

BY COURIER

29^h May 2008

Mr. S. Swarnajothy, A.C.A., B.Sc (Mgt), F.S.C.M.A.,
Auditor General,
Auditor General's Department,
Independence Square,
Colombo 7.

Dear Mr. Swarnajothy,

**Supreme Court Determination on the Appropriation Bill
Annual Report 2006**

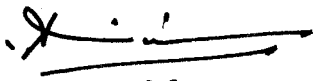
I write with reference to my Letter dated 9.5.2008, to which I have had no response on the clarifications I sought.

In addition to the details of the requisite information in respect of the Year 2006, I wish to ascertain, as to where such requisite information, I referred to in my aforesaid Letter, are available also in respect of the Years 2004, 2005 and 2006 for the information of public as they are entitled to, in terms of the statutorily mandates stipulated in the Fiscal Management (Responsibility) Act No. 3 of 2003, *which came into operation on 3.6.2003, as per Gazette Extra-ordinary No. 1291/15 of 3.6.2003.*

I draw your kind attention to the Supreme Court Determination on the 'Appropriation Bill 2007', I forwarded with my aforesaid Letter, *inter-alia*, stipulating that such information should be specifically reported in terms of the Fiscal Management (Responsibility) Act No. 3 of 2003, with reason therefor, and the Supreme Court observing further, *that such expenditure would be subject to audit and the Auditor General would report on the matter to Parliament in terms of Article 154 of the Constitution.*

In the national and public interest, I await your early response to consider, as to what steps I ought to take, as I may be advised, in that, cognisable public funds, which belong to the people, are involved.

Kind regards,



Nihal Sri Ameresekere

BY COURIER

9th May 2008

Mr. S. Swarnajothy, A.C.A., B.Sc (Mgt), F.S.C.M.A.,
Auditor General,
Auditor General's Department,
Independence Square,
Colombo 7.

Dear Mr. Swarnajothy,

**Supreme Court Determination on the Appropriation Bill
Annual Report 2006**

I attach copy of my Memo dated 15.11.2007 forwarded to the Secretary to the Treasury, *without the attachments thereto.*

I draw your kind attention to paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of my said Memo in relation to the necessity for transparent disclosure of transfers made by Secretary to the Treasury, in terms of Section 5(3) and Section 6 of the Appropriation Act, as morefully referred to therein. *I attach a copy of the Supreme Court Determination for your kind information, and draw your kind attention to the direction given in the last paragraph thereof.*

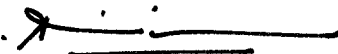
I have reason to believe that from Account Head 801 - 'Department of National Budget' - Rs. 1,500,000,000/- had been transferred to Lanka Puthra Development Bank in terms of Section 6 of Appropriation Act No. 39 of 2005, and from Account Head 240 - 'Department of National Budget' - Rs. 250,000,000/- had been transferred to Mihin Lanka in terms of Section 6 of Appropriation Act No.47 of 2006, both by the Director General of National Budget, *under the powers exercised by the Secretary to the Treasury, deeming to be Supplementary Estimates passed by Parliament.* 'Supplementary Estimates', as you know, in terms of Article 151 of the Constitution, *specifically pertain to 'contingency payments'.*

I wish to ascertain, as to whether the details of the transfers referred to in my aforesaid Memo, in respect of the Financial Year 2006, reported to have amounted to Rs. 220.2 billion, as referred to at paragraph number 6 of my aforesaid Memo, have been duly disclosed to Parliament and the public, in compliance with the said Supreme Court direction, to which said compliance, I drew the specific attention of the Secretary to the Treasury, at paragraph number 8 of my aforesaid Memo.

I shall be grateful, if you would kindly confirm, as to where such information has been disclosed, as had been directed by the Supreme Court, and in conformity with the statutory stipulations in Fiscal Management (Responsibility) Act No. 3 of 2003, so that I could avail myself of copies thereof.

On the other hand, if such information in respect of Year 2006 have not been disclosed, I shall be grateful for your kind confirmation thereof, since I am considering taking this matter up in the Supreme Court.

Kind regards,



Nihal Sri Amēēsekere

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

“APPROPRIATION BILL 2007”

S.C(SD) 7 – 13/2007

BEFORE : Sarath N Silva, Chief Justice
N.E. Dissanayake Judge of the Supreme Court
A.M. Somawansa Judge of the Supreme Court

- No.7/07 Petitioner : Nihal Sri Amarasekera (in person)
- No.8/07 Petitioner Counsel Sunil Handunneththi
Manohara de Silva, P.C., with Sunil Watagala
- No.9/07 Petitioner Counsel Centre for Policy Alternatives (Guarantee)Ltd.
M.A.Sumanthiran with Vira Corea, B. Fonseka and S.
Fernando
- No.10/07 Petitioner Counsel L.O.K.G. Fernando
Romesh de Silva, P.C., with M.A.Sumanthiran, Sugath
Caldera and Eraj de Silva, instd. By G.G. Arulpragasam
- No.11/07 Petitioner Counsel A.M. Susiri Adikari
Ikram Mohamed, P.C., with M.S.A. Wadood,
Champaka Ladduwahetty and Palitha Subasinghe
- No.12/07 Petitioner Counsel Institute of Human Rights
J.C.Weliamauna with Maduranga Ratnayake, Uma
Wijesinghe and Rashani Meegama
- No.13/07 Petitioner Counsel Themiya L. B. Hurulle
Sanjeeva Jayawardena with Senany Dayaratne
P.A.Ratnayake, Addl. Solicitor General with Ms.Indika
Demuni de Silva, Deputy Solicitor General and Janak de
Silva, S.S.C., for Attorney General

Court assembled for hearing on 17.10.2007 at 10.30 a.m

The above petitions presented in terms of Article 121(1) of the Constitution were taken up before this Court and considered together since the grounds of constitutionality in respect of the Bill are common. The Petitioners challenge the content of Clauses 5 and 6 of the Bill. The basis is that, the provisions of these Clauses are inconsistent with Article 148 and the connected Articles of the Constitution that provide for full control of public finance by Parliament. It was submitted that the impugned provisions detract from Parliamentary control amounting to an abdication of power by Parliament.

It would be convenient to first deal with the submissions as to clause 6. This clause provides that any money allocated to Recurrent Expenditure or Capital Expenditure under the "Development Activities Programme" appearing under the Head "Department of National Budget" may be transferred to any other Programme under any other Head by Order of the Secretary to the Treasury or any other officer authorized by him. It further provides that the money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.

A similar clause had been contained in all preceding years commencing from the Appropriation Act No. 44 of 2003. In that Act Section 5(3) provided for the transfer from the "Public Resources Management Program" appearing under the Head "Department of National Budget" to any other Programme under any other Head by Order of the Secretary to Treasury. The money so transferred was deemed to have been covered by a supplementary estimate.

Identical provision was contained in the Appropriation Act No. 15 of 2004 as Section 5(3). In the Appropriation Act No. 39 of 2005 the identical provision was Section 6. The Appropriation Act No. 47 of 2006 provided for a transfer from the "Development Activities" Programme as in the present Bill instead of a transfer

from the "Public Resources Management" Programme specified in the Acts of 2003, 2004 and 2005. This is only a change of nomenclature and not a budgetary innovation of any significance.

The crux of the submissions of the Petitioners is that by this provision the Secretary to the Treasury is vested with an unfettered discretion to transfer funds voted for

"Development Activities" to meet expenditure under other Programmes and Heads.

That, if there is unexpected additional expenditure under any other Head and Programme, the proper procedure would be for a supplementary estimate to be

presented to Parliament for withdrawal from the Consolidated Fund in terms of Article 150(2) of the Constitution or to establish a Contingencies Fund in terms of

Article 151 to provide for urgent and unforeseen expenditure. It was further submitted in particular that the final sentence in clause 6, which reads as :

"The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister"

is an abdication of Parliamentary control.

The Additional Solicitor General submitted that there is no abdication of Parliamentary control of public finance, since money could be transferred by the Secretary to the Treasury in terms of Clause 6, only dependent on the amount voted by Parliament for "Development Activities" (Head 240 – Department of National Budget – Programme 2). He submitted that the amount would be voted in terms of Rule 131 of the Standing Orders after a specific consideration of the budgeted expenditure under the Programme. In doing so a Committee of the whole Parliament would in terms of the Standing Orders take cognizance and deliberate not only whether the amount appearing under the Programme of "Development Activities" should be approved but also take cognizance of the fact that the Secretary to the

Treasury is authorized in terms of the principal Clause to transfer any sum under that Programme to meet expenditure under any other Head and Programme.

On this basis it was submitted that the vesting discretion by Parliament in the Secretary to the Treasury would only be after due and proper consideration and cannot amount to an abdication of Parliamentary control of public finance as contended by the Petitioners. .

It was further submitted that in any event the amount so transferred by the Secretary to the Treasury would be to meet expenditure under any other Head and Programme already included in the Appropriation Bill.

In answer to this contention Counsel for the Petitioners submitted that there should be included in the Clause 6 a specific reservation as in Clause 7 that such transfer by the Secretary to the Treasury should only be for the purpose of meeting authorized expenditure..

The submissions of Counsel focus on the allocation for Recurrent and Capital expenditure to the Ministry of Finance and Planning.

The immediate responsibility of meeting unexpected expenditure under other Heads and Programmes would finally rest on the Department of National Budget. In this context it appears that from the year 2003 a budgetary method has been adopted in which a relatively large sum is allocated under the Head "Department of National Budget" with an attendant reduction under other Heads and at times a further cut proposed by the Minister to balance the Budget, on the premise that urgent and immediate excess expenditure under other Heads be met by a transfer from the Head, Department of National Budget. The submission of Addl. Solicitor General is that such action is necessary in view of the volatile state of the country's financial position resulting from a variety of factors, including the escalating defence expenditure caused

by the war, steeply rising oil prices, inflation and an unfavourable balance of payments situation resulting in the downward trend of the Rupee vis-a-vis other currencies.

We have to accept the submissions of the Additional Solicitor General as to the context in which Parliament has passed into law clauses to the same effect consistently from the year 2003 onwards. The volatile situation may not provide the space and time for a supplementary estimate and the machinery of Government could otherwise come to a halt. A degree of flexibility may therefore be necessary as contended. We are also inclined to agree with the submissions of the Additional Solicitor General that the establishment of a Contingencies Fund to meet urgent and unforeseen expenditure as envisaged by Article 151 is farfetched in the current fiscal context plainly due to a lack of resources.

The sentence referred to above in Clause 6, which drew much criticism by the Petitioners provides that the money transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister. This provision is necessary in our view to ensure accountability by the officer who is actually responsible for the expenditure. In any event the expenditure would be subject to audit and the Auditor General would report on the matter to Parliament in terms of Article 154 of the Constitution.

A qualification as in Clause 7 that the transfer should be to meet authorized expenditure cannot be included. The transfer to meet authorized expenditure is covered by Clause 5(1). The provision that the transfer in terms of Clause 6 is deemed to be a supplementary estimate connotes that it is not intended to cover authorized expenditure. The qualification suggested could therefore be a contradiction in terms.

Our attention has also been drawn to the Fiscal Management (Responsibility) Act No.3 of 2003. The Act provides for extensive Parliamentary supervision of the fiscal position at different stages.

Section 7 provides for the "Budget Economic and Fiscal Position Report" to be tabled in Parliament in respect of each year when the Appropriation Bill is taken up for the second reading. The object of this requirement is to provide information to Parliament for the evaluation of the government's fiscal performance as against the strategy which had been previously laid down.

Section 10 provides for a "Mid-Year Fiscal Position Report" by the end of June in the current year.

In terms of Section 12 this Report should contain a statement of estimated and actual expenditure for the first four months.

Section 13 requires Final Budget Position Report to cover the entire year

In terms of Section 15(a) this Report should contain a statement of the estimated and actual expenditure and Section 15(2) requires reasons to be stated for any deviations from the estimates.

It is thus seen that although a discretion is vested by Clause 6 in the Secretary to the Treasury to transfer money voted under Head 240 of the Department of National Budget" to meet expenditure under any other Head and Program, any such transfer could come within the purview of the Parliament pursuant to the reporting mechanisms as contained in the Fiscal Management (Responsibility) Act No.3 of 2003. Thus the vesting of discretion in the Secretary to the Treasury from the year 2003 as noted

above, has been matched by the reporting mechanisms introduced to ensure Fiscal Management Responsibility from the same year.

In the circumstances Clause 6 would not in our view be inconsistent with Article 148 of the Constitution and the connected Articles, since the Parliament finally retains full control of public finance not only in the matter of allocation of expenditure but also by supervision of the actual expenditure for which there is adequate legislative provision in Article 154 of the Constitution and the Fiscal Management (Responsibility) Act No. 3 of 2003.

All the Reports presented to Parliament under the said Act have not been produced in Court. There is no requirement to do so. But we note that in the Reports submitted there is no specific reference to the transfers made by the Secretary, in terms of Sections 5(3) or 6 of the previous Appropriation Acts. It is not feasible or permissible for this Court to go into the matter of accounting to ascertain the actual transfers as contended by the Petitioner appearing in person. We have to restrict our review to the area of constitutionality. But, considering the severe criticism made, we have to observe that for purposes of ensuring transparency and prudential financial management, the transfers made in terms of Clause 6 that are deemed to be supplementary estimates should be specifically included in the relevant reports submitted in terms of the Fiscal Management (Responsibility) Act No. 3 of 2003, with reasons for the particular deviation.

The challenge in respect of Clause 5(1) also relate to the authority vested in the Secretary to the Treasury. The first part of Clause 5(1) provides for a transfer of unexpended money allocated to Recurrent Expenditure in any Programme, to meet Capital Expenditure in that Programme. This is a blanket authority which can be exercised by the Accounting Officer in respect of that Head. The second part of the

Clause permits transfer of any unexpended allocation for Recurrent Expenditure to meet Recurrent Expenditure or the Capital Expenditure under any other Programme within the Head by order of the Secretary to the Treasury or any other officer authorized by him. Similarly provisions had been included in all preceding appropriation accounts referred to above.

The submission of Counsel was that although such transfer may be necessary, the vesting of authority only in the Secretary to the Treasury in this regard would be unconstitutional and that there should be specific provision for the Secretary's power to be exercised in consultation with or on the recommendation of the Secretary of the appropriate Ministry in respect of which the transfer is made. It appears that this submission is made without taking into account the ordinary administrative procedure.

In practise the Secretary to the Treasury would necessarily act on the basis of a request for such transfer by the Accounting Officer of the particular Head of expenditure. In the absence of such a request the Secretary to the Treasury would have no basis or reason to make an order for transfer as empowered in Clause 5(1).

It was further submitted that an officer who may be authorized by the Secretary to the Treasury to make such order should ^{be} _{be} amongst officers to be specified in the Clause.

In this regard to have to observe that the Secretary to the Treasury would finally be responsible for the order and he would delegate this power only to an officer of suitable standing. Counsel did not pin point any particular provision of the Constitution in relation to which Clause 5(1) could be held to be inconsistent.

The submissions were made based on the need to introduce sufficient guidelines and limitations that would apply to the exercise of power by the Secretary to the Treasury.

We have to note that these are matters of inveterate practice in the Treasury.

We are unable to agree with the submission that there is now a need to ignore the well accepted norms as to administrative procedure and to introduce additional guidelines and limitations. Accordingly we see no merit in the submissions made in respect of Clause 5(1) of the Bill.

For the reasons stated above we make a determination in terms of Article 123 of the Constitution that the above Bill is not inconsistent with the Constitution.

We wish to however note the observation stated above that any transfer made from the "Development Activities" Program, in terms of Clause 6 to any other Programme under any other Head by order of the Secretary to the Treasury should be specifically included in the respective Reports submitted in terms of Fiscal Management Responsibility Act No. 3 of 2003 with reasons for such deviation.

Sgd.

Sarath N Silva
Chief Justice.

Sgd.

N.E. Dissanayake
Judge of the Supreme Court

Sgd.

A.M. Somawansa
Judge of the Supreme Court

BY COURIER

Dr. P.B. Jayasundera
Secretary to the Treasury
The Secretariat
Colombo 1.

**Supreme Court Determination on the Appropriation Bill
Annual Report 2006**

Attention is drawn to the following:

1. Supreme Court in its Determination on the Appropriation Bill 2007 recognising that there is severe criticism *vis-à-vis* absence of transparency and prudential financial management, *inter-alia* observed thus:

"But, considering the severe criticism made, we have to observe that for purposes of ensuring transparency and prudential financial management, the transfers made in terms of Clause 6 that are deemed to be supplementary estimates should be specifically included in the relevant reports submitted in terms of the Fiscal Management (Responsibility) Act. No. 3 of 2003, with reasons for the particular deviation."

"But we note that in the Reports submitted there is no specific reference to the transfers made by the Secretary, in terms of Sections 5(3) or 6 of the previous Appropriation Acts" (Emphasis added)

The foregoing is in reference to the Annual Report 2006 tendered to the Supreme Court by an Officer representing you, who endeavoured to mislead the Supreme Court in such regard.

2. In determining that the Appropriation Bill is not inconsistent with the Constitution, the Supreme Court, however, subjected the same to the following direction:

"We wish to however note the observation stated above that any transfer made from the "Development Activities" Program, in terms of Clause 6 to any other Programme under any other Head by order of the Secretary to the Treasury should be specifically included in the respective Reports submitted in terms of Fiscal Management Responsibility Act No. 3 of 2003 with reasons for such deviation."

Section 22 of the Fiscal Management (Responsibility) Act. No. 3 of 2003 mandates the disclosure of information in the Reports referred to in the said Act, *inter-alia*, **pertaining to public corporations and companies in which the Government own Shares.**

3. Since the Fiscal Management (Responsibility) Act. No. 3 of 2003 mandates reporting of estimated and actual expenditures, revenues, cash-flows and borrowings in terms of Section 15 thereof in the Final Budget Position Report in relation to the Budget Economic & Fiscal Position Report tabled on the day fixed for the Appropriation Bill in Parliament, and since the Appropriation Bill specifically deals with 'Consolidated Fund' and **any other fund**, such reporting should be in comparison of actual data, with the data at the Appropriation Bill stage, and also be in respect of **all other Funds** being operated utilising public monies.

4. Furthermore, in relation to the foregoing, the Supreme Court in its Determination stated thus:

"In any event the expenditure would be subject to audit and the Auditor General would report on the matter to Parliament in terms of Article 154 of the Constitution."

"..... Parliament finally retains full control of public finance not only in the matter of allocation of expenditure but also by supervision of the actual expenditure for which there is adequate legislative provision in Article 154 of the Constitution"

5. Attention is drawn to the following data, as per the respective Documents referred to therewith:

As per the detail Budget estimates presented to Parliament in December 2005 for the Financial Year 1.1.2006 to 31.12.2006, the Total Budget for Head 801- 'Department of National Budget'	Rs. 23,257,026,000/-
As per Appropriation Act No. 39 of 2005 in December 2005, the Total Budget for Head 801- 'Department of National Budget'	Rs. 62,232,026,000/-
As per the Committee Stage Amendments to Appropriation Bill in December 2005, the Total Budget for Head 801- 'Department of National Budget' was increased by Rs. 39,590,000,000/- to a total of	Rs. 77,960,775,000/-
As per the Audited Financial Statements for the Year Ended 31.12.2006, the Total Expenditure incurred for Head 801- 'Department of National Budget' has been reported as <u>only</u>	Rs. 4,587,324,120/-
Therefore difference	Rs. 73,373,450,880/-

6. Attention is also drawn to the following extracts from the Report of the former Auditor General, Mr. S.C. Mayadunne, present Project Director of the Office of the Committee on Public Accounts and the Committee on Public Enterprises, titled – "Proposals for Strengthening of Parliamentary Control over Public Finance", forwarded in September 2007 to the Committee on Public Accounts and Committee on Public Enterprises, for review and action:

"This position has led to an aggravated situation due to the very wide gap between the Budget approved by our Parliament and the budget actually executed and the practice of not obtaining a special approval or authority of Parliament for such variances.

The revision of the Budget approved by the Parliament for the year 2006 by Rs. 220.2 Billion at the discretion of the Officers, as explained in detail in (2) Paragraph of Part II of this report can be cited as an example.

The revision of the budget by Rs.220.2 Billion at the discretion of the officers in terms of provisions in Section 5 of the Appropriation Act, No. 39 of 2005 including Rs.166 Billion in terms of authority granted under Section 6 of the said Act raises the question whether it tantamount to a partial abdication of the powers of full control over the Public Finance vested in the Parliament by Article 148.

As compared with Rs.609 Billion originally approved for expenditure for the year 2006 and Rs.1,072.8 Billion stated as the actual expenditure, that sum of Rs.220.2 Billion represents a very high percentage.

This becomes more serious as this form of version left to the discretion of the Officers has been arranged in such manner, it does not need the approval or sanction of the Parliament as well as that of the Cabinet of Ministries or even the Minister.

In addition to such revisions made to the provisions at the full discretion of the officers, instances of non-implementation of Budgets approved by Parliament properly abound as follows.

- i. Savings of approved provisions due to non-release of funds for Budget implementation.
- ii. Savings of approved provisions due to various other reasons
- iii. Irregular excess spending over the provisions
- iv. Discretionary expenditure within the approved provision contrary to estimates.
- v. Non-achievement of expected Performance despite expenditure incurred.

Even though provision has been made in Sections 13, 14 and 15 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 for carrying out a statements of the approved Budget and the actual Budget and report thereon to Parliament, the Annual Report for the year 2006 presented by the Ministry of Finance and Planning does not clearly and adequately facilitate a comparison.

Therefore the opportunity afforded to report the actual position to the Parliament had been abandoned." (Emphasis added)

7. Reference is drawn to the Supreme Court 'dicta' at 1. and 2. above and to the fact that the utilization of funds and the deviations giving the reasons therefor, have not been transparently disclosed demonstrating prudential financial management in the Annual Report 2006, as also confirmed by the former Auditor General, as aforesaid.
8. **Hence, in compliance with the direction of the Supreme Court, please have the said data disclosed to Parliament and the public, without delay, inasmuch as such data ought to be readily available in the Department of State Accounts, which would have kept an accounting record thereof.**
9. With reference to the Supreme Court 'dicta' referred to at 4. above, pointing out that in any event the aforesaid data would be subject to audit by the Auditor General in terms of Article 154 of the Constitution, it has to be pointed out in the public interest and in the context of the said 'dicta' of the Supreme Court, that the Government's Financial Statements for the Year 2006 had been certified (presumably) in August 2007 by Auditor General, Mr. P.A. Pematilaka, who had given an 'unqualified' report on the said Government's Financial Statements of 2006.
10. Such 'unqualified' report has been notwithstanding the adverse Special Audit Report submitted to Parliament in July 2006 by former Auditor General, Mr. S.C. Mayadunne, adverting to a loss caused to government tax revenue amounting to about Rs. 389 billion due to failure to collect in accordance with legal provisions therefor, which is very material in comparison to the total revenue of Rs. 477 billion in the Year 2006.

"According to test checks carried out during the course of audit it was observed that the annual loss of the Government Tax Revenue is extraordinarily large. According to audit test checks the computable value of the loss of Government Tax Revenue and the failure to collect in accordance with the legal provisions during the last few years amounts to about Rs.389 billion while the amount that cannot be computed is extremely large."

The said Special Audit Report forwarded to Parliament in terms of the Constitution stands uncontradicted, without any evidence to have controverted the same.

11. It is indeed shocking that Auditor General, Mr. P.A. Pematilaka, who had given an 'unqualified' audit opinion on the Government's Financial Statements for the Year 2006, had in fact been the Director General, State Accounts, General Treasury during the very Year 2006, presumably at least upto 20th October 2006, as disclosed by the Government's Financial Statements for the Year 2005 issued by him on 20th October 2006, as Director General, State Accounts, under your very direction, purview and control, as Secretary to the Treasury.
12. Thus, Auditor General Mr. P.A. Pematilaka had been involved in and responsible for the maintenance, supervision and processing of the Government's Accounts during the Year 2006, as Director General, State Accounts, General Treasury. (*Relevant pages of documents attached*).
13. The aforesaid Special Audit Report to Parliament *inter-alia* in its Executive Summary has stated thus:
- "The institutions dealing with the Tax Revenue had not maintained an adequate tax management co-ordination with their supervisory institutions that is, the General Treasury and the Ministry of Finance."**
- "The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly." (*Emphasis added*)**
14. Furthermore, whilst the audit opinion given for the Year 2006, notwithstanding the foregoing adverse Special Audit Report of July 2006 forwarded to Parliament, had been an 'unqualified' opinion, on the other hand, **the audit opinion given on the Government's Financial Statements for the Year 2005 on 13th September 2006 by the Actg. Auditor General, Mr. W.D. Hemaratne had been a 'qualified' audit opinion, with comments and observations pertaining thereto. (*Audit Report attached*).**



Nihal Sri Amersekere

15th November 2007

cc: Mr. P.A. Ratnayake P.C., Addl. Solicitor General *vis-à-vis* the SC Determination
Mr. S.C. Mayadunne, former Auditor General, present Project Director, Office of the Parliamentary Committees on Public Accounts and Public Enterprises *vis-à-vis Reports referred to above*
Mr. M.N. Peiris, Secretary, Parliamentary Committees on Public Accounts and Public Enterprises
- Copies to be given to Hon. Members

Hon. Minister Rauf Hakeem, M.P. Chairman, Parliamentary Committee on Public Accounts
Hon. Wijeyadasa Rajapakshe P.C. M.P., Chairman, Parliamentary Committee on Public Enterprises
Hon. Ranil Wickremesinghe M.P., Leader of the Opposition, Parliament of Sri Lanka
Hon. Minister Nimal Siripala de Silva M.P., Leader of the House, Parliament of Sri Lanka
Hon. W.J.M. Lokubandara M.P., Speaker, Parliament of Sri Lanka

Supplementary Allocation No 215 of 2006

Copies to: -

- 1.DG/State Accounts (Computer Division)
- 2.DG/Treasury Operations
- 3.Auditor General
- 4.BDA/
- 5.Accountant Dept. of National Budget
- 6.Secretary, Ministry of Finance & Planning
- 7.Summary File

My No. BD/356/388/1/B
Your No.
Department of National Budget
General Treasury
Colombo 01.
03. 2006

**Director General
Department of Development Finance**

Supplementary Allocation

A sum of Rs. 1,500,000,000/- is hereby transferred from:

Head 801 - Department of National Budget
Programme 07- Public Resources Management
Project 02- Budgetary Support Services and Contingent Liabilities
Sub Project 0-
Object Code/s 2501 - 11 - 06

for expenditure on supplies/services in terms of the Appropriation Act No.39 of 2005 to the Ministry/Department as per the attached schedule.

2. This transfer shall be deemed to have been covered by a supplementary estimate submitted by the **Minister of Finance and Planning** in terms of Section 6 of the Appropriation Act No. 39 of 2005.
3. The granting of this allocation should not be construed as adequate authority for incurring expenditure. All expenditure should be incurred in accordance with the provisions of the relevant Financial Regulations, Establishment Code and instructions issued from time to time by government.
4. This supplementary allocation should not be utilized for purposes other than that for which it has been specifically granted. Also it should not be transferred under FRR 66 - 69. Please note that savings of the Object Codes to which the supplementary allocation is granted cannot be transferred to any other Object Code.

Please see overleaf for accounting details

For Director General of National Budget

Sgd/B, A.K.W. MAHENDRA

Supplementary Allocation No²¹⁵..... of 2006
Schedule

Minister of Finance and Planning

Head No 847 - Department of Development Finance
 Programme 04 - Finance Policy Services
 Project 01 - Small, Medium and Rural Micro Enterprise Development

Project	Sub Project	Object	Financing Code	Item	Description	Amount Rs.
					Recurrent Expenditure	
					Total	-
					Capital Expenditure	
1	10				Lanka Putra Development Bank Acquisition of Financial Assets	
1	10	2404	11		Other (Supplementary Allocation for equity capital to establishment of Lanka Putra Development Bank)	1,500,000,000.00
					Total	1,500,000,000.00

For Director General of National Budget

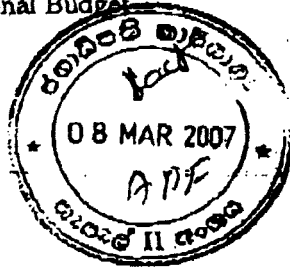
Sgd/B; A.K.W. MAHENDRA

Copies to: -

- 1. DG/State Appointments
- 3. Auditor General
- 4. BDA/
- 5. Accountant Dept. of National Budget
- 6. DG/Public Enterprises
- 7. Mihin Lanka (Pvt) Ltd
- 8. Summary File

Your No.

Department of National Budget
General Treasury
Colombo 01.



01.03.2007

Secretary to the President
The Presidential Secretariat

Supplementary Allocation

A sum of Rs:250,000,000/= is hereby transferred from:

Head 240 -	Department of National Budget
Programme 02-	Development Activities
Project 02-	Budgetary Support Services and Contingent Liabilities
Sub Project 0-	
Object Code/s	2501-1-11 Rs. 250,000,000/=

for expenditure on supplies/services in terms of the Appropriation Act No.47 of 2006 to the Ministry/Department as per the attached schedule.

2. This transfer shall be deemed to have been covered by a supplementary estimate submitted by the H.E. the President in terms of Section 6 of the Appropriation Act No. 47 of 2006.
3. The granting of this allocation should not be construed as adequate authority for incurring expenditure. All expenditure should be incurred in accordance with the provisions of the relevant Financial Regulations, Establishment Code and instructions issued from time to time by government.
4. This supplementary allocation should not be utilized for purposes other than that for which it has been specifically granted. Also it should not be transferred under FR 66 - 69. Please note that savings of the Object Codes to which the supplementary allocation is granted cannot be transferred to any other Object Code.

Please see overleaf for accounting details

21/23/21
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Director General of National Budget

Sudharma Karunaratne
Director General
DEPARTMENT OF NATIONAL BUDGET
General Treasury
Colombo 01.

BY COURIER

1st November 2007

Mr. P.A. Pematilaka, FCA, BCom, PDFM, MBA,
Auditor General,
Auditor General's Department,
Torrington Square,
Colombo 7.

Dear Sir,

Financial Statements for the Year Ended 31st December 2006

I refer to the above Financial Statements published by the Department of State Accounts, General Treasury, with your unqualified opinion on page 33 thereof.

I draw your attention to the following advances made by the Government since 1997, where interest has been defaulted since 1998 and Capital has been defaulted since 2002, by Hotel Developers (Lanka) Ltd., a Government majority (64%) owned Company. The following tabulation shows the advances made and not re-paid and the interest totally defaulted up to 30th June 2006, which together with the Capital amounts to a total of Rs. 5,566,880,397/-. In the light of opinions expressed by the Auditor General *vis-à-vis* Government Accounts, such defaulted sum, no doubt, is cognisable and material.

<u>Date of Advances</u>	<u>Capital</u> Rs.	<u>Rate of Interest</u> % p.a.	<u>Interest to 30.6.2006</u> Rs.
02.7.1997	288,567,633	12.50	544,385,026
12.7.1999	469,742,070	12.50	601,597,422
03.7.2000	464,427,826	12.50	477,100,449
29.6.2001	360,618,876	18.56	484,152,925
01.7.2002	446,803,874	12.50	268,889,538
04.7.2003	340,024,378	9.40	105,182,659
30.6.2004	395,658,959	8.59	70,893,701
30.6.2005	<u>225,639,338</u>	10.28	<u>23,195,723</u>
Total	<u>2,991,482,954</u>		<u>2,575,397,443</u>

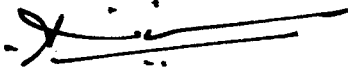
I attach copies of the Treasury Letters dated 13.11.1997, 17.8.1999, 11.8.2000, 30.7.2001, 30.7.2002, 23.9.2003, 29.7.2004 and 19.7.2005 issued at the time such advances had been made, stipulating the conditions of payment of interest and the re-payment of Capital. You would note that the rates of interest are far below the present Treasury Bill rates, which, you would concur could not be justified on defaulted advances, in that, as you are aware, Banks in circumstances of such default, charge penal rates of interest.

The Land, on the advice of the Hon. Attorney General, having been surrendered by the UDA in July 1999, belongs to the Government. Copies of the Surrender of Special Grant Instruments Nos. 673 and 674 are attached. No consideration has been paid by the said Company to the Government for the use of such valuable Land in the heart of the city.

In the circumstances as set out in my Petition dated 17th November 2006 (copy attached), I filed an Application for the Winding-up of the said Company, so that the said Hotel would become and be 100% owned by the Government. This Application has been *questionably* opposed by the Secretary, Ministry of Finance, intervening without status.

I attach copies of my Letters dated 31st July 2007 and 14th August 2007 addressed to H.E. the President, as the Minister of Finance, and to the Secretary to H.E. the President, respectively, which set out the salient facts and the rationale for the action instituted in the interest of the Government.

Yours truly,



Nihal Sri Ameresekere

cc: Hon. Minister Rauff Hakeem M.P., Chairman, Public Accounts Committee
Mr. M.N. Peiris, Secretary, Public Accounts Committee
- *for copies to be circulated to Members of PAC*
Mr. S.C. Mayadunne, former Auditor General, present Project Director, Office of the
Committee on Public Accounts