THE LIABILITY THAT IS THE BOI

The re-privatisation of Mattegama Textile Mills Ltd., had been privatised previously in October 1993 by the then government and revested in the state in February 1997 as a failed privatisation, and re-privatised in may 1997 by this government.

In the background of the roaring repetitive rhetoric, critical of the privatisations carried out by the previous government, it stands to reason, that the privatisation transactions carried out by this government, would have been expected to be free of any criticism and to be in conformity with the government's avowed policies on transparency and public accountability. Has this really happened in such manner? If not, why and how? Who takes the responsibility?

IS MATTEGAMA SALE ULTRA-VIRES ?

According to the powers conferred upon the Public Enterprises Reform Commission [PERC] by the Public Enterprises Reform Commission of Sri Lanka Act No. 1 of 1996, it would appear that PERC could make recommendations to the government, on the sale or disposal of shares in government owned companies *only to the public*.

Section 5(e) of the PERC Act No. 1 of 1996 establishing PERC and conferring powers thereon reads as follows: *"for the purpose of discharging its functions the commission may exercise and perform the following powers and duties (e) to make recommendations to the government on the sale or disposal to the public, of shares in, or assets of, companies registered under the conversion of public corporations and government owned business undertakings into Public Companies Act, No. 23 of 1987."*

Could one interpret the sale of the 100% shareholding in Mattegama Textile Mills Ltd. to the Korean Company Kabool Lanka (Pvt) Ltd., who incidentally also owns the giant Thulhiriya Textile Complex, as a sale or disposal of shares *to the public of this country*? If not, would not such sale, then be ultra-vires the powers conferred upon PERC by statute? If so, who takes the responsibility?

The definition of "public" given by the Oxford and Webster's Dictionaries is "of or concerning the people as a whole or pertaining to the community as a whole; open to or shared by all the people or the community". When the law enacted by this government itself has permitted the sale or disposal of shares in a government owned company, *only to the public*, how could one interpret the sale of 100% shareholding in a government owned company to a foreign owned company to be permissible, within the dictum of the specific provision of such law enacted by the government?

It is the government itself that enacted the law spelling out the policy on the sale or disposal of shares in government owned companies to the public of this country. Accordingly, one would expect the government to act in conformity with its own enacted law. Otherwise, why have such law at all ?

DEVELOPMENT OF STOCK MARKET SHUNNED

The PERC Act No. 1 of 1996, inter-alia, stipulates one of its functions as *"developing and broadbasing the capital market and mobilising long-term private savings"*. How could such objective ever be achieved, when 100% shareholdings of companies are being sold to one investor, that too, to a foreign investor already owning a large textile complex ? Thereby, furthermore, how could a another objective defined in the PERC Act No. 1 of 1996 - *"of improving efficiency and competitiveness of the economy"* also be achieved in such manner by such sale to a party already in such sector ? Are such objectives defined in the statute mere make belief ? Are not the members of PERC bounden in duty to act to achieve such statutorily defined objectives ?

The Securities & Exchange Commission [SEC] Act No. 36 of 1987, defines its primary objective in Section 12(a) as *"the creation and maintenance of a market in which securities can be issued and traded in an orderly and fair manner."* Section 13(e) which further amplifies the duties and functions of the SEC reads *"to advise the Government on the development of the securities market"*. The Director-General, SEC, Kumar Paul is statutorily also a member of PERC. Given such statutorily defined objective of the SEC, would not the Director-General, SEC, be compromising such objective and duty by such transactions ?

As a result of there being no public shareholdings, Mattegama Textile Mills Ltd. becomes a very private enterprise. Public shareholdings even in the minority, would not only broadbase the share ownership and strengthen the nascent local capital market and the stock market, but would also bring about the desired levels of transparency and public accountability, with the public disclosure of financial and other informations stipulated for listed public companies in the Colombo Stock Exchange.

As a listed public company, the annual report, giving the operational and financial results and the state of financial affairs of the company, would make full disclosure to the public and such disclosure would be subject to the test of public and the business community scrutiny and opinion prevalent in the market. This would be a pre-requisite to developing a vibrant, free and open economy.

How could the capital market and the Colombo stock market ever be developed, without increasing the number of listed public companies particularly during these nascent years of growth ? Even in the very same sector, Pugoda Textiles Ltd. and Veyangoda Textiles Ltd. are listed public companies. So why only permit such exception in the case of Mattegama Textile Mills Ltd. If Mattegama Textile Mills Ltd., was also a listed public company, its performance could have then been compared with the other companies in the textiles sector.

FUNDAMENTAL RIGHTS DEBARS EXCEPTIONS

In addition, would not further import duty concessions be unfair by the other textile mills in the same sector, creating an uneven playing field and unfair competition ? Should they also not be entitled to the same concessions. If not, why ? Would this not raise the question of right to equality enshrined as a fundamental right in Article 12 of the Constitution ?

On the other hand, not being a listed public company, such information is away from public glare and scrutiny, that too of an enterprise, whose operations are of public interest and directly affecting the consumer public of this country. How could 100% ownership of such public enterprise to multinationals augur well for the development of a free and open economy in this developing country ? Particularly in the background of known practices of multinationals in the international business world. In recent times, several Korean scandals inter-woven between the political and business worlds, have made headline news in the international media !

Such privatisation transaction of Mattegama Textile Mills Ltd. in isolation, would be a deviation from the generally known policy of restricting the ownership by foreign investors in local companies, except in the specifically set up free trade zones. Many countries pursuing free and open economic policies insist on minimum investment by the nationals of a country, whilst restricting the share ownership by foreign investors. Malaysia, for example, that developed by leaps and bounds in the last two decades adopted the "bhoomiputhra" policy.

No doubt it is very necessary to mobilise foreign investment, but it must be within a given frame work of publicly pronounced policy parameters. What is generally known as policy in this country is that foreign ownership outside the free trade zones generally is restricted to below 50%. In such context such 100% ownership of Mattegama Textile Mills Ltd. by the Korean company Kabool Lanka (Pvt) Ltd. questionably stands out aloud. Would it be that it is government policy now, that 100% ownership in local companies is permissible ? Or what is the policy ? The public ought to know, particularly moreso in the light of the actions being taken by the Exchange Controller on Kotagala Plantations Ltd. now being highly publicised in the media sending certain signals to the business community. The constitution guarantees right to equality.

CABINET APPROVAL & RESPONSIBILITY

The Daily News of April 26, 1997 made the front page lead story announcement *"Kabool's take-over of Mattegama Mills, another landmark in Korean investment - President"*. This announcement was in April 1997 and the observations by Industrial Development Minister, C.V. Gooneratne, on the Cabinet Memorandum of the Ministry of Finance & Planning, recommending such sale of 100% shareholding in Mattegama Textile Mills Ltd., with other concessions, have been made only in May 1997. Accordingly, Cabinet approval for such sale would have also been made only in May 1997.

Nevertheless, the commitment and the effectuation of the transaction was announced by the state media even prior to such Cabinet approval being made, raising the question, as to whether, such Cabinet approval was mere rubber stamping of decision already made elsewhere. However, the members of the Cabinet would be collectively responsible for such decision. The Cabinet Memorandum of the Ministry of Finance & Planning invited the Cabinet to approve the following:

(a) The Government to sell 100 per cent Mattegama Textile Mills Limited to M/s. Kabool Lanka (Pvt) Limited for US $ 500,000.

(b) BOI to grant concessions entitled under a minimum investment programme on plant and machinery at Rs. 500 million.

(c) The Government to use sales proceed to compensate workers' 10 per cent shares as determined by the Compensation Tribunal in terms of Section 5 of the Rehabilitation of Public Enterprise Act No. 29 of 1996.

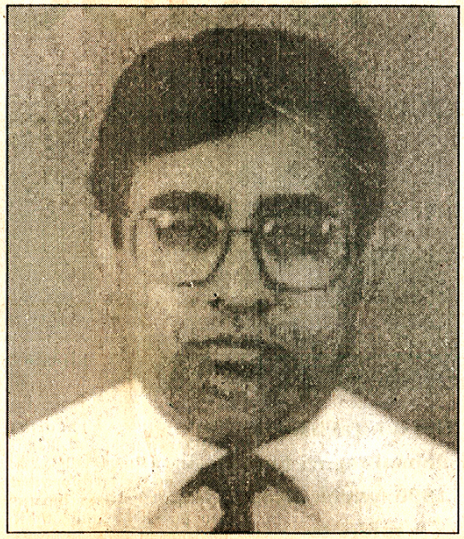
(d) The Government to settle all the existing liabilities of the Mattegama Textile Mills Limited.

The sale of such shareholding according to the Cabinet Memorandum had been advertised only in the local media, receiving only the one offer from Kabool Lanka (Pvt) Ltd. That too, the sale has been negotiated at Rs. 29 million [US $ 500,000], excluding liabilities amounting to Rs. 345.9 million that, has been taken over to be settled by state. The sale of 100% ownership of Mattegama Textile Mills Ltd. with several concessions, including on import of plant and machinery at only Rs. 29 million after excluding liabilities amounting to Rs. 345.9 million is pronounced to be because Korean company, Kabool Lanka (Pvt) Ltd. had agreed to invest US $ 10 million in plant and machinery.

Exposures have already been made on the giving away of the 90% shareholdings of Ceylon Steel Corporation Ltd. for Rs. 840 million, with stocks to the value of Rs. 504 million and bank deposits of Rs. 300 million and creditors of only Rs. 39 million, together with land, buildings, plant and machinery, apparently given free of any consideration, to another Korean company Hanjung, with the government also taking over the liability of Rs. 220 million, as compensation to retrenched employees on such privatisation. As was held out by Chairman PERC, Dr. P.B. Jayasundera, such sale was effected on such basis, because the Korean company Hanjung had agreed to invest US $ 10 million in Ceylon Steel Corporation Ltd. i.e. on themselves !

FOREIGN INVESTMENTS AT ANY COST ?

Chairman BOI and Member PERC Thilan Wijesinge — Foreign investments at any cost since promotional drive has flopped?



Chairman PERC and DST Dr. P.B. Jayasundera — How would the members of PERC fare before another special presidential commission?

The inevitable deduction from the sales of Mattegama Textile Mills Ltd. and Ceylon Steel Corporation Ltd. on such basis is that the government is pursuing efforts to get foreign investments at whatever costs. Is it that the foreign investment climate and the foreign investment flow is in such dire straits, that foreign investments at the levels of mere US $ 10 million each, have to be

solicited bending backwards, offering such unbelievable deals amounting to the gifting of such public property and the offering of such bonanzas to mobilise such levels of foreign investments ? If not what does all this mean and amount to ?

The Board of Investment of Sri Lanka [BOI] has been set up with given policy framework and guidelines to attract and approve foreign investments into this country. Carefully thought out tax incentives and other concessions have been structured and made available to attract such foreign investments. BOI ofcourse is expected to promote and attract foreign investments on such basis. That is the challenge and task of the BOI. Chairman/Director-General BOI, Thilan Wijesinghe, is also an influential member of PERC. Is public property being so disposed of to mobilise such levels of foreign investments ?

It would appear from the cases of Mattegama Textile Mills Ltd. and Ceylon Steel Corporation Ltd. that to attract foreign investments, in addition to such pronounced incentives and concessions, the government is giving away the ownership of government owned companies, such as in Steel and Textiles, at unbelievably give away prices, that too, to mobilise foreign investments of levels of US $ 10 million. Would this not be reflective of a sence of desperation and state of bankruptcy of requisite strategy to promote and mobilise foreign investments ?

FINANCE MINISTRY REPORT REVEALS THE TRUE FACTS

In this context, some of the data from the recent Report dated July 15, 1997, prepared by the Department of Public Enterprises, of the Ministry of Finance & Planning, on the examination of the Auditor General's Report on the BOI, would be very revealing.

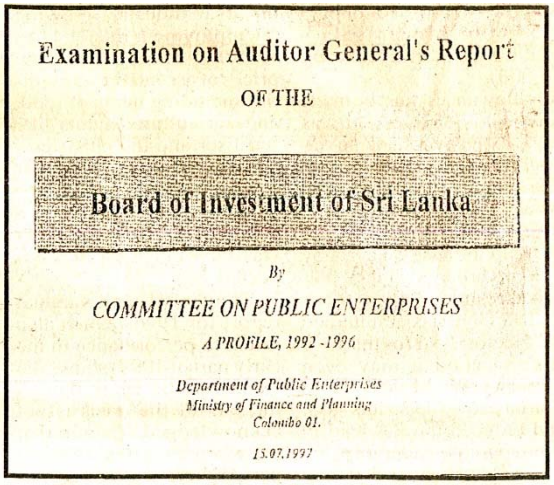
Table 5 (C) on page 7 of the Finance Ministry Report schedules the BOI projects that had commenced commercial operations annually from 1992 upto 1997 April. From the given data in this Finance Ministry schedule, the number of projects going into commercial operations in 1995 [55], particularly, 1996 [16] appear to be alarmingly low, compared with 1992 [316] and 1993 [232].

Page 5 of the same Finance Ministry Report - Table 5(A) gives the number of projects approved by the BOI annually from 1992 upto April 1997. The projects approved for 1995 [281] and 1996 [336] compared with 1992 [586] and 1993 [582] reflects a downward trend, whereas one would expect an upward trend, with the further liberalisation of the economy.

The total reckoned estimated value of approved investments in 1996 is distorted by the approval of a Rs. 394.4 million investment in a petroleum refinery and processing project, which at this stage would appear to be a mere a pie in the sky ! The rupee value of the dollar moving from levels of Rs. 42 in 1992 to Rs. 59 [i.e. + 40%] in 1997, the rupee value of foreign investments given in the schedule should be reckoned in such light.

Whilst such levels as reported have reflected a downward trend, the BOI expenditure as given on page 1 of the Report has registered a marked increase, particularly in salaries and allowances, going upto a budgetary level of Rs. 207.98 million in 1997 compared with Rs. 106.08 million in 1993 !

This pragmatic analysis is published in the public interest and in the interest of the future of this country, particularly in the light of its endeavours to grow and develop into a free and open economy. Such pragmatic analysis becomes even more significantly important, given the euphoria propagated on this very same issue of foreign investments, particularly by the state media, which might result in the country now being marketed as a paradise, ending up being referred to as a *fool's paradise*, as amplified by the revelations made by me *!*



Examination on Auditor General's Report

OF THE

Board of Investment of Sri Lanka

By

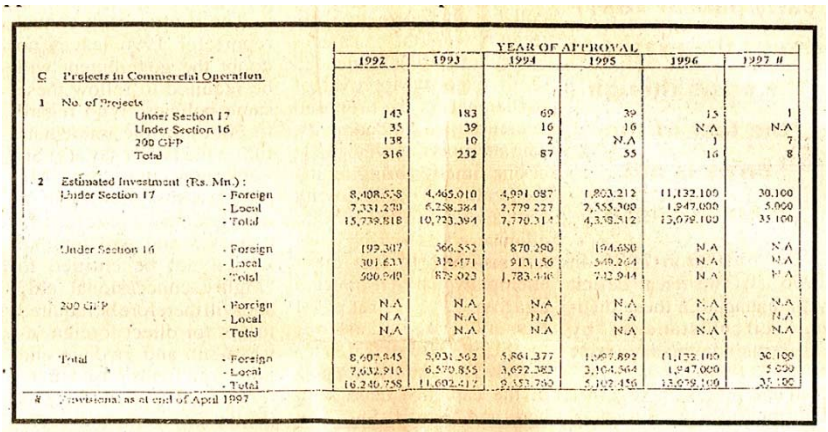
COMMITTEE ON PUBLIC ENTERPRISES

A PROFILE, 1992 -1996

Department of Public Enterprises
Ministry of Finance and Planning
Colombo 01.

13.07.1997

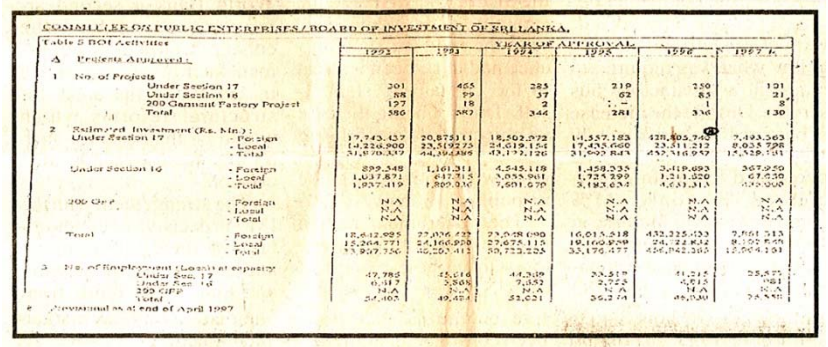
The cover page of the finance ministry document



C Projects in Commercial Operation		YEAR OF APPROVAL 1992	1993	1994	1995	1996	1997 #
1 No. of Projects							
Under Section 17		143	183	69	39	15	1
Under Section 16		35	39	16	16	N.A	N.A
200 GFP		138	10	2	N.A	1	7
Total		316	232	87	55	16	8
2 Estimated Investment (Rs. Mn.):							
Under Section 17	- Foreign	8,408.558	4,465.010	4,991.087	1,803.212	11,132.100	30.100
	- Local	7,331.270	6,258.384	2,779.227	2,555.300	1,947.000	5.000
	- Total	15,739.818	10,723.394	7,770.314	4,358.512	13,079.100	35.100
Under Section 16	- Foreign	199.307	566.552	870.290	194.650	N.A	N.A
	- Local	301.633	312.471	913.156	549.294	N.A	N.A
	- Total	500.940	879.023	1,783.446	732.944	N.A	N.A
200 GFP	- Foreign	N.A	N.A	N.A	N.A	N.A	N.A
	- Local	N.A	N.A	N.A	N.A	N.A	N.A
	- Total	N.A	N.A	N.A	N.A	N.A	N.A
Total	- Foreign	8,607.845	5,031.562	5,861.377	1,997.892	11,132.100	30.100
	- Local	7,632.913	6,570.855	3,692.383	3,104.594	1,947.000	5.000
	- Total	16,240.758	11,602.417	9,553.760	5,102.456	13,079.100	35.100

Provisional as at end of April 1997

BOI data on investment



COMMITTEE ON PUBLIC ENTERPRISES / BOARD OF INVESTMENT OF SRI LANKA.

Table 5 BOI Activities		YEAR OF APPROVAL 1992	1993	1994	1995	1996	1997 #
A Projects Approved:							
1 No. of Projects							
Under Section 17		301	465	285	219	230	101
Under Section 16		58	99	57	62	83	21
200 Garment Factory Project		127	18	2	-	1	8
Total		586	582	344	281	314	130
2 Estimated Investment (Rs. Mn.):							
Under Section 17	- Foreign	17,745.437	20,873.111	18,502.972	14,337.183	428,805.742	7,493.563
	- Local	14,226.900	23,519.273	24,019.154	17,435.666	23,311.212	8,033.798
	- Total	31,970.337	44,392.386	42,522.126	31,772.849	452,116.954	15,528.361
Under Section 16	- Foreign	899.348	1,161.311	4,545.118	1,458.235	3,419.893	367.950
	- Local	1,037.871	647.313	3,055.961	1,735.299	1,211.820	67.030
	- Total	1,937.419	1,808.324	7,601.079	3,193.534	4,631.713	434.980
200 GFP	- Foreign	N.A	N.A	N.A	N.A	N.A	N.A
	- Local	N.A	N.A	N.A	N.A	N.A	N.A
	- Total	N.A	N.A	N.A	N.A	N.A	N.A
Total	- Foreign	18,644.785	22,034.422	23,048.090	16,015.418	432,225.635	7,861.513
	- Local	15,264.771	24,166.586	27,075.115	19,169.965	24,522.032	8,100.828
	- Total	33,907.556	46,201.013	50,123.205	35,185.383	456,747.667	15,962.341
3 No. of Employment (Local) at capacity							
Under Sec. 17		47,785	45,616	44,349	33,519	41,215	25,825
Under Sec. 16		6,317	3,808	2,352	2,723	5,613	981
200 GFP		N.A	N.A	N.A	N.A	N.A	N.A
Total		54,102	49,424	51,021	36,242	46,830	26,806

Provisional as at end of April 1997

Table of BOI activities

- Published in The Sunday Leader on 3.8.1997 by Nihal Sri Ameresekere under the pseudonym 'Bismark'