

Intrigues in the privatization of Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium, including with payments by a mysterious foreign company

The Supreme Court of Sri Lanka, the highest judiciary, delivered Judgment in SC (FR) Application No. 158/2007 on 4.6.2009 annulling as unlawful and illegal the Sale by the Government of Sri Lanka of Sri Lanka Insurance Corporation Ltd., to the Distilleries Consortium, with the said Judgment being written by Justice R.A.N.G. Amaratunga, with Chief Justice Sarath N. Silva and Justice K. Sripavan agreeing. Immediately thereafter on 6.6.2009, Chief Justice Sarath N. Silva retired from Office.

Subsequently, after Chief Justice Sarath N. Silva retired on 6.6.2009, the former Treasury Secretary P.B. Jayasundera filed Application on 7.7.2009 through the same Counsel, Faisz Musthapha, President's Counsel, seeking to be relieved from the undertaking given by him to the Supreme Court by his Affidavit dated 16.10.2008, affirming to the Supreme Court, the highest judiciary, that **he will not hold any public office, directly or indirectly, or purport to do so, in any manner.**

Thereafter on 21.7.2009 and 31.7.2009 Amended Applications had been filed by Treasury Secretary P.B. Jayasundera ***without having obtained the prior approval of the Supreme Court.***

The above had been consequent to the severe castigations made on his conduct and actions in a Judgment delivered on 21.7.2008 by the Supreme Court in annulling the sale by the Government of Sri Lanka to John Keells Holdings PLC of the Colombo Port Oil Bunkering Monopoly as illegal and fraudulent.

The subsequent above Application on 7.7.2009 had been made to the Supreme Court by Treasury Secretary, P.B. Jayasundera on the basis of Letter dated 25.5.2009 addressed to him by then Secretary to President, Lalith Weeratunga on the instructions of the President Mahinda Rajapaksa, which had been responded to by Letter dated 3.6.2009 by former Treasury Secretary, P.B. Jayasundera.

In this instance of the Sale by the Government of Sri Lanka of Sri Lanka Insurance Corporation Ltd., to the Distilleries Consortium, the Treasury Secretary, P.B. Jayasundera by his Affidavit dated 21.11.2007, had, *inter-alia*, declared and affirmed as follows at paragraphs 35 and 61 thereof – viz:

35. With reference to the averments contained in paragraph 11(a) of the affidavit of the Petitioner. I only admit that the Share Sale and Purchase Agreement was structured by PricewaterhouseCoopers, that the said Agreement was signed on 11.04.2003 by the 5th respondent, Acting Secretary to the Treasury on behalf of the Government of Sri Lanka as the Seller and Milford Holding (Private) Ltd. and Greenfield Pacific EM Holding Ltd. as the Purchasers and the 15th respondent had signed the agreement as one of the witnesses. Denying the rest of the averments contained in the said paragraph, I state as follows after perusing the relevant documents, files and record available to me:

(a) that at the 1st meeting of the Cabinet Appointed Tender Board, one of the issues taken up for discussion had pertained to the formation of consortiums by investors and it had been recorded in the minutes 'that it is usual in transactions of this nature for bidders to form consortiums and for the composition of the consortiums to change during the process of the bid'. A photocopy of the

Minutes of the Meeting of the Cabinet Appointed Tender Board held on 13.08.2002 is annexed hereto marked 7R8 and is pleaded as part and parcel of the affidavit;

- (b) this matter had once again been discussed at the Cabinet Appointed Tender Board meeting held on 23.09.2002 and it is recorded in the relevant minutes under the sub-title 'Final Bid Process' in the following manner -

'It was decided to continue with the final bidding process that would provide for well credentialed financial and /or insurance parties to join the process. This should leave open the opportunity for:

- i. Existing groups who have submitted preliminary proposals and/or Expressions of Interest merging/consolidating - and with possibly some parties dropping out of these evolving arrangements: and/or
- ii. New parties who have not submitted EOI and/or Preliminary Proposals (PPs) possibly joining with the parties who have expressed interest or submitted PPs and are thereby eligible to move forward into the final bidding process'

A photocopy of the Minutes of the Meeting of the Cabinet Appointed Tender Board held on 23.09.2002 is annexed hereto marked 7R9 and is pleaded as part and parcel of this affidavit.

- (c) further, the Cabinet Memorandum marked 7R7A specifically refers to the Distilleries Consortium as comprising Distilleries Company of Sri Lanka Ltd., along with Aitken Spence & Company Ltd., Aitken Spence Insurance Company (Pvt.) Ltd and other foreign institutional investors together with Technical Partners. ING Institutional and Government Advisory Services B.V. (Holland). In any event, it was also disclosed in the said Cabinet Memorandum that a sum of US\$10 million from the purchase price of Rs.6,050 million, would be mobilized from the foreign equity partner of the Distilleries Consortium;
- (d) that according to letter dated 08.04.2003 addressed to the Director General of PERC by the Authorized Officer of the Distilleries Consortium, the beneficial shareholders of Milford Holdings (Private) Ltd. and Greenfield Pacific EM Holding Ltd. (the Institutional Investor) are the following entities:

- Milford Holdings (Private) Ltd. -
- Distilleries Company of Sri Lanka Ltd. 24th Respondent
- Aitken Spence & Company Ltd. 25th Respondent
- Aitken Spence Insurance (Pvt) Ltd. 26th Respondent
- Stassen Exports Ltd. -
- Greenfield Pacific EM Holdings Ltd. -
- Hambros Bank (Gibraltar Nominees) Ltd. -

61. With reference to the averments contained in paragraph 20(d) of the affidavit of the Petitioner, I reiterate the averments contained in paragraphs 10 and 39 hereof and state that I specifically apprised the Public Enterprises Reform Commission about the other assignments undertaken by me, especially those offered by International Agencies and International Firms providing financial advisory services. I further state that accordingly, I undertook assignments inter *alia* of the International Monetary Fund, the World Bank and the Asian Development Bank. I also served Ernst & Young as a Senior Policy Advisor on part time basis, but during the short span I served Ernst & Young, I did not render my services in any local transactions. I resigned from the post of part time Advisor to PERC at the end of February 2004. Specifically denying the averment that I had failed and neglected to take action to protect the interests of the Government, I state that I have always carried out my duties in the best interests of the Government of Sri Lanka. A copy of the PERC Board Paper Reference Sp/36/18.12.02 is annexed hereto marked 7R13A and the Letter of Resignation from the part time Advisor position is annexed hereto marked 7R13B and are pleaded as part and parcel of this affidavit.

The ownership of Greenfield Pacific EM Holdings Ltd., Gibraltar was a mystery before the Supreme Court of Sri Lanka. It had been even incorporated after the Cabinet Approval referred to above. However, Affidavit dated 1.11.2008 by Petitioner, Vasudeva Nanayakkara, Attorney-at-Law, had shed some light thereon.

Nevertheless, Hatton National Bank Ltd., known to be closely associated with the Distilleries Consortium, by its Managing Director and Chief Executive Reinzie T. Wijetilake had given Letters confirming the sourcing of funding for the above purchase, whereby the said Bank ought to have known the origin and beneficial ownership of such funding, as per 'Know Your Customer' (KYC) norms and standards for banks and financial institutions.

It would be a mockery of the laid down procedure for technical evaluation and pre-qualification to bid and a travesty of justice, if what is stated at paragraph 35(a) in the Affidavit of Treasury Secretary, P.B. Jayasundera is permitted to stand as true.

Former Treasury Secretary, P.B. Jayasundera had been severely castigated in the Judgment dated 21.7.2008 annulling the above referred to Sale by the Government of Sri Lanka of the Colombo Port Bunkering Monopoly to John Keells Holdings.

On the contrary, intriguingly in the instance of the Judgment delivered on 4.6.2009 annulling as unlawful and illegal the Sale by the Government of Sri Lanka of Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium. **The aforesaid conduct and actions disclosed by the Affidavit of Treasury Secretary, P.B. Jayasundera, including his serious conflict of interest disclosed by paragraph 61 of his Affidavit cited above, and his other actions in this transaction had not even been commented upon, with the Supreme Court significantly been silent thereon.**

Nevertheless even with furthermore dubious conduct and actions disclosed in the said Case, **the former Secretary Treasury, P.B. Jayasundera's conduct and actions had not been castigated as previously**, raising the lurking doubts, as to whether it had been due to the aforesaid Letters dated **25.5.2009** and **3.6.2009** exchanged by and between Lalith Weeratunga, Secretary to the President Mahinda Rajapakse and former Treasury Secretary, P.B. Jayasundera ?

An intriguing incident that startled the Supreme Court had been the disclosure that the final Technical Evaluation Committee Meeting recommending the Sale of Sri Lanka Insurance Corporation Ltd., to the above parties having met on 25.3.2003 at 9:30 am at the Public Enterprise Reform Commission at Level 11, West Tower, World Trade Centre, Colombo 1, and immediately thereafter, within an ½ hour, had met the Cabinet Tender Board at 10:00 am on the same day 25.3.2003 at another location namely the Treasury Auditorium, Ministry of Finance, Colombo 1, together with the approved and signed Minutes of the aforesaid Technical Evaluation Committee Meeting and decision recommended thereat.

The pertinent question arose in the Supreme Court, as to how physically and practically possible it was, that the Technical Evaluation Committee had completed its deliberations to make recommendation and had typed and signed its Minutes, and thereafter had met within an ½ hour in another location with the Cabinet Appointed Tender Board, **thereby raising the intriguing hasty and questionable manner, in which this transaction had been concluded ?**

The Institute of Chartered Accountants of Sri Lanka, Securities & Exchange Commission, Criminal Investigation Department of Sri Lanka Police, the Commission to Investigate Allegations of Bribery or Corruption had been Respondents in this Case, and therefore they had been well and truly aware of the facts disclosed and the findings by the Supreme Court of Sri Lanka, the highest judiciary, and notwithstanding Complaints made to the said law enforcement authorities, no investigative and prosecutorial actions had been pursued with by them, thereby making a mockery of the rule of law ?

Even more shocking was that former Minister of Economic Reform, Milinda Moragoda, the 2nd Respondent in this Case, and whose conduct and actions had been castigated in the above Supreme Court Judgment, immediately thereafter had been appointed by President Mahinda Rajapakse as Minister of Justice, causing humiliation to the Justices of the Supreme Court to have him as the Minister of Justice effectively over them and to fraternize with them !

“Chief Justice Asoka De Silva and Justice Minister Milinda Moragoda are visiting Holland to establish links with the judicial system in that country.

Daily Mirror - Monday September 28, 2009
Int'l judicial network to deal with LTTE suspects

BY KELUM BANDARA
 The government expects to establish an international judicial network to solicit the support of other countries to formulate an effective judicial procedure to deal more effectively with the LTTE suspects now in custody, sources said.

As part of this exercise, Chief Justice Asoka De Silva and Justice Minister Milinda Moragoda are visiting Holland to establish links with the judicial system in that country. The Ministry is also planning to establish a similar link with India.



Milinda Moragoda

Int'l judicial ...

Contd. from A1
 Justice Ministry Secretary Subada Gamaith are on a mission to the United States and Britain to study the judicial process adopted by these countries when dealing with terrorist suspects in the post 9/11 period with special reference to Afghanistan and Iraq.
 "It is important to gather inputs from the western world on transitional justice, to be introduced to Sri Lanka with suitable modifications and amendments to suit our conditions and political realities," a government source said.

POST WAR
As part of this exercise, Chief Justice Asoka De Silva and Justice Minister Milinda Moragoda are visiting Holland to establish links with the judicial system in that country.

The objective behind the establishment of an international judicial network is to obtain assistance in capacity building within our judiciary and the upgrading of various departments under the ministry such as the Attorney General's Department, the Legal Draftsman's Department, Government Analyst's Department and the Prisons Department.

Meanwhile Attorney General Mohan Peiris and



Asoka De Silva

Justice magazine launched



The official launch of the Justice legal magazine was held at the Supreme Courts Complex yesterday. Speaking at the launch, Minister of Justice and Law Reforms, Milinda Moragoda stated that the magazine should serve as a source of education, focusing on important and controversial legal issues of the day, and present various viewpoints involved. He stressed its importance as a medium of communication, building up a platform and forum for lively debate. This project is funded under the Equal Access to Justice Project under the United Nations Development Program (UNDP). Justice and Law Reforms Minister Milinda Moragoda presents a copy of Justice magazine to Chief Justice Asoka de Silva. Speaker W.J.M. Lokubandara looks on. (DG)

Given below:

1. Certificate of Incorporation of Greenfield Pacific EM Holdings Ltd. (Gibraltar)
2. Affidavit dated 1.11.2008 of Petitioner, Vasudeva Nanayakkara, Attorney-at-Law
3. Letters dated 17.9.2002 and 29.11.2002 of Hatton National Bank Ltd.
4. Extracts of Pages of Affidavit dated 21.11.2007 of Treasury Secretary, P.B. Jayasundera
5. Letters dated 25.5.2009 of Lalith Weeratunga, Secretary to the President Mahinda Rajapakse and 3.6.2009 of former Treasury Secretary, P.B. Jayasundera
6. Technical Evaluation Committee Minutes of 25.3.2003
7. Cabinet Tender Board Minutes of 25.3.2003
8. 'Extracts' form the Supreme Court Judgment delivered on 4.6.2009 in SC (FR) Application No. 158/2007
9. Parliament of Sri Lanka Hansard of 12.1.2007 on the investigation into above

11. a) In blatant violation of the Cabinet Decision, an Agreement structured by PWC and finalised by the 15th Respondent, then Director Legal, PERC, who has also signed as a Witness, for the Sale of 90% Shares of SLIC had been signed on 11.4.2003 on behalf of the Government by the 5th Respondent, as Acting Secretary to the Treasury, not with the above selected and Cabinet approved parties, but with the following new parties, as Purchasers;
- Milford Holdings (Pvt) Ltd., (28th Respondent)
 - Greenfield Pacific EM Holdings Ltd., incorporated in Gibraltar on 28.3.2003. (29th Respondent)
- b) Greenfield Pacific EM Holdings Ltd. Gibraltar had been incorporated on 28.3.2003, and hence had not been even in existence on the date of the Cabinet Memorandum of 27.3.2003.

A true copy of the Certificate of Incorporation dated 28.3.2003 of Greenfield Pacific EM Holdings Ltd. Gibraltar is annexed hereto marked P12, pleaded as part and parcel hereof



Certificate
of the Incorporation of a Company

No. of Company: 57757

IT IS HEREBY CERTIFIED that

GREENFIELD PACIFIC EM HOLDINGS LIMITED

is this day incorporated under the Companies Ordinance and that
the company is limited.

Given at Gibraltar, this 28th day of March Two Thousand and
Three.



- c) Distilleries Company of Sri Lanka Ltd., (24th Respondent), Aitken Spence & Co. Ltd., (25th Respondent) and Aitken Spence Insurance (Pvt) Ltd., (26th Respondent) have signed the said Agreement of 11.4.2003, as Guarantors, guaranteeing the payment of the purchase consideration to the Government by the aforesaid Purchasers.
- d) D.H.S. Jayawardene has signed on behalf of the 2 Purchasers and the 3 Guarantors, aforesaid.

A true copy of the Agreement dated 11.4.2003 is annexed hereto marked P13, pleaded as part and parcel hereof

- e) P.B. Jayasundera (7th Respondent), who had been Chairman PERC since January 1997, had curiously resigned in or about January 2003 and had continued thereafter as Senior Advisor PERC, in effect *de-facto* Chairman, whilst G. Hewagama had been Chairman PERC from January 2003.

35. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1.
36. Chairman
Commission to Investigate Allegations of Bribery or
Corruption
36, Malalasekera Mawatha
Colombo 7.
37. Hon. Attorney General
Attorney General's Department
Colombo 12.
38. D.H.S. Jayawardhene
C/o Milford Holdings (Pvt) Ltd.
110, Norris Canal Road
Colombo 10.

Respondents

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

I, Vasudeva Nanayakkara of 49 1/1, Vinayalankara Mawatha, Colombo 10, being a Buddhist, do hereby solemnly, sincerely and truly affirm and declare as follows:

1. I am the Petitioner and the affirmant above-named.
2. Your Lordships' Court having heard this matter, Judgment is pending.
3. I received anonymously copies of documents referred to herein, they having been left at my Office.
4. The documents are
 - (a) a copy of a Letter dated 26.4.2006 on a Stassen Export Ltd.'s Letter Head addressed to Mr. C.H. Gomez, Private Banker, SG Hambros Bank & Trust (Gibraltar) Ltd., P.O. Box 375, Hambro House, Line Wall Road, Gibraltar on the subject;

**GREENFIELD PACIFIC EM HOLDINGS LTD.
VILLA C000 – PURCHASE PRICE - AED 4,196,262.00**

signed by the 38th Respondent, Harry Jayawardhene, instructing to remit 15% installment amounting to AED 629,439.30, which is now due to AL HAMRA REAL ESTATE DEVELOPMENT LLC, UAE, and to debit our Account (i.e. the account of Greenfield Pacific EM Holdings Ltd.,) accordingly, together with copy of the Fax Confirmation of remittance of SG Hambros Bank & Trust (Gibraltar) Ltd., annexed marked "X1" and "X2" hereto

- (b) Copy of 38th Respondent's Affidavit dated 31.10.2007 with paragraph 5 highlighted, wherein the 38th Respondent has stated that **he had no management or financial interest in the 29th Respondent Company – Greenfield Pacific EM Holdings Ltd.,** annexed marked "X3"

(c) Copy of Affidavit dated 31.10.2007 of the 29th Respondent Greenfield Pacific EM Holdings Ltd., also signed by the 38th Respondent, with paragraph 25 sidelined, wherein it is stated that the 29th Respondent is wholly owned by Hambros (Gibraltar Nominees) Ltd., of Line Wall Road, Gibraltar, whose sole shareholder is SG Hambros Bank (Gibraltar) Ltd., at P.B. Box 375, Hambro House, Line Wall Road, Gibraltar annexed marked "X4"

5. I cannot affirm to the genuineness of these documents, which had been delivered to my Office and I am respectfully submitting the same to Your Lordships' Court, so that the genuineness thereof could be ascertained by Your Lordships' Court by directing the Central Bank of Sri Lanka to do so through its international banking channels in terms of international agreements.
6. If found to be genuine, then it would reveal that the 38th Respondent is the beneficial owner of the 29th Respondent contrary to what he had affirmed to in his Affidavit tendered to Your Lordships' Court, which would constitute a false statement made under oath to Your Lordships' Court.
7. Furthermore, given the date 26.4.2006 of the aforesaid Letter "X1", it had been after the Prevention of Money Laundering Act No. 5 of 2006 and Financial Transactions Reporting Act No. 6 of 2006 had become law on 6.3.2006.

Having read and understood the contents, nature and effect of the above, affirmed to the correctness and veracity hereof, signed at Colombo on this 1st day of November Two Thousand and Eight



BEFORE ME

[Signature]
Justice of the Peace /
Commissioner for Oaths



S. NAVARTANAM
Justice of the Peace
No. 25/10, Wipulasena Maw
Colombo - 10.

008/11/01



X1

833, Sirimavo Bandaranaike Mawatha, P. O. Box 1970, Colombo 14, Sri Lanka. Tele : +94-11 2522155, +94-11 2522157
Fax : +94-11 2540333, +94-11 2540332 e-mail : info@stassen.com

26th April 2006

Mr C H Gomez
Private Banker
SG Hambros Bank & Trust (Gibraltar) Ltd.
P O BOX 375
Hambro House
Line Wall Road
Gibraltar

Phone : 00350 748 50
Fax : 00350 790 37

Dear Charles,

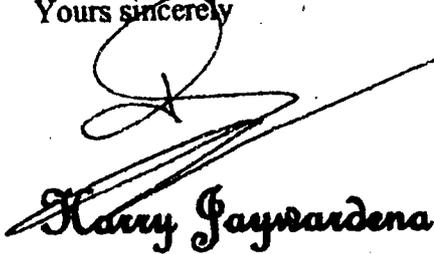
GREENFIELD PACIFIC EM HOLDINGS LTD.
VILLA C000 - PURCHASE PRICE - AED 4 196 262 00

Reference your fax, we hereby authorize you to remit 15% installment amounting to
**AED 629,439.30, which is now due to AL HAMRA REAL ESTATE
DEVELOPMENT LLC, UAE, and debit our Account accordingly.**

Please let me know when done.

Thanking you

Yours sincerely



Harry Jaywardena

X2

PRIVATE BANKING

To: Mr. Harry
 From: Charles Palmer
 Date: 27 April 2003
 Page(s): 1

Tel: 00951 2526000
 Fax: 79037
 D: 70274
 E:
 Tel: 74850

In case of missing page please call

Subject: **Gibraltar Pacific EM Holdings Limited - AED 600 - Purchase price
 AED 4,196,262.00**

Dear Mr Harry

The new Sales Agreement with the plot as described as 147602 is in the possession of Marana Real Estate Development LLC.

The 1st instalment amounting to AED 600,400.00 is now due. We are required to pay the dollar equivalent. Please authorise us to pay this amount to:

Beneficiary Name	AL MARANA REAL ESTATE DEVELOPMENT LLC
Beneficiary Account Number - USD account	3031-779077-509
Beneficiary Bank	ARAB BANK PLC AL NAKHEEL RAS - EMIRATI UNITED ARAB EMIRATES SWIFT: ARABAD33

With kind regards,

Yours sincerely,

G.H. Palmer
 Senior Private Banker
 Direct tel. No (350) 70254

SG Hambros Bank & Trust
 (Gibraltar) Limited
 PO Box 375
 Hambro House
 Line Wall Road
 Gibraltar
 tel: 00350 74950
 fax: 00350 79037
 telex: 2251 GZ
 SWIFT: HMBR22

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35. Deputy Inspector General Police,
Criminal Investigation Department
4th Floor,
New Secretariat Building
Colombo 1
36. Chairman,
Commission to Investigation Allegations of
Bribery or Corruption
36, Malalasekera Mawatha,
Colombo 7
37. Hon. Attorney General
Attorney General's Department
Colombo 12.
38. D.H.S.Jayawardane
C/o.Milford Holdings (Pvt) Ltd.
110, Norris Canal Road,
Colombo 10.

Respondent

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

Objections of the 38th Respondent

I, Don Harold Stassen Jayawardena of 82, Main Street, Ja-Ela, being a Roman Catholic do hereby make oath and swear as follows:

1. I am the deponent above named. I state the following from my personal knowledge, from the documents available to me and from facts that I verily believe to be true.
2. I state that at the time of supporting this application for leave by the Petitioner, I have been added in my personal capacity as the 38th Respondent to this application in order to facilitate the service of notice on the 29th Respondent Company in view of the fact that I have signed the Share Sale and Purchase Agreement P13 on behalf of the 29th Respondent, a Company registered in Gibraltar.
3. I state that I am a Director of the 24th and 25th Respondent Companies. I have signed the Share Sale and Purchase Agreement dated 11.04.2003 on behalf of the 24th and 25th Respondent Companies and on behalf of the 26th Respondent Company upon being authorized to do so by the Board of Directors of these Companies.

4. I further state that I am a Director of the 28th Respondent and have signed the Share Purchase Agreement dated 11.04.2003 on behalf of the said Company as empowered by Board Resolution of the 28th Respondent.
5. I state that I have no management or financial interest in the 29th Respondent Company - Greenfield Pacific EM Holdings Ltd. However, in view of the short notice given by the Government of Sri Lanka as to the signing of the said Share Sale and Purchase Agreement, and the insistence of PERC that the said passive Foreign Institutional Investor become a party to the Share Sale and Purchase Agreement, the Board of Directors of the 29th Respondent at a meeting of the Board of Directors held on 08.04.2003 resolved to authorize myself as the Managing Director of the lead company of the Distilleries Consortium to sign the Share sale and Purchase Agreement on behalf of the 29th Respondent.
6. I state that the specific allegations against the 24th, 25th, 26th, 27th, 28th and 29th Respondents will be specifically dealt with by them.
7. I admit that the 1st Respondent has, in his professional capacity appeared for me as well as for Companies in which I am a Director. I state however that these matters are irrelevant for the purpose of the present application.
8. I state that the 33th Respondent craves the indulgence of Your Lordship's Court and reserves the right to file additional document and affidavits if necessary after perusing the objections of the other Respondents and the Counter Objections of the Petition.
9. I deny all averments in the petition and the corresponding averments in the affidavit which are contrary to what is stated herein. I state that no relief is claimed against me and that I have been added only in the circumstances and for the limited purpose as is explained in paragraph 2 above.
10. I specifically state that this application has been made mala fide and is a frivolous application and hence I be awarded punitive costs.

The foregoing affidavit having been read over to the deponent above named and he after having understood the contents therein sworn and signed on this 31 day of October 2007 in Colombo.



[Handwritten Signature]
Before me

[Handwritten Signature]

Justice of the Peace

A. A SENEVIRATHNE
B. A (Sri Lanka)
Attorney-at-Law, Notary Public
Commissioner For Oaths
Company Secretary
No. 296 DAM STREET
COLOMBO 12
Tel: 0714132136

35. Deputy Inspector General Police,
Criminal Investigation Department
4th Floor,
New Secretariat Building
Colombo 1
36. Chairman,
Commission to Investigation Allegations of
Bribery or Corruption
36, Malalasekera Mawatha,
Colombo 7
37. Hon. Attorney General
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38. D.H.S. Jayawardane
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Respondent

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
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I, Don Harold Stassen Jayawardena of 82, Main Street, Ja-Ela, being a Roman Catholic do hereby make oath and swear as follows:

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2. I state that at the time of supporting this application for leave, I have been added in my personal capacity as the 38th Respondent to this application inter alia in order to facilitate the service of notice on the 29th Respondent Company in view of the fact that I have signed the Share Sale and Purchase Agreement P13 on behalf of the 29th Respondent, a Company registered in Gibraltar.
3. In the circumstances I state that I am duly authorized by the 29th Respondent, by Power of Attorney dated 09.07.2007 to execute this affidavit for and on behalf of the said 29th Respondent. (A copy of the Special Power of Attorney of the 29th

Respondent dated 09.07.2007 is produced marked "29R1" and pleaded as part and parcel of these objections.)

By way of objections to the petition of the Petitioner, I state as follows:

4. I deny all and singular, all the averments in the Petition and the Affidavit thereto, save and except what is hereinafter specifically admitted. All references to the averments in the Petition shall mean a reference also to the corresponding averments in the Affidavit of the Petitioner.
5. These objections are specific to the averments in the petition and the corresponding affidavit that make reference to the 29th Respondent and to averments that are relevant to the 29th Respondent. The paragraphs of the petition that makes reference to and/or which are relevant to the 29th Respondent are 2(z), 11(a), (b), (d) 13(a) to (j) 21(b)(9) and 21(b)(10), 22 and 23. I deny the averments in the above paragraphs and the averments in the other paragraphs of the petition which are inconsistent with the averments hereinafter set out in this affidavit.
6. The 29th Respondent refrains from answering the averments in the petition which are irrelevant to the 29th Respondent and the non answering of any of the averments contained in the petition cannot in any way be taken as an admission of the averments therein contained.
7. As preliminary objections to the Petition I am advised that this application should be dismissed *in limine* in view of the following:
 - a) the application is manifestly out of time in view of the following:
 - i. The Petitioner's own averments demonstrate that the transaction complained of in the Petition, being the signing of the Share Sale and Purchase Agreement had taken place on 11.04.2003, which is more than 4 years prior to the filing of this application.
 - ii. The matters complained of in the Petition all refer to incidents that took place during the periods spanning 2001, 2002 and 2003.
 - iii. The Petition of the Petitioner is dated 28.05.2007.
 - iv. The Petitioner has failed to adduce any reasons for the delay.
 - v. The Petitioner is in violation of the mandatory provisions of the law and in particular of Article 126 of the Constitution with regard to time.
 - b) The Petition fails to disclose any cause of action and the Petition is misconceived in law.

8. The Petitioner has alleged violation of the fundamental rights guaranteed under the Constitution by executive and administrative action. Whilst denying any such violation I am advised to state that in any event the actions of the 29th Respondent are not executive and / or administrative action. Similarly, the actions of the 24th and/or 25th and/or 26th and/or 27th and/or 28th Respondent Companies and of the 38th Respondent do not constitute executive and / or administrative action. Whilst denying any violation of fundamental rights in any manner, I am advised to state that in any event, the Petitioner is not entitled to invoke the jurisdiction of Your Lordship's Court in terms of article 126 of the Constitution seeking relief that violates the rights of the 24th and/or 25th and/or 26th and/or 27th and/or 28th and/or 29th and/or 38th Respondents including under the common law, on contract and their fundamental rights.

9. In any event the relief sought in the Petition that prejudices the rights of the 28th and 29th Respondents in any manner cannot be granted in view of the fact that:

a) The 29th Respondent and the 28th Respondent are bona fide successful purchasers of 90% of the shares of the 27th Respondent after an internationally and locally publicized process that resulted in expressions of interest by 17 parties and competitive bidding in a transparent procedure.

b) The 29th Respondent and the 28th Respondent have purchased 90% of shares of the said 27th Respondent having paid the highest consideration of LKR 6,050 million for 90% of the shares of the 27th Respondent. The balance 10% of the shares were reserved for the employees at the time of the sale and subsequently some of the employees opted to take the value of the shares and the shares of those employees were transferred to the 28th Respondent after payment of the value of the shares to those employees.

10. I am also advised that in any event this application of the Petitioner is misconceived in law in that the Petitioner is not seeking an order in respect of the 10% of shares reserved for the employees of the 27th Respondent. The reservation of the 10% of the shares was an integral part of the entire transaction. I am also advised to state that subsequently the shares were transferred to the workers who opted to receive the shares and those who opted to sell have sold those shares to the 28th Respondent.

The value per share of the said 10% was on the same identical basis as the valuation of the balance 90% of the shares purchased by 27th and 28th Respondents.

I am also advised to state that in view of the above also this application is on the face of it not an application in the interest of the public nor a bona fide application.

Without prejudice to the above I further state as follows:

11. The entire process of privatization of the 27th Respondent by the Government of Sri Lanka was given wide publicity in local and foreign media from its initial stages to the finalization thereof.

12. A Preliminary Technical Proposal was submitted by a group consisting of the 24th, 25th, 26th Respondents and C T Smith Stockbrokers (Pvt.) Limited and Asiabox Consultancy (Pvt.) Limited in or around September 2002. (A copy of the said Preliminary Technical Proposal is annexed hereto marked "29R2" and pleaded as part and parcel of these objections) C T Smith Stockbrokers (Pvt.) Limited and Asia Box Consultancy (Pvt.) Limited were inter alia involved in the search for a passive Foreign Institutional Investor to invest along with the major investors.

I state that the 24th and 25th Respondents are companies incorporated in Sri Lanka which are financially strong, listed public companies.

C T Smith Stockbrokers (Pvt.) Ltd., is one of the largest brokerage houses in Sri Lanka. It commenced operations in November, 1992 as a joint venture between Ceylon Theatres Group and Smith New Court (Far East) Limited – a subsidiary of Smith New Court Plc., the former British brokering house. For the past 14 years up to December 2006, C T Smith Stockbroker - foreign transactions have accounted for approximately 33% of the Colombo Stock Exchange total foreign turnover. The above facts are set out in the web page of C.T. Smith. (The relevant portions from the web site of C T Smith Stockbrokers are annexed hereto marked "29R3" and pleaded as part and parcel of these objections.)

Asiabox Consultancy (Pvt.) Limited is incorporated in Singapore and inter alia operates an investment advisory service. Asiabox Consultancy (Pvt.) Limited works inter alia as a facilitator in attracting much needed foreign investment to the Sri Lankan Stock Market.

13. I state that the Final Technical Proposal was submitted by the 24th, 25th and 26th Respondents and the ING Group, Amsterdam, the Netherlands. (A copy of the said Final Technical Proposal is annexed hereto marked "29R4" and pleaded as part and parcel of these objections)

14. I state that the said technical proposals "29R2" and "29R4" clearly indicated to the seller and to the evaluation committees of the involvement of passive Foreign Institutional Investors in the purchase and the establishment of a Special Purpose Vehicle (SPV) for investment purposes.

15. I state that the Report of the Financial Advisors Price Waterhouse Coopers annexed to the document P7 produced with the Petition indicates in section 2 that the Distilleries Consortium includes 'international investors who propose to invest in up to Rs. 1 billion in funds.'

16. I state that the technical proposals submitted by the Distilleries Consortium and Commercial Bank of Ceylon Ltd. [CBC] / DFCC were found acceptable and upon negotiations the final bids offered by the two parties for 90% of the shares of the 27th Respondent were as follows:

Distilleries Consortium	Rs. 6,050 Million (Rs. 134.44 – per share)
CBC/DFCC Group	Rs. 3,600 Million (Rs. 80.00 – per share)

Therefore I state that the bid submitted by the Distilleries Consortium at the end of the competitive bidding process, which took approximately one year, was higher than its closest competitors by 2,450 Million for 90% of the shares of the 27th Respondent or Rs. 2,700 million for 100% of the shares.

Therefore I state that the Technical Evaluation Committee and the Cabinet Appointed Tender Board rightfully determined that the bid submitted by the Distilleries Consortium had been the successful bid.

17. I state that accordingly, the Cabinet Memorandum P10 dated 27.03.2003 has sought the approval of the Cabinet to authorize the Secretary to the Treasury to inter alia divest 90% of the shares of the 27th Respondent to the Distilleries Consortium. The said memorandum identifies the Distilleries Consortium as follows:

- Distilleries Company of Sri Lanka
- Aitken Spence & Co. Ltd
- Aitken Spence Insurance (Pvt.) Ltd.
- Foreign Institutional Investors
- Technical Partners, ING Institutional and Government Advisory Services B.V. (Holland)

18. I state that this Cabinet Memorandum has been approved in terms of the document P11 by the Cabinet.

19. In the circumstances I respectfully state that there was adequate notice given to the Government of Sri Lanka and to the Public Enterprise Reform Commission (PERC) of the involvement of a passive Foreign Institutional Investor in the purchase of the 27th Respondent.

20. During the bidding process, as set out above C T Smith Stockbrokers (Pvt.) Limited and Asia Box Consultancy (Pvt.) Limited, in the search for a passive Foreign Institutional Investor had invited several foreign institutional investors including the world renowned and respected banking group SG Hambros Bank [subsidiary of the Societe Generale Banking Group] to invest in the purchase of the 27th Respondent.

21. Accordingly, the SG Hambros Bank was kept informed of the bidding process, and the bid value but had to await the result of the bidding process in order to make a final commitment. The reason for this is that there were several bidders and also that SG Hambros Bank group as is the usual practice in transactions of this nature opted to

invest through a SPV especially in view of the fact that it was understood that it would be a passive investor.

22. I state that upon being informed of the fact that the bid submitted by the Distilleries Consortium was successful, the SG Hambros Bank established the 29th Respondent - Greenfield Pacific EM Holdings Ltd., a company duly incorporated under and in terms of the company laws of Gibraltar having its registered address at No. 32, Line Wall Road, Gibraltar as a SPV in order to so invest in the said privatization of the 27th Respondent.
23. In the circumstances, I state that the 29th Respondent is a SPV specially incorporated to enable the Foreign Institutional Investor namely the Hambros (Gibraltar Nominees) Ltd., to invest in the 27th Respondent the Sri Lanka Insurance Corporation Ltd., as a passive investor. I state that the establishment of SPV is a common and well established practice in commercial and business ventures of this nature the world over.
24. The SPV Greenfield Pacific EM Holdings Ltd., (the 29th Respondent) was established after the Distilleries Consortium bid had been successful in as much as incorporating a company to purchase shares of the 27th Respondent would be futile unless and until it is known that the purpose has materialized.
25. I state that the 29th Respondent is wholly owned by Hambros (Gibraltar Nominees) Ltd., of No. 32, Line Wall Road, Gibraltar. (A copy of a letter dated 02.08.2007 from F. Imossi of SG Private Banking SG Hambros is produced marked "29R5" and pleaded as part and parcel of these objections.)

The sole shareholder of Hambros (Gibraltar Nominees) Ltd., is SG Hambros Bank (Gibraltar) Ltd., with its registered office at P. O Box 375, Hambros House, No. 32, Line Wall Road, Gibraltar. (A copy of a letter dated 19.07.2007 from Francis Imossi - Private Banking Officer of SG Private Banking SG Hambros is produced marked "29R6" and is pleaded as part and parcel of these objections.)

Thus, I state that the sole shareholder of SG Hambros Bank (Gibraltar) Ltd., is SG Hambros Bank Limited with the registered office at SG House, No. 41, Tower Hill, London EC3N 4SG. (A copy of a letter dated 24.07.2007 from F. Imossi of SG Private Banking SG Hambros is produced marked "29R7" and a copy of the Annual Report of SG Hambros Bank Ltd., for the year ending 31.12.2006 is annexed hereto marked "29R8" respectively and are pleaded as part and parcel of these objections) The said Annual Report on page 35 states that the 'ultimate parent undertaking and controlling party is Societe Generale S.A. which is incorporated in France'.

The parent company of SG Hambros Bank Limited is Societe Generale S.A. having its headquarters at 29, Boulevard Haussmann 75009, Paris, France. (A copy of the 2007 Registration Document of Societe Generale S.A. filed with the French

Securities Regulator on 06.03.2007 translated from the original French Text is annexed hereto marked "29R9" and pleaded as part and parcel of these objections)

26. I state that initially the 29th Respondent did not intend to become a party to the Share Sale and Purchase Agreement signed with the Government of Sri Lanka. (A copy of a letter dated 07.04.2003 addressed to the Director Legal of PERC by and on behalf of the Distilleries-Spence Consortium is annexed hereto marked "29R10" and pleaded as part and parcel of these objections)
27. However upon the insistence of PERC, the 29th Respondent agreed to become a party to the Share Sale and Purchase Agreement in spite of the fact that it had no intention of participating in the management of the 27th Respondent.
28. I state that through the SPV, Greenfield Pacific EM Holdings Ltd., the Foreign Institutional Investor invested a sum of US\$ 9,309,992/- in the 27th Respondent as a passive investor and accordingly the sum of US\$ 9,309,992/- was transferred to Greenfield Pacific EM Holdings Ltd., (Sierra Account) at the Hatton National Bank and thereafter a transfer of Rs. 969,100,000/- was made to Milford Holdings (Pvt.) Ltd. on 07.04.2003 to be paid for the purchase of 7,437,000 shares of the 27th Respondent. (A letter from the Hatton National Bank dated 08.08.2007 is annexed hereto marked "29R11" and pleaded as part and parcel of these objections.)
29. Accordingly I state that 7,438,000 shares of the 27th Respondent Company have been transferred to the 29th Respondent Company. (A copy of the share certificate to this effect is annexed hereto marked "29R12" and is pleaded as part and parcel of these objections.)
30. I further state that the Government of Sri Lanka clearly did not express an intention of evaluating the passive Foreign Institutional Investor. Paragraph 7 (e) of the Petition states that the criteria for evaluation of the buyers were as follows:
- Operational experience in life and general insurance industry - this requirement was fulfilled by Aitken Spence Insurance (Pvt.) Ltd., and ING Institutional & Government Advisory Services BV., Holland.
 - Financial Capacity to Operate 27th Respondent - This requirement was fulfilled by Distilleries Company of Sri Lanka Limited, backed by necessary bank guarantees.
 - Business Plan to develop future business - This was submitted together with the technical proposals produced marked 29R2 and 29R4 and had been evaluated accordingly.

Hence, the evaluation of the passive Foreign Institutional Investor who has no management responsibility and who is merely investing as a passive investor was not a requirement according to the Petitioner's own pleadings.

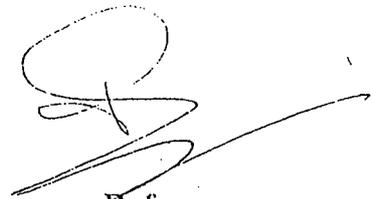
31. I state that the Government of Sri Lanka acting through PERC gave short notice in relation to the signing of the Share Sale and Purchase Agreement. Accordingly the 29th Respondent at a meeting of the Board of Directors held on 08.04.2003 arrived at a resolution to authorize myself as the Managing Director of the lead company of the Distilleries Consortium to sign the Share Sale and Purchase Agreement on behalf of the 29th Respondent. (A copy of the minutes of the meeting of the Board of Directors of the 29th Respondent dated 08.04.2003 and a letter addressed to PERC by two directors of the 29th Respondent dated 08.04.2003 is annexed hereto marked "29R13" and "29R14" respectively and are pleaded as part and parcel of these objections.)

32. Without prejudice to the above I state that,

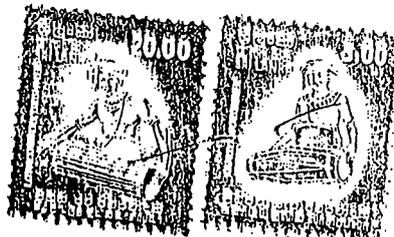
- a. the appointment of the Tender Board is not within the purview of the 29th Respondent. However on a perusal of the document P2 annexed to the Petition; it is clear that the permanent Cabinet Appointed Tender Board had been assigned the task of handling the tender for the restructuring of the 27th Respondent.
- b. The Cabinet has at all times accepted the said permanent Cabinet Appointed Tender Board carrying out such tasks and functions in handling the tender for the restructuring and sale of the 27th Respondent.
- c. In the circumstances private parties who submitted bids are entitled to rely upon the correctness of processes and procedures carried out by a Sovereign State. While the said Tender had been given wide publicity in local and foreign media the Distilleries Consortium has clearly out bid its competitors and been rightly accepted as the successful bidder.
- d. The indicative valuation prepared by Price Waterhouse Coopers – an internationally reputed finance house - was a confidential document and was not available to bidders; as demonstrated by the documents produced by the Petitioners themselves. In any event the bid submitted by the Distilleries Consortium is considerably higher than the indicative valuation.
- e. In these circumstances the Petitioner's application is frivolous and should be dismissed by Your Lordships' Court.
- f. I state that the 29th Respondent as a foreign investor who had invested approximately 10 million US\$ in Sri Lanka as an investment expects as any reputable investor would that his investment is safe and that such investment shall be protected by the Government of Sri Lanka. If the 29th Respondent had any doubt that such protection was not forthcoming it would not have invested in Sri Lanka but would have invested that money in some other country or some other purpose.
- g. I am further instructed to state that the 29th Respondent invested almost 10 Million US\$ as a passive investor on the understanding that the shares of the 27th Respondent Company will be listed in the Colombo Stock Exchange within a reasonable time so that they could get adequate return by transacting the shares in the stock market.

33. I state that the address in Singapore for the 29th Respondent is incorrect and that the correct address for the 29th Respondent is PO Box 375, No. 32, Line Wall Road, Gibraltar. (A copy of a letter from the 29th Respondent to the 27th Respondent dated 12.04.2006 is produced marked "29R15" and pleaded as part and parcel of these objections.)
34. The Distilleries Consortium also established a Special Purpose Vehicle (the 28th Respondent) in order to purchase shares of the 27th Respondent which is an accepted practice.
35. I state that the specific allegations against the other partners of the Distilleries Consortium will be specifically dealt with by them.
36. I deny any violations as stated in the Petition and state that the said privatization of the 27th Respondent took place in conformity with the relevant law and the relevant regulations, rules and norms thereto.
37. I specifically deny that the Petition reveals any violation of fundamental rights, Directive Principles of State Policy or Fundamental Duties.
38. I state that the 29th Respondent craves the indulgence of Your Lordship's Court and reserves the right to file additional document and affidavits if necessary after perusing the objections of the other Respondents and the Counter Objections of the Petition.
39. I specifically state that this application has been made mala fide and is a frivolous application and hence the 29th Respondent be awarded punitive costs.
40. In the circumstances I state that the petition should be dismissed and this Respondent should be awarded costs and such other relief as to Your Lordships' Court shall seem meet.

The foregoing affidavit having been read over to the deponent above named and he after having understood the contents therein sworn and signed on this 31st day of October 2007 in Colombo.



Before me



Justice of the Peace.

A. A SENEVIRATHNE
 B. A (Sri Lanka)
 Attorney-at-Law, Notary Public⁴
 Commissioner For Oaths
 Company Secretary
 No. 286 DAM STREET
 COLOMBO 10

The 24th to 21st respondents have submitted that Milford Holdings is a company formed by and owned by three parties which figured in the Distilleries Consortium. Greenfield Pacific EM Holdings Ltd is a total stranger. There is only one contract and when it is void due to illegality the whole contract is null and void. I accordingly hold and declare that the Share Sale and Purchase Agreement executed by the 5th respondent Acting Secretary to the Treasury on behalf of the Government of Sri Lanka and by Milford Holdings (Pvt) Ltd and Greenfield Pacific EM Holdings on 11.4.2003 was and is illegal and null and void ab initio. "

Know your Customer ?

Hatton National Bank Ltd., of which D.H.S. Jayawardena had a major control, directly and indirectly, had issued Letter of Intent dated 17th September 2002, and another Letter dated 29th November 2002, both signed by its Managing Director & Chief Executive, Rienzie T. Wijetilleke, confirming the availability of financing, including from 'passive equity partners', for the purchase of the Shares of Sri Lanka Insurance Corporation Ltd., by the Consortium led by Distilleries Co. of Sri Lanka Ltd.

Hatton National Bank Ltd., had also issued a Bid Bond dated 28th November 2002, and subsequently, the total purchase consideration to the Government of Sri Lanka had been paid through Hatton National Bank Ltd.; thereby raising the question, as to whether Hatton National Bank Ltd., had ascertained and/or knew the origins of the source of the foreign funding from Gibraltar, and which funding transaction, as evidenced by the foregoing, had been handled by its Managing Director & Chief Executive, Rienzie T. Wijetilleke, who, as reported in the media, advocates in the public domain, the causes to combat fraud and corruption, and the necessity to comply with norms of good governance, transparency and accountability ?

HATTON NATIONAL BANK LIMITED

RIENZIE T. WIJETILLEKE
MANAGING DIRECTOR & CHIEF EXECUTIVE



HATTON NATIONAL BANK LIMITED

RIENZIE T. WIJETILLEKE
MANAGING DIRECTOR & CHIEF EXECUTIVE



Tuesday, September 17, 2002.

The Managing Director
Distilleries Company of Sri Lanka Ltd
No 110, Norris Canal Road
Colombo 10.

Dear Sir,

LETTER OF INTENT FOR FINANCING FOR THE PURCHASE OF SHARES OF INSURANCE CORPORATION OF SRI LANKA LTD. (SLICL)

As per the discussions we have had with your company, we write to confirm that our Bank will structure facilities as shown below and act as the lead banker in case the bid for the above, by the consortium comprising of Distilleries Company of Sri Lanka Ltd., (DCSL), Aitken Spence Company Limited and Aitken Spence Insurance Ltd., is successful.

- (a) A term loan repayable in five years to DCSL to finance the short fall in own funds to purchase the shares of SLICL, that DCSL intends to hold long term.
- (b) A bridging loan to DCSL/the consortium repayable within a period of 2-3 years to be paid by disposing the part of the equity in excess of the long-term holding as envisaged by the consortium, in the Colombo Stock Exchange or transferring all or part of such excess shares to other passive equity partners.

Other terms and conditions for the above facilities to be negotiated. Hatton National Bank will act as the lead bank in syndicating the above loans and will participate in lending within the limits specified by the Central Bank of Sri Lanka.

Please contact the undersigned on Tel : 430908 if further information or clarification is required.

This letter is issued on the request of Distilleries Company of Sri Lanka Ltd.

Yours faithfully,

Friday, November 29, 2002.

The Managing Director
Distilleries Company of Sri Lanka Ltd
110 Norris Canal Road
Colombo 10

Dear Sir,

LETTER CONFIRMING THE AVAILABILITY OF FUNDS TO THE CONSORTIUM COMPRISING DISTILLERIES COMPANY OF SRI LANKA LTD., AITKEN SPENCE & CO. LIMITED AND AITKEN SPENCE INSURANCE (PVT) LTD. FOR PURCHASE OF SHARES OF SRI LANKA INSURANCE CORPORATION

This has reference to my previous letter dated 17th September 2002, and the proposal submitted and the discussions we had on the above.

We hereby confirm that the funds required to bridge the gap between the funds internally available and the bid price indicated to us, will be made available by us to the consortium.

The funds loaned will be structured as follows :

- (a) Long Term Loan to the consortium members to finance the majority portion of the shares the consortium intends to retain with them in the long term.
- (b) Loans for 2-3 year period for the value of the portion of the shares the consortium intends to divest to the public.

We are satisfied with the proposed repayment plan and also the collateral offered for this syndicated facility.

We will structure the above facilities for the consortium with the participation of other banks if required, and the funds will be made to the consortium to meet the timetable set by the PERC for the conclusion of the transaction. As indicated in my previous letter this Bank will be the lender for the portion of funds loaned to be within the guidelines set by the Central Bank of Sri Lanka.

Please contact the undersigned on Tel: 662701, 664701 if further information or clarification is required.

This letter is issued on the request of Distilleries Company of Sri Lanka Ltd., on behalf of the consortium bidding for shares of Sri Lanka Insurance Corporation.

Yours faithfully,

34. Inspector General of Police
Police Headquarters
Colombo 1.
35. Deputy Inspector General of Police
Criminal Investigation Department
4th Floor, New Secretariat Building
Colombo 1.
36. Chairman
Commission to Investigate
Allegations of Bribery or Corruption
36, Malalasekera Mawatha
Colombo 7.
37. Hon. Attorney General
Attorney General's Department
Colombo 12.
38. D H S Jayawardena
C/o Milford Holdings (Pvt) Ltd.,
110, Norris Canal Road
Colombo 10.

Respondents

I, Purichi Bandara Jayasundera, Secretary to the Ministry of Finance and Planning and Secretary to the Treasury, Secretariat Building, Colombo 1, being a Buddhist do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am the affirmant above named and the 7th Respondent to this Application.
2. I affirm to the matters embodied hereinafter of my personal knowledge and with recourse to official documents, files and records available to me.
3. I have perused the Petition and the Affidavit filed by the Petitioner and I deny all and singular the several averments contained therein save and except those that are hereinafter specifically admitted by me. The reference to any averment of the affidavit of the Petitioner hereafter made also refers to and applies to corresponding paragraphs in the Petition.
4. I am unaware of the averments contained in paragraph A of the affidavit of the Petitioner.
5. I admit the averments contained in paragraphs 1, 2(e), 2(f), 2(h), 2(i), 2(o), 2(s), 2(u), 2(v), 2(w), 2(x), 2(y), 2(z), 2(ee) and 2(ff) of the affidavit of the Petitioner.

- (e) that the Cabinet Memorandum dated 27.03.2003 submitted by the 2nd Respondent seeking authorization for the Secretary to the Treasury to execute the Share Sale and Purchase Agreement and divest 90% of SLIC to the Distilleries Consortium was approved by the Cabinet of Ministers at the meeting held on 02.04.2003. Photocopies of the said Cabinet Memorandum and Cabinet Decision are annexed hereto marked 7R7A and 7R7B and are pleaded as part and parcel of this affidavit.
31. With reference to the averments contained in paragraph 7(d) of the affidavit of the Petitioner. I admit that the 24th and 25th Respondents were well known, financially strong, listed public companies. However, I state that ING Institutional and Government Advisory Services BV, Holland were associated to work with the entire Consortium.
32. I am advised and I admit the averments contained in paragraphs 7(e), 8(a), 8(b) and 8(c) of the affidavit of the Petitioner.
- 32A. whilst admitting the averments contained in paragraph 8(d) of the affidavit of the Petitioner, I state that the indicative valuation had been on the basis of a 'net present value of a discounted cash flow'.
33. With reference to the averments contained in paragraph 9 of the affidavit of the Petitioner, I only admit the document marked P9. I state that the Minutes of the Meetings of the Cabinet Appointed Tender Board *inter alia* give reasons for its decision and refer to the Tender Board minutes marked 7R4A and 7R6B referred to in paragraphs 30(a) and 30(d) hereof respectively and to the Tender Board minutes marked 7R8 and 7R9 referred to in paragraphs 35(a) and 35(b) hereof respectively.
34. With reference to the averments contained in paragraphs 10(a) and 10(b) of the affidavit for the Petitioner. I only admit the Cabinet Memorandum and the Cabinet Decision marked P10 and P11.
35. With reference to the averments contained in paragraph 11(a) of the affidavit of the Petitioner. I only admit that the Share Sale and Purchase Agreement was structured by PricewaterhouseCoopers, that the said Agreement was signed on 11.04.2003 by the 5th respondent, Acting Secretary to the Treasury on behalf of the Government of Sri Lanka as the Seller and Milford Holding (Private) Ltd. and Greenfield Pacific EM Holding Ltd. as the Purchasers and the 15th respondent had signed the agreement as one of the witnesses. Denying the rest of the averments contained in the said paragraph, I state as follows after perusing the relevant documents, files and record available to me:
- (a) that at the 1st meeting of the Cabinet Appointed Tender Board, one of the issues taken up for discussion had pertained to the formation of consortiums by investors and it had been recorded in the minutes 'that it is usual in transactions of this nature for bidders to form consortiums and for the composition of the consortiums to change during the process of the bid'. A photocopy of the

Minutes of the Meeting of the Cabinet Appointed Tender Board held on 13.08.2002 is annexed hereto marked 7R8 and is pleaded as part and parcel of the affidavit;

- (b) this matter had once again been discussed at the Cabinet Appointed Tender Board meeting held on 23.09.2002 and it is recorded in the relevant minutes under the sub-title 'Final Bid Process' in the following manner -

'It was decided to continue with the final bidding process that would provide for well credentialed financial and /or insurance parties to join the process. This should leave open the opportunity for:

- i. Existing groups who have submitted preliminary proposals and/or Expressions of Interest merging/consolidating - and with possibly some parties dropping out of these evolving arrangements: and/or
- ii. New parties who have not submitted EOI and/or Preliminary Proposals (PPs) possibly joining with the parties who have expressed interest or submitted PPs and are thereby eligible to move forward into the final bidding process'

A photocopy of the Minutes of the Meeting of the Cabinet Appointed Tender Board held on 23.09.2002 is annexed hereto marked 7R9 and is pleaded as part and parcel of this affidavit.

- (c) further, the Cabinet Memorandum marked 7R7A specifically refers to the Distilleries Consortium as comprising Distilleries Company of Sri Lanka Ltd., along with Aitken Spence & Company Ltd., Aitken Spence Insurance Company (Pvt.) Ltd and other foreign institutional investors together with Technical Partners. ING Institutional and Government Advisory Services B.V. (Holland). In any event, it was also disclosed in the said Cabinet Memorandum that a sum of US\$10 million from the purchase price of Rs.6,050 million, would be mobilized from the foreign equity partner of the Distilleries Consortium;

- (d) that according to letter dated 08.04.2003 addressed to the Director General of PERC by the Authorized Officer of the Distilleries Consortium, the beneficial shareholders of Milford Holdings (Private) Ltd. and Greenfield Pacific EM Holding Ltd. (the Institutional Investor) are the following entities:

- Milford Holdings (Private) Ltd. -
- Distilleries Company of Sri Lanka Ltd. 24th Respondent
- Aitken Spence & Company Ltd. 25th Respondent
- Aitken Spence Insurance (Pvt) Ltd. 26th Respondent
- Stassen Exports Ltd. -
- Greenfield Pacific EM Holdings Ltd. -
- Hambros Bank (Gibraltar Nominees) Ltd. -

58. With reference to the averments contained in paragraph 19(a) and 19 (b) of the affidavit of the Petitioner, I am advised that on the basis of the Cabinet decision submitted by the 3rd Respondent, action has been pursued in respect of the matter.
59. With reference to the averments contained in paragraph 20(a) of the affidavit of the petitioner I admit that the 19th respondent who was a senior partner of the PricewaterhouseCooper was a member of the Steering Committee, and that Ms. Marina Tharmaratnam who also functioned as a member of the Steering Committee resigned in July 2002 citing conflict of interest as the reason. However, I state that the 19th respondent having declared an interest in the appointment of financial advisers, excused himself from the discussions of the Steering Committee in this regard.
60. With reference to the averments contained in paragraph 20(c) of the affidavit of the Petitioner, I admit that Ernst & Young were Auditors of the Sri Lanka Insurance Corporation Ltd., when the Government was 100% owner and even thereafter.
61. With reference to the averments contained in paragraph 20(d) of the affidavit of the Petitioner, I reiterate the averments contained in paragraphs 10 and 39 hereof and state that I specifically apprised the Public Enterprises Reform Commission about the other assignments undertaken by me, especially those offered by International Agencies and International Firms providing financial advisory services. I further state that accordingly, I undertook assignments *inter alia* of the International Monetary Fund, the World Bank and the Asian Development Bank. I also served Ernst & Young as a Senior Policy Advisor on part time basis, but during the short span I served Ernst & Young, I did not render my services in any local transactions. I resigned from the post of part time Advisor to PERC at the end of February 2004. Specifically denying the averment that I had failed and neglected to take action to protect the interests of the Government, I state that I have always carried out my duties in the best interests of the Government of Sri Lanka. A copy of the PERC Board Paper Reference Sp/36/18.12.02 is annexed hereto marked 7R13A and the Letter of Resignation from the part time Advisor position is annexed hereto marked 7R13B and are pleaded as part and parcel of this affidavit.
62. I admit the averments contained in paragraph 21(a) of the affidavit of the Petitioner.
63. With reference to the averments contained in paragraph 21(b) I only admit that the privatization transaction of Sri Lanka Insurance Corporation Ltd is being examined by COPE which has referred it to a Sub - Committee of COPE. In the Hansard of 21st February 2007, at column 685, Hon. Hussain Baila, Deputy Minister of Foreign Affairs and Member of Parliament, has stated that the privatization of SLIC, *inter alia* is a matter still being investigated and as such has disassociated responsibility pertaining to such annexes. As such items 1 to 18 referred to in the averment are not part of a COPE Report. An extract from Hansard of 21st February 2007 is annexed hereto marked 7R14 and is pleaded as part and parcel of this affidavit.

64. I deny the averments contained in paragraphs 22(a), 22(c), 22(d), 22(h) and 23 of the affidavit.
65. I am unaware of the averments contained in paragraphs 22(b), 22(f) and 22(g) and 24 of the affidavit of the Petitioner.
66. I state that I reserve the right to tender further documents pertaining to this transactions when the matter is taken up for hearing before Your Lordships' Court.
67. I am advised and I state as follows :
- (a) that the Petitioner's application is misconceived in law ;
 - (b) that the Petitioner's application is time barred ;
 - (c) that the Petitioner has failed to establish any infringement of the fundamental rights guaranteed by Articles 12(1) and 12(2) of the Constitution; and
 - (d) that in the circumstances, the Petitioner is not entitled to any of the relief as prayed for.

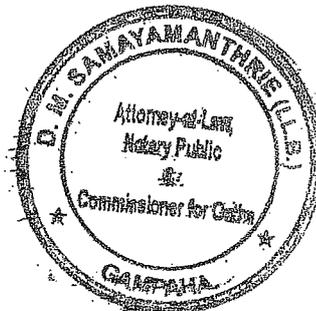
The affirmant having)
 read over and understood)
 the contents hereof)
 affirmed to and signed)
 at Colombo on this 21st)
 day of November, 2007.)



Before Me



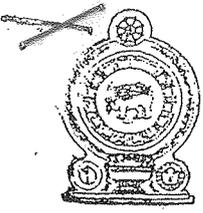
Justice of the Peace/Commissioner of Oaths



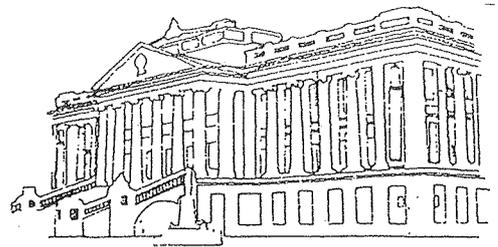
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 Attorney-at-Law

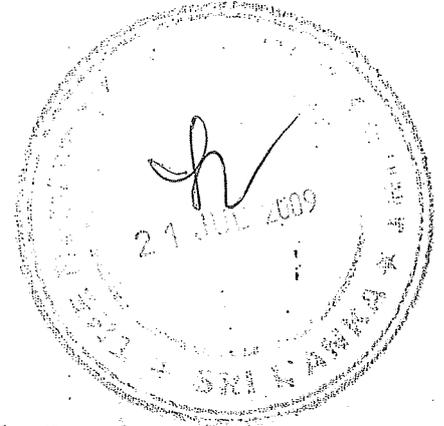


ජනාධිපති කාර්යාලය
சனாதிபதி அலுவலகம்
PRESIDENTIAL SECRETARIAT



25 May 2009

Dr. P. B. Jayasundera
761/C, Pannipitiya Road
Pelawatta
Battaramulla



Dear Dr. Jayasundera,

I am writing this letter on the instructions of His Excellency the President. As His Excellency the President has re-emphasized in his address to the Members of Parliament on 19th May 2009, with the successful liberation of the North and East from the grips of terror, our country now needs to embark on a massive development programme over the next several years to fulfill aspirations of our people who have suffered immensely for almost three decades. Although we have been successful in surpassing this barrier due to uncompromising commitment of our security forces, you are well aware that our country is also confronted with several other challenges that require to be managed successfully to restore the desired socio-economic progress. The impact of the global economy that is confronted with a financial crisis is one such major challenge that we have to manage to position our country on a rapid post-war development path.

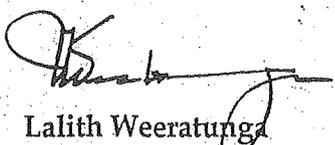
You are also aware that His Excellency the President upon assumption of duties embarked on several major infrastructure development activities under the Mahinda Chinthana – 10 Year Development Framework, with a view to transform our economy by alleviating unemployment and poverty and raising the income level of people, particularly in lagging regions. Several of these projects are now in the final stage of implementation and many others are to be launched for which domestic and external funding and other resources need to be mobilized. In addition, the implementation of post-war development programmes in the North and East also demand well experienced and committed public officers.

As we know, His Excellency the President accepted your resignation from the post of Secretary, Ministry of Finance and Planning and other positions in the Government reluctantly, in view of your insistence. Considering the vast knowledge and experience you command while acknowledging your honesty and integrity, His Excellency the President is of the view that it is a waste that your services are not available to the

TRINICK
D. M. Wickramaratne
Attorney-at-Law

Government particularly in the present context. In this background, His Excellency the President has instructed me to inform you to resume duties as Secretary, Ministry of Finance and Planning and assist the Government in its endeavours.

Yours faithfully,



Lalith Weeratinga
Secretary to the President

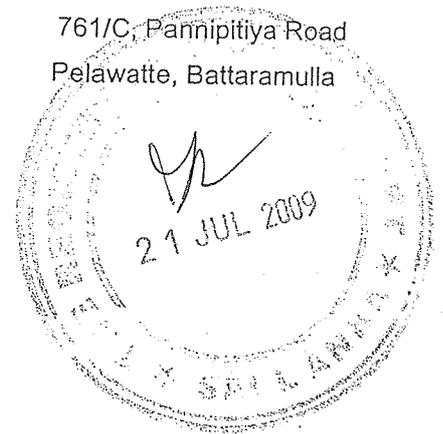
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D. Wickramaratne
Attorney at Law

TRUE COPY
D. Wickramaratne
Attorney at Law

3rd June, 2009

761/C, Pannipitiya Road
Pelawatte, Battaramulla

Mr. Lalith Weeratunga
Secretary to the President
The Presidential Secretariat
Colombo 1.



Dear Mr. Sir,

I thank you for your letter dated 25th May, 2009 informing me that His Excellency the President has requested me to resume duties as the Secretary, Ministry of Finance and Planning. I wish to express my gratitude to His Excellency, for placing confidence in me and also for the sentiments expressed therein.

I regret to inform you that in view of an undertaking given by me to the Supreme Court in Case No: SC(FR) 209/2007 through an Affidavit, consequent to a direction given by the Court, I am unable to make a commitment as at present although I am anxious to honour His Excellency's request. I am forwarding herewith a copy of the said Affidavit for your perusal.

I wish to state that I have always conducted myself with the utmost propriety and that I am not guilty of any wrongdoing. In this context, my lawyers had advised me prior to the delivery of the Judgment in the said case that if the Court were to take into account all the relevant material, there could be no adverse findings against me.

While thanking you once again, as already indicated in my letter of resignation addressed to you dated 25th July 2008, I wish to reiterate that throughout my career in the public service I have maintained the highest level of honesty and integrity and always discharged my duties with utmost commitment, in good faith and in the best interest of the country and I have never compromised under any circumstance the public interest in discharging my duties in the various capacities that I served in the Government.

Yours faithfully,

A handwritten signature in black ink, appearing to be "P.B. Jayasundera".

P.B. Jayasundera

Encl.

A handwritten signature in black ink, appearing to be "D.M.D. Wickramanayake".
Attorney-at-Law

MINUTES OF THE MEETING FOR TECHNICAL EVALUATION COMMITTEE
ON THE RESTRUCTURE OF
SRI LANKA INSURANCE CORPORATION LTD

Held at 9.30 a.m. on March 25, 2003 at the Public Enterprises Reform Commission,
Level 11-0, West Tower, world Trade Centre, Colombo - 01.

Present:

Members of the Technical Evaluation Committee

Mr Leel Wickremarachchi, CEO/GM, Private Sector Infrastructure Development
Mr E Arumugam, Director General, Public Finance, Ministry of Finance
Dr R H S Samarātunga, Director, Dept of National Planning (Treasury Representative)
Mr N Meemaduma, Director General, Ministry of Economic Reform, Science &
Technology

Present at the Meeting - Financial Advisors

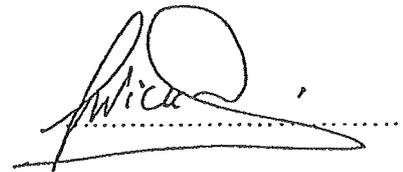
~~Mr Channa Manoharan, Pricewaterhouse Coopers~~
Ms Aneela de Soysa, Director, Pricewaterhouse Coopers

In Attendance:

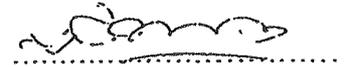
Ms Piyumica Wijeweera, Manager, PERC
Ms Lumbini Kulasekera, Manager, PERC

The Technical Evaluation Committee (TEC) considered Attachment 1, which sets out the Report of the Financials Advisors on the Bid for 90% of the shares of Sri Lanka Insurance Corporation Ltd (SLIC) and decided to recommend acceptance of the bid for 90% of shares of SLIC at a price of Rs 6,050 Mn submitted by the consortium comprising Distilleries Co Ltd. Aitken Spence & Co Ltd Aitken Spence Insurance together with their Technical Partner, ING. Institutional & Government Advisory Services B.V. (Holland) together with Institutional Investors.

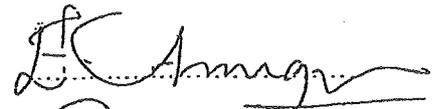
Mr Leel Wickremarachchi



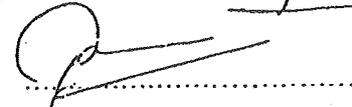
Dr R H S Samarātunga



Mr E Arumugam



Mr N Meemaduma



March 25, 2003.

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25/3/2003

MINUTES OF THE 11TH CABINET APPOINTED TENDER BOARD (CATB)
ON THE RESTRUCTURE OF
SRI LANKA INSURANCE CORPORATION LTD

Held at 10.00 a.m. on March 25, 2003 at the Treasury Auditorium, Ministry of Finance,
General Treasury, Colombo - 01.

Present:

Members of the Cabinet Appointed Tender Board (CATB)

Mr N Pathmanathan, Deputy Secretary to the Treasury, Ministry of Finance
Mr Jayampathy P Hettiarachchi, Addl Secretary, Ministry of Co-operatives
Mr Dharmasena Dissanayake, Secretary, Ministry of Eastern Development & Muslim
Affairs

Present at the Meeting - Financial Advisors

Ms Aneela de Soysa, Partner, Pricewaterhouse Coopers

In Attendance:

Ms Lumbini Kulasekera, Manager, Public Enterprises Reform Commission

The Cabinet Appointed Tender Board (CATB) considered the minutes of the meeting of the Technical Evaluation Committee (TEC) held on March 25, 2003 recommending the preferred bidder for the sale of shares of Sri Lanka Insurance Corporation Ltd (SLIC) attached herewith. The CATB agreed with the recommendation of the TEC on the sale of 90% of the shares of SLIC at a price of Rs 6,050 Mn to the consortium comprising Distilleries Co Ltd., Aitken Spence & Co Ltd, Aitken Spence Insurance together with Institutional Investors along with the Technical Partner, ING. Institutional & Government Advisory Services B.V. (Holland).

The CATB noted that :

- The bidder has agreed to purchase upto 10% of the shares which the employees will be gifted at the same sale share price at which the shares were purchased by the Investor in the event the employees wish to sell the shares.
- It is proposed that a dividend of upto Rs 750 Mn be declared by the SLIC to the Government of Sri Lanka (GOSL) prior to the sale of the shares and

Contd. 2

“The Application is permitted strictly on the following 03 grounds.

1. that the property referred to as the Waters Edge and its appurtenant lands referred to in the said Judgment will be used only for a public purpose.
2. that the water retention will not be reduced
3. and that the new Board would be bound by the findings made in the aforesaid Judgment of this case. “

‘Extracts’ from the Supreme Court Judgment delivered on 4th June 2008 in SC (FR) Application No. 158/2007.

Set out below are relevant ‘*extracts*’ concerning the conduct and actions of then Minister of Economic Reform Milinda Moragoda, Member of Parliament, from the Supreme Court Judgment delivered on 4th June 2009 by His Lordship Justice N.G. Amaratunga, with Their Lordships then Chief Justice Sarath N. Silva and Justice K. Sripavan agreeing, in annulling as wrongful, unlawful and illegal the privatization of Sri Lanka Insurance Corporation Ltd., to a consortium comprising Distilleries Company of Sri Lanka Ltd., Aitken Spence & Co. Ltd., *et al.*

“It is sufficient to say that the conscience of this Court is shocked by the manner in which the senior public officers had handled the sale of a pivotal asset of the state which belongs to the people of this country.”

“On 21.1.2002, the 2nd respondent Milinda Moragoda M.P., non Cabinet Minister of Economic Reform, Science and Technology (who became a Cabinet Minister on 28.2.2002) appointed a Steering Committee comprising of the following persons to oversee and facilitate the restructuring of SLIC.

- | | | |
|---|---|------------|
| 1. Mr.Chrisantha Perera - Chairman - SLIC | - | Chairman |
| 2. Dr.P.B.Jayasundara - Chairman - PERC | - | Member |
| 3. Mr.M. Kandasamy - General Manager - SLIC | - | Member |
| 4. Mr.Deva Rodrigo - Partner PricewaterhouseCoopers | - | Member |
| 5. Mr.S.Kanagasabapathy -Addl. Director General -Dept of Public Finance | - | Member |
| 6. Ms. Marina Tharmaratnam -Executive Vice President, operations, DFCC | - | Member |
| 7. Dr. Dayanath Jayasuriya - Director General- Insurance Board of Sri Lanka | - | Member |
| 8. Dr. Mrs. Rane Jayamaha - Asst. to the Governor -Central Bank | - | Member |
| 9. Ms. Aneela de Soysa - Director - PERC | - | Secretary” |

“The 2nd respondent (*i.e. Minister Milinda Moragoda, Member of Parliament*) in his affidavit has stated that “an integral part of the privatization process was the setting up of a ‘Steering Committee’ consisting of experts from related fields for each entity to be privatized and for such Steering Committee to make preliminary assessments and preparations for the privatization”. Responding to the allegation of the petitioner that the Steering Committee has been appointed without Cabinet approval, the 2nd respondent in his affidavit has stated that “Since the Steering Committees were advisory bodies without executive power the approval of the Cabinet of Ministers was not required for their appointment. However the Cabinet of Ministers was kept informed of the activities of the Steering Committee appointed by me”. Even though the 2nd respondent has stated that Steering Committees were advisory bodies without executive power, it is manifest from the minutes of the meetings of the Steering Committee that it has exercised executive powers such as the approval of payments from public funds to Financial Advisors.”

“On 28.2.2002, the 2nd respondent (*i.e. Minister Milinda Moragoda, Member of Parliament*) submitted a Cabinet Memorandum seeking approval for the divestiture of SLIC. In this Memorandum, the need for reform has been set out as follows.

“The company lacks the management and technical skills to compete effectively in the market. The company needs insurance expertise and upgrading of its technology to increase capacity and efficiency of its operations. The private sector is able to address these issues more efficiently than the Government and service better the interests of the policyholders. The Government can effectively carry out its role of protecting the policyholders and developing the insurance industry through the regulatory framework that has already been established. With a restructuring of the ownership of the SLIC the revenue generated from the transaction can increase Government revenue at the same time increasing the level of expertise and competitiveness of the insurance industry. This transaction has the potential to attract an international insurance company to invest in Sri Lanka.”

“Thereafter, Minister Milinda Moragoda the 2nd respondent, submitted a Cabinet Paper dated 27.3.2003, recommending the sale of 90% shares of the SLIC to the Distilleries Consortium. I quote below the relevant part of the recommendation of the Minister set out in the Cabinet Memorandum.

“The privatization to SLIC is a lead transaction of the Government’s privatization programme for 2002/03. It has been implemented in a background of a relatively unfavourable global economic environment. Despite this situation, it has been possible to secure an investor consortium led by a domestic investor group technically supported by ING-IAG to provide management skills to SLIC. The Distilleries Consortium, in addition to securing an internationally reputed Technical Partner, has offered the highest bid price of Rs.6050 million which is in excess of the business valuation, in the range of Rs.5100 - 5400 million. The transaction has also taken necessary steps to transfer to the Government any increase in additional working capital over and above the position disclosed to the investor Therefore I recommend that Cabinet grant approval to divest 90% of SLIC to Distilleries Consortium for the value of Rs.6050 mn.

In view of the above, the Cabinet is invited to authorize the Secretary to the Treasury to execute the Share Sale and Purchase Agreement annexed to this Cabinet Memorandum and divest 90% of SLIC to the Distilleries Consortium.”

“On 2.4.2003, the Cabinet approved the recommendation of the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*). The relevant part of the Cabinet decision reads as follows.

“Approval was granted to authorize the Secretary to the Treasury to execute the Share Sale and Purchase Agreement annexed to the Cabinet Memorandum and divest 90% of SLIC to the Distilleries Consortium. Cabinet noted the observations of the President on this subject contained in the Cabinet Memorandum dated 2.4.2003” “

“The petitioners have alleged that the 2nd respondent Minister appointed a Steering Committee to restructure SLIC at a time when there was no decision by or approval of the Cabinet to restructure the SLIC by divesting 90% of the shares of SLIC to the private sector. As already pointed out, the appointment of the Steering Committee was made on 21.01.2002 and the Cabinet Memorandum seeking the Cabinet approval to privatize SLIC was submitted on 28.2.2002. The Cabinet approval to the proposals set out in the Cabinet Memorandum

including approval to authorize PERC to facilitate and initiate action on the transaction was granted on 3.4.2002. The Steering Committee was informed of Cabinet approval only on 11.4.2002. Between 21.1.2002 and 11.4.2002 the Steering Committee had taken the following decisions and steps relating to restructuring of SLIC”

- * At the very first meeting of the Steering Committee held on 25.1.2002 it prepared a tentative time table for the privatization of SLIC which envisaged the completion of the transaction by 30th November 2002.
- * On 5.3.2002 the Steering Committee estimated the fees payable for Financial Advisory Services to be around Rs.200 million. It was decided that this payment would be made by the SLIC out of the funds that would be otherwise transferred to the Treasury in the form of dividend declared to the shareholder (who is the Secretary to the Treasury).
- * On the same day at the same meeting the Steering Committee shortlisted five Audit Firms from which the Committee sought bids to provide financial advisory services in connection with the privatization of SLIC.
- * On 22.3.2002, the Steering Committee decided to request the Secretary to the Treasury to appoint a Technical Evaluation Committee consisting of persons named by the Steering Committee to evaluate bids for Financial Advisory Services.
- * On 27.3.2002 the 4th respondent, the then Secretary to the Treasury appointed a Technical Evaluation Committee consisting of the persons named by the Steering Committee.
- * On 11.4.2002, on the recommendation of the TEC, the Steering Committee decided to award the contract for financial advisory services to PricewaterhouseCoopers

“Although the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*) in his affidavit has stated that since Steering Committees are advisory bodies without executive power, Cabinet approval for their appointment was not necessary, the list set out above indicates that the Steering Committee had taken several decisions which should have been taken by the executive arm of the Government. The Steering Committee was an ad hoc body not responsible to anyone including the Minister who appointed it. The Steering Committee had continued to approve payments to the Financial Advisors out of the Funds provided by SLIC owned by the Government.”

“Although the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*) in his affidavit has stated that he kept the Cabinet informed of the appointment of the Steering Committee, the Cabinet Memorandum does not contain even the names of the members of the Steering Committee. The Cabinet Memorandum submitted by the Minister states that “I have appointed a Steering Committee to advise and assist in restructuring the SLIC”. The Cabinet was not informed of the decision making role to be played by the Steering Committee. Although one may contend that the eventual approval granted by the Cabinet on 3.4.2002 to the proposals contained in the Cabinet Memorandum (fully set out in the earlier part of this judgment) covers the steps taken by the Steering Committee prior to the Cabinet decision, the manner in which the Steering Committee had conducted its affairs indicates that the Committee proceeded on the basis that the Cabinet would approve all such acts as a matter of course!”

"In the Cabinet Memorandum dated 27.3.2003 submitted by the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*) to obtain the approval of the Cabinet to sell shares of SLIC to the bidder selected by the Tender Board, there was no reference whatsoever to the decision of the Cabinet made on 4.3.2002 that the Tender Board was to be appointed by the Cabinet. The Cabinet Memorandum dated 27.3.2003 contains the following statement:

"A Cabinet appointed Tender Board (CATB) Chaired by a Deputy Secretary to the Treasury assisted by a Technical Evaluation Committee (TEC) was also set up to ensure that a proper procedure is followed in the selection, particularly since the transaction is complex and involves high financial values."

"As already stated, the Cabinet approval for the sale of SLIC to the Distilleries Consortium followed the Cabinet Memorandum dated 27.2.2003 submitted by the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*). The Cabinet Decision taken on 2.4.2003 indicates that it noted the observations of the then President set out in her Memorandum. (already quoted in the earlier part of this judgment)"

"This Court notes that one of the objects sought to be achieved by the programme to divest the State ownership of the SLIC was the need to attract an international insurance company to invest in Sri Lanka. The end result of the privatization shows that the Government has failed to achieve this desired objective. When the Cabinet granted its approval to the proposed divestiture programme, the 2nd respondent Minister (*i.e. Minister Milinda Moragoda, Member of Parliament*) was requested to report on the feasibility of divesting the State ownership of SLIC, whilst retaining a minority share by the Government. The Minister in his Cabinet Memorandum of 27.3.2003 set out his observations on this aspect and recommended, for the reasons set out by him that "retaining minority stake in SLIC by the Government is not in the best interest of the transaction". One of the reasons adduced for his recommendation was that "retaining a minority shareholding in SLIC is also not conducive to ensure a level playing field in the insurance industry which has the presence of 10 players."

Whilst no action, whatsoever, warranted to uphold and enforce the 'rule of law' was initiated against Minister Moragoda on such grave and serious findings by the highest judiciary of the country, ironically on the contrary, he was appointed Minister of Justice on the very heels of the Supreme Court Judgment, and thereafter D.H.S. Jayawardene Chairman of the Distilleries Consortium, was appointed Chairman, Ceylon Petroleum Corporation of the Government.

Furthermore, it is not even known, as to whether the Criminal Investigation Department had commenced any investigation into the perverse privatization deal of Sri Lanka Insurance Corporation Ltd., which was annulled by the Supreme Court by its Judgment dated 4th June 2009, declaring it to have been wrongful, unlawful and illegal.

Petitioner Vasudeva Nanayakkara, Attorney-at-Law, then Advisor to President Mahinda Rajapaksa (*now Member of Parliament and a Cabinet Minister*) had caused his Lawyers, Abdeen Associates by Letter dated 15th June 2009, to complain on the matter of the perverse privatization deal of Sri Lanka Insurance Corporation Ltd., to the Deputy Inspector General of Police, Criminal Investigation Department, with copies to the Inspector General of Police, Secretary, Ministry of Defence, Public Security, Law & Order and to the Hon. Attorney General. No visible action, whatsoever, has been taken.

Appointment of Minister of Justice

Ironically, shortly after the above Supreme Court Judgment was delivered, Milinda Moragoda, Member of Parliament, who crossed-over from the Opposition United National Party to the Government of President Mahinda Rajapaksa was appointed, as Minister of Justice & Law Reform by President Mahinda Rajapaksa.

After the delivery on 24th September 2009 by the 7-Judge Bench of the Supreme Court, (*with one Judge dissenting*), of the Order granting relief in the Application made by P.B. Jayasundera in SC (FR) Application No. 209/2007, enabling President Mahinda Rajapaksa to re-appoint P.B. Jayasundera, as Secretary, Ministry of Finance & Secretary to the Treasury, the Daily Mirror of 28th September 2009 *inter-alia* reported as follows:

“Chief Justice Asoka De Silva and Justice Minister Milinda Moragoda are visiting Holland to establish links with the judicial system in that country.

Also as referred to above, in the Judgments delivered annulling the privatizations of Lanka Marine Services Ltd., (*IMF, World Bank & ADB Agenda on Privatisation - Colombo Port Bunkering Privatisation - Annulled as Illegal & Fraudulent by Supreme Court – by same Author*) and Sri Lanka Insurance Corporation Ltd., grave and serious findings had been made by the Supreme Court of Sri Lanka, the highest judiciary of the country, of wrongdoing, unlawfulness, illegality and fraud, with the Hon. Attorney General having also participated in the Supreme Court proceedings.

In fact, regardless of the foregoing grave and serious findings detrimental to the national and public interest, by the highest judiciary of the country, the Supreme Court of Sri Lanka, the Government of President Mahinda Rajapaksa re-appointed P.B. Jayasundera, as Secretary to the Treasury & Ministry of Finance, appointed D.H.S. Jayawardene (*ex-Chairman, Sri Lanka Insurance Corporation Ltd. & Managing Director, Distilleries Co. of Sri Lanka Ltd*), as Chairman & Managing Director, Ceylon Petroleum Corporation, and appointed Susantha Rathnayake (*Chairman, John Keells Holdings Ltd.*) as Chairman, Sri Lanka Tea Board, thereby making a ‘*mockery*’ of the ‘rule of law’.

With sheer disrespect to the highest judiciary of the country, worst still was the appointed Milinda Moragoda, as Minister of Justice, who was *portrayed* in the *media* to be fraternizing in such official capacity, with the new Chief Justice, J.A.N De Silva and other senior members of the judiciary.

Vasudeva Nanayakkara, Petitioner in the above two Fundamental Rights Applications made to the Supreme Court of Sri Lanka, who was then Advisor to President Mahinda Rajapaksa, *and now Member of Parliament and a Cabinet Minister*, promptly addressed the following Letter dated 9th July 2009 to President Mahinda Rajapaksa, decrying such appointment of Milinda Moragoda, as Minister of Justice.

“

9th July 2009

His Excellency the President of Sri Lanka,
Presidential Secretariat,
Colombo 1.

Your Excellency,

Re the appointment of Mr. Moragoda as the Minister of Justice

In the Sri Lanka Insurance Corporation Case (FR/158/2007) it was revealed and the S.C. observed that then Minister Moragoda has not acted within the proper rules of governance. I particularly refer to the appointment of a Steering Committee by him, without Cabinet Approval, in violation of the PERC Act.

Further I point to the Cabinet's decision of the need of a CATB to be specifically appointed by the Cabinet, and a T.E.C. to assist the same. This has not been heeded, nor brought to the attention of the Cabinet by Minister Moragoda, when the Cabinet had pointedly stated that this transaction is complex and is of high value.

The Steering Committee appointed by Minister Moragoda had violated and exceeded its mandate, as an Advisory Committee, which was known to him. This is also noted by the S.C. The Steering Committee appointment has not even been placed before the Cabinet according to Cabinet Minutes.

Minister Moragoda thereafter obtains Cabinet Approval to dispose of 90% of the Shares of SLIC by his special intervention for parties, who had not been even pre-qualified, for a sum of money based on a Valuation by a firm of a Member of the Steering Committee ! S.C. agreed that the Valuation was low and questionable, and made without the Chief Valuer.

The Steering Committee was appointed by Minister Moragoda and he has taken the responsibility for its decisions and recommendations, that led to the privatization of SLIC on a Cabinet Paper submitted by him, which transaction has been declared by the S.C. as null and void abinito; with part sale to a company incorporated in Gibraltar after the Cabinet Paper, and on whose behalf Hary Jayawardene had signed, as per the S.C. observation. Cabinet had not approved such a questionable company.

The decision to appoint Minister Moragoda as the Minister of Justice in the teeth of these findings of the S.C. will obviously and adversely reflect on Your Excellency. I believe that the Minister should be persuaded to step down.

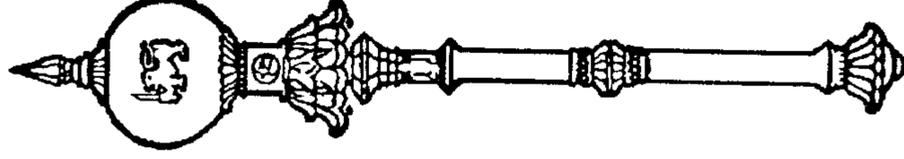
Yours faithfully,



Vasudeva Nanayakkara
Advisor to the President "

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தொகுதி 167 - இல. 4
Volume 167 - No. 4

2007 ජනවාරි 12 වන සිකුරාදා
2007 சனவரி 12, வெள்ளிக்கிழமை
Friday, 12th January, 2007



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(හැන්සාඩ්)

பாராளுமன்ற விவாதங்கள்

(ஹன்சாட்)

PARLIAMENTARY DEBATES

(HANSARD)

නිල වාර්තාව

அதிகார அறிக்கை

OFFICIAL REPORT

At the 'Pre-Bid Conference' PERC Chairman, P. B. Jayasundera had confirmed;

"Land - within one year of the closing date. PERC to revert by 7th May 2002 regarding the terms of the transfer including any payments that would have to be made by LMSL." - (As per Item 5(b) of the Minutes)

16. Secretary, Ministry of Power & Energy, P. Weerahandi has initiated action on 3.11.2004 to have this Land transferred to LMSL. Consequently by Letter dated 11.1.2005, Addl. Secretary, Ministry of Lands, W. M. Jayathilake has stated that the Secretary to the President has informed the Land Commissioner that the President has approved the vesting of this Land to LMSL, after recovering the purchase consideration of Rs. 1,199,362,500/-.
17. Though the Instrument of Grant dated 19.1.2005 has stated that the Government has received Rs. 1,199,362,500/- from LMSL, Director General, Department of Treasury Operations, by Letter dated 18.8.2006 has confirmed that the Government has not received any money for the transfer of this Land, in response to Letter dated 21.3.2006 addressed to the Secretary Treasury, P. B. Jayasundera by Chairman, PERC, W. M. Bandusena, seeking confirmation as to whether the Government has received the purchase consideration as stated in the Instrument of Grant.

LMSL Accounts for the Financial Year ended 31.3.2005 do not disclose that LMSL has made a payment of Rs. 1,199,362,500/- to the Government for this Land in extent 8A 2R 21.44P.

In fact, the payment of Rs. 1,199,362,500/- is the payment made in August 2002 by John Keells Holdings Ltd., to CPC for the Sale of 90% Shares of LMSL, to be paid to the Secretary Treasury, and this could not be interpreted or construed to be a payment made in January 2005 by LMSL to the Secretary to the Treasury for the Land.

18. Therefore, this Government Land has been purported to be 'transferred' to LMSL 'without receipt of any consideration', in January 2005, for a 'purported payment' of Rs. 1,199,362,500/-.

Hence, the Instrument of Grant is a 'fraudulent document' and a 'fiction', in that, no payment had been made by LMSL and has been received by the Government, as acknowledged in the Instrument of Grant for the transfer of the Government Land at Bloemendal in extent 8A 2R 21.44P to LMSL. Therefore, there could not be a legal transfer of this Land, inasmuch as this Instrument of Grant is *ex-facie* fraudulent and a 'fiction'.

19. A Valuation by the Chief Valuer and a professional private Valuer will disclose the Market Value of this Land in August 2002 i.e. when the Share Sale & Purchase Agreement was executed.
20. The 'business valuation' in June 2002 by DFCC Bank for LMSL on an 'earnings basis' reckoned for the Financial Year 2002/03, at a multiple of 8 had been given as Rs. 1,405 Mn. and at a multiple of 10 had been given as Rs. 1,757 Mn.

However, LMSL's Net Profits after Tax for the following Financial Years have been :

	Rs.
Financial Year 2002/03	402,733
Financial Year 2003/04	235,876
Financial Year 2004/05	574,062
Financial Year 2005/06	1,089,393

The above Net Profits are after John Keells Holdings Ltd., having recovered whatever charges and costs from LMSL.

21. This transaction had been executed blatantly without Cabinet Approval, with several flaws causing loss and detriment to the Government, and demonstrating it to be a questionable "fix", and is therefore *ab-initio* bad in law, null and void,

Sale of 90% shares of Sri Lanka Insurance Corporation. (SLIC)

- Steering committee to handle the sale of 90% shares of SLIC has been appointed on 21.01.2002 by the Hon. Minister Milinda Moragoda without a Cabinet approval.
- Steering committee has appointed Price Waterhouse Cooper (PWC), Indonesia in collaboration with the PWC, Sri Lanka without a Cabinet approval on 10.04.2002 as consultant to the Government for a fee of US\$ 1.6 million (at present rate of Sri Lanka Rs. 172.8 million)
- The Cabinet approval granted on 18.04.2002 to appoint a technical evaluation Committee (TEC) - By that time PWC had already been selected.
- The Cabinet has approved the appointment of a TEC by the Secretary to the Treasury, but had rejected the request of the Secretary to the Treasury to appoint a Tender Board by himself and decided that the Tender Board shall be appointed by the Cabinet.
- Disregarding the Cabinet disapproval the Secretary to the Treasury had caused the Deputy Secretary to the Treasury, Mr. N. Pathmanathan to appoint CATB including himself as Chairman.
- After the evaluation of bids, the TEC has recommended the sale of 90% shares to the consortium comprising of Distilleries Co. Ltd., Aitkan Spence Insurance (Pvt.) Ltd. together with Technical Parties ING. Institutional and Government Advisory Service BV (Holland) on 25.03.2003.
- On the same day 25.03.2003 CATB recommended the TEC recommendations.
- The Cabinet memorandum dated 27.03.2003 had recommended the sale of 90% shares of SLIC to the above consortium.
- On 11.04.2003 shares sale and purchase agreement has been signed with Milford Holdings (Pvt) Ltd., and offshore Company, Greenfield Pacific EM Holdings (Pvt). Ltd., incorporated in Gibraltar on 28.03.2003. It was not in existence when the Cabinet approved it on 27.03.2003.
- These two Companies were not bidders and they were strangers.
- The said sale has been taken placed on unaudited accounts and thereby it was not possible to enter into any kind of share transaction. It also appeared the accounts have been surreptitiously and intentionally adjusted.
- Earnest and Young auditors and PWC consultants were directly involved in the said fraudulent conduct.
- Deva Rodrigo, Senior partner of PWC has been a member of the steering committee selecting PWC as consultants to the Government, and continuing thereafter as a steering committee member supervising the work of PWC and approving payments to PWC.
- Director, PERC and Secretary Steering Committee, who handled this transaction for PERC, Aneela de Soysa joined PWC as a partner in March 2003.
- Ernest & Young, who had been auditors of SLIC, whilst the Government was 100% share holder, continued as SLIC auditors after the sale to the illegal buyers and had been compromised by them not to discharge their responsibilities to the Government.

16. The Ethnics Committee of Institute of Chartered Accountants, coming under the purview of the Minister of Trade, after the preliminary investigation established a prima facie case, had decided that the Disciplinary Committee should be appointed into the professional misconduct by PWC and Ernest & Young.

17. Chairman, PERC who handled this SLIC transaction and later Secretary to the Treasury, Dr. P. B. Jayasundara has been a Senior Policy Advisor to Ernest & Young, and had failed and neglected to act in the interest of the Government in this matter.

18. In the facts and circumstances of the said transaction is null and void *ab initio* and frustrated. *Prima facie* the conduct of the responsible Officers is in violation of the provisions of Public Property Act and the Bribery and Corruption Laws. We await for the recommendations of the Sub Committee.

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 தொலைபேசி 777100 - Ext. 5240, 5242 எனது இல.
 Telephones 5249, 5264 My No.
 5269

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 தொலைநகல் 777301 உமது இல.
 Fax Your No.

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அரசாங்கப் பொறுப்பு முயற்சிகள் பற்றிய குழு
COMMITTEE ON PUBLIC ENTERPRISES

ශ්‍රී ලංකා පාර්ලිමේන්තුව
 Parliament of Sri Lanka
 இலங்கைப் பாராளுமன்றம்

ශ්‍රී ජයවර්ධනපුර කෝට්ටේ
 श्री ஜயவர்தனபுர கோட்டே Sri Jayewardenepura Kotte

11th January 2007.

To all Party Leaders,

Herewith I forward you the attendance register of the Members of the COPE representing all political parties. I kindly request you to make suitable arrangements to make sure the attendance of the Members of your party is satisfactory or to make alternative arrangements to appoint Members who will take keen interest in the affairs of the COPE, after proper evaluation of the attendance register.

I write this letter as the proper and regular functioning of the Committee is very important in relation to the proper monitoring process of the public funds of which the parliament is the Custodian.

(Sgd.) Hon. Wijeyadasa Rajapakshe
 Chairman of the Committee on Public Enterprises

Second Session of the Sixth Parliament
 Committee on Public Enterprises
 Attendance Record of the Hon. Members
 From July to December 2006
 Total Number of Sittings - 31

No.	Name	Total	Percentage (%)
01.	Hon. Wijayadasa Rajapakshe (Chairman)	30	96.77
02.	Hon. Hussain Ahamed Bhaila	29	93.55
03.	Hon. Lasantha Alagiyawanna	28	90.32
04.	Hon. Dilan Perera	23	74.19
05.	Hon. Lakshman Kiririlla	23	74.19
06.	Hon. Ravi Karunanayake	23	74.19

No.	Name	Total	Percentage (%)
07.	Hon. Mahinda Amaraweera	22	70.97
08.	Hon. Piyasiri Wijenayake	22	70.97
09.	Hon. Mahindananda Aluthgamage	16	51.61
10.	Hon. H. R. Mithrapala	16	51.61
11.	Hon. Sunil Handunnetti	16	51.61
12.	Hon. Anura Dissanayake	15	48.39
13.	Hon. Lakshman Yapa Abeywardena	13	41.94
14.	Hon. Sarath Ranawaka	13	41.94
15.	Hon. Chandrasiri Gajadeera	11	35.48
16.	Hon. Anura Priyadharshana Yapa	10	32.26
17.	Hon. (Dr.) Mervyn Silva	10	32.26
18.	Hon. Sripathi Sooriyaarachchi	09	29.03
19.	Hon. Navin Dissanayake	09	29.03
20.	Hon. John Amaratunga	07	22.58
21.	Hon. Muthu Sivalingam	07	22.58
22.	Hon. Mavai S. Senathitajah	07	22.58
23.	Hon. Hasen Ali	05	16.13
24.	Hon. A. D. Susil Premajayantha	04	12.90
25.	Hon. Gunaratna Weerakoon	04	12.90
26.	Hon. (Ven.) Athuraliya Rathana Thero	04	12.90
27.	Hon. Rohitha Bogollagama	03	09.68
28.	Hon. Vadivale Suresh	02	06.45
29.	Hon. Hemakumara Nanayakkara	01	03.23
30.	Hon. Senathirajah Jeyanandamoorthy	00	00

මගේ අංකය } 2777100
 எனது இல. } தொலைபேசி } Telephone }
 My No. }
 මගේ අංකය }
 உமது இல. } பாராளுமன்றம் }
 Your No. } PARLIAMENT } E-Mail } sgp@parliament.lk
 2777227
 ෆැක්ස් } தொலைநகல் } Fax }

ශ්‍රී ජයවර්ධනපුර කෝට්ටේ ශ්‍රී ජයවර්ධනපුර කොට්ටේ Sri Jayewardenepura Kotte

Proposed Resolution

It is hereby recommended that the Item No. 9 of the Schedule B of the Parliament (Powers and Privileges) Act be suitably amended to grant the discretion to respective Committees to decide to open the proceedings to the media.

Sgd. Hon. Wijayadasa Rajapakshe
 Chairman
 Committee on Public Enterprises
 11th January 2007.

ගරු ඩී වී ගුණසේකර මහතා
 (மாண்புமிகு டியூ குணசேகர்)
 (The Hon. Dew Gunasekara)

ගරු කථානායකතුමනි, පොදු ව්‍යාපාර පිළිබඳ කාරක සභාවේ සභාපති ගරු විජයදාස රාජපක්ෂ මහතා විසින් ඉදිරිපත් කරනු ලැබූ සිය ප්‍රථම වාර්තාව මුද්‍රණය කළ යුතුයයි පාර්ලිමේන්තුවේ සභානායකතුමා වෙනුවෙන් මා යෝජනා කරනවා.

ප්‍රශ්නය විමසන ලදීත් සභා සම්මත විය.
 வினா விடுக்கப்பெற்று ஏற்றுக்கொள்ளப்பட்டது.
 Question put, and agreed to.

වාර්තාව මුද්‍රණය කළ යුතුයයි නියෝග කරන ලදී.
 அறிக்கை அச்சிடப்படக் கட்டளையிடப்பட்டது.
 Ordered that the Report be printed.

ගරු සරත් කුමාර ගුණරත්න මහතා
 (மாண்புமிகு சரத் குமார குணரத்ன)
 (The Hon. Sarath Kumara Gunarathna)

ගරු කථානායකතුමනි, මට මිනිත්තුවක් දෙන්න. ගරු විජයදාස රාජපක්ෂ මැතිතුමාගේ කථාව මා අහගෙන තිටියා. එතුමා ඉතිහාසගත වන වාර්තාවක් ඉදිරිපත් කර තිබෙනවා. එම නිසා පොදු ව්‍යාපාර පිළිබඳ කාරක සභාවේ සභාපතිතුමා අතුළු සාමාජික මන්ත්‍රීතුමන්ලාට මා විශේෂ ස්තූතියක් පිරිනමනවා.