, reverted to its usual depreciating trend during 2006. The rupee depreciated at a moderate rate against the US dollar (5.2 per cent), Japanese yen (4.3 per cent) and Indian rupee, (7.2 per cent), while it depreciated at a higher rate against the sterling pound (16.7 per cent) and euro (14.6 per cent), mainly due to the weakening of the US dollar against these currencies during 2006.

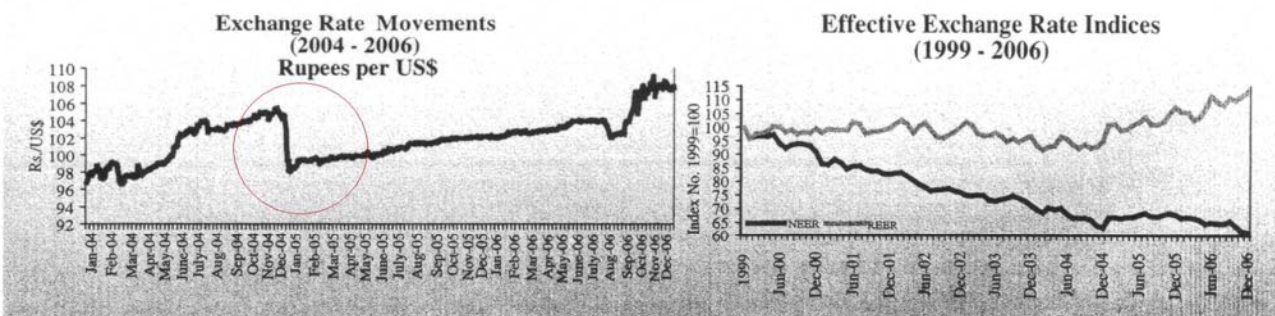
A larger current account deficit, caused by substantially higher imports and the relatively higher domestic inflation that prevailed in Sri Lanka compared to those of its trading partners and competitor countries, exerted pressure on the exchange rate to depreciate. However, increased worker remittances, unprecedented FDI inflows and higher foreign inflows to the government, including commercial borrowings, resulted in an overall balance of payments surplus in 2006 and improved market confidence, thus negating the tendency for excessive depreciation of the rupee towards the end of 2006.

Nominal and Real Effective Exchange Rates

During 2006, the Nominal Effective Exchange Rate depreciated, reversing the appreciating trend seen in 2005, while the Real Effective Exchange Rate continued with the same trend. Reflecting the higher nominal depreciation of the Sri Lanka rupee against the major currencies, the nominal effective exchange rate (NEER) of the Sri Lanka rupee, based on both, the 5 currency and the 24 currency baskets, depreciated during 2006. Meanwhile, the real effective exchange rate (REER), which takes into account the inflation differentials amongst countries in addition to the variations in exchange rates, appreciated during 2006, indicating a deterioration in the competitiveness of Sri Lanka's exports. This could be attributed to the

Chart 5.10

Exchange Rate Movements



- Courtesy, Central Bank of Sri Lanka

EXTRACTS OF ENFORCEMENT PROCEDURES IN OTHER IMF ARTICLE VIII STATUS COUNTRIES

SCHEDULE 'B'

Country	Export Proceeds Repatriation Requirements	Export Proceeds Surrender Requirements
India	Proceeds must be repatriated within six months of shipment unless otherwise specified by the RBI. Indian-owned warehouses abroad established with the permission of the RBI are allowed a period of up to 15 months to realize export proceeds. Exporters are required to obtain permission from an AD if the export proceeds are not realized within the prescribed period. The RBI also administers a scheme under which engineering goods (capital goods and consumer durables) may be exported under deferred credit arrangements, so that the full export value is paid in instalments over more than six months. Exporters of certain bulk items, exports to Latin American countries, and status holder exporters may realize export proceeds within 365 days from the date of shipment.	Exporters are permitted to retain up to 50% of foreign exchange receipts in foreign currency accounts with banks in India. In the case of 100% export-oriented businesses, those in export-processing zones, and those in hardware/software technology parks, up to 70% of foreign exchange receipts may be retained. Corporate exporters are permitted to extend trade-related advances to their importer clients out of their EEFC accounts without obtaining RBI approval. ADs are permitted to allow utilization of funds held in EEFC accounts for making payments for current and capital transactions that are permissible under FEMA regulations.
Pakistan	Proceeds must be repatriated by the due dates of bills of exchange or within six months of shipment, whichever is earlier. Export proceeds may be held in a special exporter's account for up to three working days for the purpose of sale to an AD only.	Exporters are required to sell their proceeds in the intrabank market within three days. Effective August 15, 2003, exporters may retain up to 10% (previously, 6%) of the f.o.b. value in their FCAs for advertising, purchase of designs and patterns, market studies, bona-fide export claims, and to cover export proceeds, without approval from the SBP (FE Circular No. 15). For software and service sector exports, this limit is 35%. Exporters reporting an increase of more than 10% in export earnings may keep 50% of the additional earned amount in FCAs.
People's Republic of China	Yes	Effective May 1, 2004, all enterprises authorized to conduct current account transactions may retain foreign exchange equivalent to 30% or 50% (previously, 20%) of their current account foreign exchange earnings in the previous year; enterprises that had no current foreign exchange income may retain up to the equivalent of US \$ 100,000; the remaining amounts must be surrendered to authorized banks.
Malaysia	Proceeds from exports must be received and repatriated according to the payment schedule specified in the commercial contract, but no later than six months after the date of exportation. Export proceeds must be received in foreign currency for all countries except the currencies of Israel and Serbia and Montenegro.	Also effective this date, qualifying enterprises are defined as those that are authorized by a competent department on the basis of having registered foreign operating rights, current foreign exchange income, or foreign exchange income for a designated purpose, such as donations, aid, or international postal remittances. Previously, these were defined as (1) those that have annual export foreign exchange earnings in excess of the equivalent of US \$ 2 million and foreign exchange expenditures in excess of US \$ 200,000; (2) foreign trading companies whose annual export-import volume exceeds US \$ 30 million, whose capital exceeds Y 10 million, whose export foreign exchange receipt rates are at least 95% and whose document presentation rates are at least 80%; and (3) production-type enterprises authorized to engage in export-import operations whose annual export-import volume and capital exceed US \$ 10 million and Y 30 million, respectively.
Thailand	Export proceeds exceeding the equivalent of B 500,000 must be repatriated immediately after payment is received and within 120 days from the date of export.	Effective April 1, 2003, exporters are allowed to retain a portion of their export proceeds in foreign currency accounts with designated banks with an overnight limit of between the equivalent of US \$ 1 million and US \$ 70 million, or any larger approved amount (previously, between US \$ 1 million and US \$ 10 million). Effective April 1, 2004, this limit was raised to between the equivalent of US \$ 30 million and US \$ 100 million.
South Africa	Unless otherwise permitted, all export proceeds must be remitted to South Africa within 30 days of accrual. Exporters may retain export proceeds for 180 days after accrual in customer foreign currency accounts with authorized dealers.	Foreign exchange proceeds must be surrendered to authorized banks within seven days of receipt. Foreign exchange earners are allowed to deposit foreign exchange in their foreign currency accounts only if they have obligations to pay out such amounts to non-residents abroad within three months of the deposit date provided that foreign exchange obligations are due over the longer period. On July 22, 2003, this limit was increased to six months.
Republic of Korea	Export earnings exceeding \$ 100,000 or the equivalent must be repatriated within six months of receipt. However, they may be held abroad and used for overseas transactions in accordance with the regulations on foreign exchange transactions.	Unless otherwise permitted, all export proceeds must be offered for sale within six months of the date of shipment or 30 days of the date of accrual, whichever is sooner. Except for exports made on a cash-on-delivery basis or those for which the full proceeds are received in advance, exporters are permitted to cover forward their export proceeds.