

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

*In the matter of an Application in terms of Article 121,  
read with the other applicable and relevant Articles of the  
Constitution, for a determination, as to whether any one  
or more provisions of the Bill titled: "Appropriation Bill  
2007" is / are inconsistent with and / or ultra-vires the  
Constitution.*

Nihal Sri Ameresekere  
167/4, Vipulasena Mawatha  
Colombo 10.

**PETITIONER**

**SC/SD No. 7/2007**

Vs.

Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**RESPONDENT**

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

On this 11<sup>th</sup> day of October 2007

The **Petition** of the **Petitioner** above-named, appearing by himself in person, states as follows:

1. The Petitioner is a -
  - a) i) citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as "**the country**")
  - ii) Fellow Member of, the Institute of Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of UK.
  - iii) Consultant exposed to both private and public sectors, having also functioned, as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government, and as an Advisor, Ministry of Finance, and as Chairman, Public Enterprises Reform Commission.
  - iv) Member of the International Consortium of Governmental Financial Management, and the International Association of Anti-corruption Authorities.
  - v) public interest activist, engaged in public interest activities and litigations, and in combating, the pillage and plunder of resources of the people of the country, the misuse and waste of public property, and fraud, corruption and scandalous transactions, detrimental to the interests of the people of the country.

- b) presenting this Petition for himself, on his own behalf, and for and on behalf of the people of the country, to prevent extensive loss, damage and detriment being caused to the people of the country, who are the real owners of the Consolidated Fund defined in Article 149 of the Constitution, in violation of the provisions of the Constitution, more particularly *vis-a-vis* the control of Public Finance dealt with in Chapter XVII of the Constitution.

*A true photostat copy of the National Identity Card of the Petitioner is annexed hereto marked ("P1"), pleaded as part and parcel hereof.*

2. The Appropriation Bill 2007 of the Government in respect of the Financial Year 1.1.2008 to 31.12.2008, issued on 1.10.2007, as per Gazette Part II of 28.9.2007, was placed on the Order Paper of Parliament on 10.10.2007.

*True copies of the pages of the Order Paper of Parliament of 10.10.2007 and the said Appropriation Bill are annexed hereto marked ("P2") and ("P3"), respectively, and pleaded as part and parcel hereof.*

3. In terms of Article 28 of the Constitution, it is the fundamental duty of every person in Sri Lanka, *inter-alia*, to;
- a) **uphold and defend the Constitution and the law;**
  - b) further the national interest and to foster national unity;
  - c) work conscientiously in his chosen occupation;
  - d) **preserve and protect public property, and combat misuse and waste of public property;**
  - e) respect the rights and freedom of others; and
  - f) protect nature and conserve its riches.

4. The Petitioner respectfully draws the kind attention of Your Lordships' Court to the under-mentioned Articles of the Constitution (*Emphasis added*)

- a) The Constitution mandates that **the full control over public finance** shall be exercised by Parliament;

Article 148 – **"Parliament shall have full control over public finance"**.

– "No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law".

– Articles 154(G) and 154(Q) provide for Parliament to pass laws to be given effect to by the Provincial Councils and for the appointment of a Finance Commission for the management of funds of Provincial Councils, including funds granted by the Government, and the Finance Commission being responsible to Parliament.

Article 149 (1) – **"The funds of the Republic not allocated by law to specific purposes shall form one Consolidated Fund into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues and receipts of the Republic not allocated to specific purposes"**

**Therefore funds have to be allocated for 'specific purposes'**

- b) The Constitution mandates that withdrawals from the Consolidated Fund shall only be by the Minister of Finance and that too, only after approval has been given by Parliament for specified public services;

Article 150 (1) – “Save as otherwise expressly provided in paragraphs (3) and (4) of this Article, **no sum shall be withdrawn from the Consolidate Fund except under the authority of a warrant under the hand of the Minister in charge of the subject of Finance.**”

Article 150 (2) – “**No such warrant shall be issued unless the sum has by resolution of Parliament or by any law being granted for specified public services for the financial year during which the withdrawal is to take place** or is otherwise lawfully charged on the Consolidated Fund.”

Article 149 (2) – “The interests on the public debt, seeking fund payments, the costs, charges and expenses incidental to the collection, management and receipt of the Consolidated Fund **and such other expenditure as Parliament may determine** shall be charged on the Consolidated Fund.”

- c) The following expenditure has been provided for by the Constitution, itself, to be charged to the Consolidated Fund;

Article 149 (2) – “The interests on the public debt, seeking fund payments, the costs, charges and expenses incidental to the collection, management and receipt of the Consolidated Fund ..... shall be charged on the Consolidated Fund.”

Article 108 (1) – “The salaries of the Judges of the Supreme Court and the Court of Appeal shall determined by Parliament and shall be charged on the Consolidated Fund. 108 (2) – “The salary payable to and the pension entitlement of, a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after his appointment.”

Article 65 (2) – “The salary of the Secretary-General shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.”

Article 153 (2) – “The salary of the Auditor-General shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.”

Article 56 (6) – “A member of the Public Service Commission shall be paid such salary as may be determined by Parliament. The salary payable to any such member shall be charged on the Consolidated Fund and shall not be diminished during his term of office.”

- d) The exception for **Parliamentary control over public finance** is specifically provided for in the Constitution, only in the following instance;

Article 150 (3) – “**Where the President dissolves Parliament** before the Appropriation Bill for the financial year has passed into law, he may, unless Parliament shall have already made provisions, authorize the issue from the Consolidated Fund and the expenditure of such sums as he may consider necessary for the public services until the expiry of a period of three months from the date on which the new Parliament is summoned to meet”

Article 150 (4) – “**Where the President dissolves Parliament** and fixes a date or dates for the general election the President may, unless the Parliament has already made provisions in that behalf, authorize the issue from the Consolidated Fund and the expenditure of such sums as he may, after consultation with the Commissioner of Elections, consider necessary for such elections.”

- e) The Constitution has provided for a **Contingencies Fund for urgent and unforeseen expenditure**, in the following manner, subject to covering approval by Parliament for **replacement** of such expenditure;

Article 151 (1) – “Notwithstanding any of the provisions of Article 149, Parliament may by law create a **Contingencies Fund** for the purpose of **providing for urgent and unforeseen expenditure**.”

Article 151 (2) – “**The Minister in charge of the subject of Finance**, is satisfied –

- a) that there is need for any such expenditure, and
- b) that no provision for such expenditure exists,

may, **with the consent of the President**, authorize provision to be made therefor by **an advance** from the **Contingencies Fund**”

Article 151 (3) – “As soon as possible after **every such advance**, a **Supplementary Estimate** shall be presented to Parliament for the purpose of **replacing** the amount so **advanced**.”

When the President is also the Minister of Finance, **then one and the same person**, would be acting in terms of Article 151 (2) of the Constitution.

- f) **Approval or Authorization of Cabinet and Approval of Parliament is mandated by the Constitution** for making a charge on the **Consolidated Fund** or **other funds of the Government** or for the imposition of any tax.

Article 152 – “No Bill or motion, authorizing the disposal of, or the imposition of charges upon, the Consolidated Fund or **other funds of the Republic**, or the imposition of any tax or the repeal, augmentation or reduction of any tax for the time being imposed **shall be introduced in Parliament except by a Minister, and unless such Bill or motion has been approved either by the Cabinet of Ministers or in such manner as the Cabinet of Ministers may authorize**.”

- g) The Constitution mandates that Parliament cannot **abdicate or alienate** its legislative power

Article 76 (1) – “**Parliament shall not abdicate or in any manner alienate its legislative power**, and shall not set up any authority with any legislative power.”

h) **The Constitution mandates that the President, Cabinet of Ministers and Ministers are responsible to Parliament**;

Article 42 – “The **President shall be responsible to Parliament** for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.”

Article 43 (1) – “There shall be a **Cabinet of Ministers** charged with the direction and control of the Government of the Republic, which **shall be collectively responsible and answerable to Parliament**”

Article 45 (3) – “**Every Minister** appointed under this Article **shall be responsible** and answerable to the Cabinet of Ministers and to **Parliament.**”

5. The Petitioner respectfully draws the kind attention of Your Lordships’ Court to the under-mentioned Clauses in the **Appropriation Bill (“P3”)** for the Financial Year 1.1.2008 to 31.12.2008.

a) Clause 2 – Authorises the estimated expenditure of Rs. 925,057,284,000/- for the Financial Year 1.1.2008 to 31.12.2008 to be met from

i) the Consolidated Fund or **any other Fund of the Government**

ii) Loans raised in or outside Sri Lanka in aggregate not exceeding Rs. 740,903,593,000/-

iii) Rs. 925,057,284,000/- **to be expended as specified in the First Schedule**

b) Clause 3 – Receipts from activities for the Financial Year 2008 specified in Column I of Second Schedule **shall not be less than the minimum limit specified** in Column III of that Schedule, and any net surplus **to be paid to the Consolidated Fund before 30.6.2009.**

– The net surplus from an activity is to be determined after deducting expenses incurred in respect of such activity, including provision for depreciation.

– Expenditure for activity for the Financial Year 2008 specified in Column I of Second Schedule to be paid from the receipts of such activity, and **shall not exceed the maximum limit specified** in Column II of that Schedule.

– The debit balance outstanding as at 31.12.2008 of any activity specified in Column I of Second Schedule **shall not exceed the maximum specified limit** in Column IV of that Schedule and total liabilities of that activity **shall not exceed the maximum limit specified** in Column V of that Schedule.

c) Clause 4 – If the receipts from any activity specified in Column I of Second Schedule are insufficient to meet the expenditure, the **Minister may from time to time Order** that such sums deemed necessary to meet such expenditure **shall be paid by way of advances** out of the Consolidated Fund or **any other Fund of the Government**, however, the aggregate of such sums advanced **shall not exceed the maximum limit of expenditure specified** in Column II of that Schedule.

**Any such sum so advanced to be refunded** to the Consolidated Fund in such manner as the **Minister by Order direct.**

- d) Clause 7 – **Where the Minister is satisfied, that**
- i) receipts from taxes and other sources **will be less than the amounts anticipated to finance authorised expenditure;** or
  - ii) **the amounts originally appropriated for a particular purpose are no longer required,**

**he may, with the approval of the Government withdraw in whole or in part, any amounts previously released for expenditure under the authority of a warrant issued by him from the Consolidated Fund or any other Fund of the Government to meet any authorised expenditure.**

- e) Clause 8 – **The Minister, with the approval of the Government on or before 31.5.2009 by Order may vary or alter**
- i) any maximum limit specified in Column II, Column IV and Column V;
  - ii) any minimum limit specified in Column III

of the Second Schedule.

**No such Order made by the Minister shall have effect, unless it had been approved by Parliament by resolution.**

- f) Clause 9 – **Parliament may by resolution amend the Second Schedule, by adding to the appropriate Columns, any activity and providing for -**
- i) maximum limit for that activity
  - ii) minimum limit relating to such activity

6. The Petitioner respectfully draws the kind attention of Your Lordships' Court to Clauses 5 and 6 of the **Appropriation Bill ("P3")** for the Financial Year 1.1.2008 to 31.12.2008, set out herein below.

"5. (1) Any moneys which by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head, by Order of the Secretary to the Treasury or any other officer authorised by him.

(2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme."

"6. Any money allocated to Recurrent Expenditure or Capital Expenditure under the **"Development Activities"** Programme appearing under the Head **"Department of National Budget"** specified in the First Schedule, may be transferred to any other Programme under any other Head in that Schedule, by Order of the Secretary to the Treasury or any other officer authorized by him. **The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.**" (*Emphasis added*)

- a) Inherently, it is implied that funds allocated for Recurrent or Capital Expenditure under the **"Development Activities"** Programme, are readily 'available to be transferred', thereby raising the question, as to whether such funds are allocated for any 'specified public services' or any 'specific public purpose', as mandated in Articles 150(2) and 149(1) of the Constitution, or if not, as to whether such allocations are mere 'provisionings' of funds, in sheer violation of the dictates of the Constitution

- b) The Clauses 5 and 6 above are identical to Sections 5 and 6 of the Appropriation Act No. 47 of 2006, which was in respect of the Financial Year 1.1.2007 to 31.12.2007.
- c) The Appropriation Act No. 39 of 2005, which was in respect of the Financial Year 1.1.2006 to 31.12.2006 contained the following identical Sections 5 and 6 (except the name "**Development Activities**" Programme had another name "**Public Resources Management**");
- "5. (1) Any moneys which, by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme, or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head, by Order of the Secretary to the Treasury or any officer authorised by him.
- (2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme.
- "6. Any money allocated to Recurrent or Capital Expenditure under the "**Public Resources Management**" Programme appearing under the Head "**Department of National Budget**" specified in the First Schedule, may be transferred to any other Programme under any other Head in the Schedule, by Order of the Secretary to the Treasury or any other officer authorized by him. **The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.** (*Emphasis added*)
- d) The Appropriation Act No. 15 of 2004, which was in respect of the Financial Year 1.1.2005 to 31.12.2005, had the following Section 5, with Sub-sections (1), (2) and (3).
- "5. (1) Any moneys which, by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme, or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head, by Order of the Secretary to the Treasury or any officer authorised by him.
- (2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme.
- (3) Subject to the provisions of sub-section (2), any money allocated to Recurrent or Capital Expenditure under the "**Public Resources Management**" Programme appearing under the Head "**Department of National Budget**" specified in the First Schedule, may be transferred to any other Programme under any other Head in the Schedule, by Order of the Secretary to the Treasury or any officer authorized by him. **The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.** (*Emphasis added*)
- e) The Section 5, Sub-sections (1), (2) and (3) above, were identical to Section 5 Sub-sections (1), (2) and (3) of the Appropriation Act No. 44 of 2003, which was in respect of the Financial Year 1.1.2004 to 31.12.2004.
- f) **The aforesaid Section, 5 Sub-section (3) had been included in the Appropriation Act, only from the Financial Year 1.1.2004 to 31.12.2004, in terms of Appropriation Act No. 44 of 2003.**

- g) Prior to that, only Section 5, Sub-sections (1) and (2) had been contained in the Appropriation Act, in respect of the Financial Year 1.1.2003 to 31.12.2003, and previous Financial Years, as given below:

"5. (1) Any moneys which, by virtue of the First Schedule to this Act, allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme or to the allocation of Recurrent or Capital Expenditure under any other Programme within that Head, by Order of the Secretary to the Treasury or any other officer authorised by him."

"(2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme."

- h) This has been so from as far back as Act No. 18 of 1978, which was in respect of the Financial Year 1.1.1979 to 31.12.1979, wherein Section 5 (1) was identical and 5 (2) read as follows:

"(2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that allocation."

- i) Appropriation Act No. 38 of 1968 in respect of the Financial Year 1.10.1968 to 30.9.1969, Section 5 had stated thus;

"5. (1) Any moneys which, by virtue of the provisions of the First Schedule to this Act, have been allocated to any Vote other than Votes Nos. 3, 5 and 7, appearing under any Head specified in that Schedule, but have not been expended and are not likely to be expended, may be transferred to other Vote under that Head by Order of the Secretary to the Treasury or any officer authorised by him."

7. In examining the Clauses of the **Appropriation Bill ("P3")** it is revealed that;

- a) terms and conditions of the Loans to be raised, payments in respect of which are mandated by the Constitution to be charged to the Consolidated Fund, are not disclosed.
- b) accumulated levels of debt are not disclosed, both local and foreign
- c) estimates of revenues anticipated are not disclosed
- d) **other funds of the Government are not disclosed, nor the utilisation of such funds disclosed**
- e) Clauses 2, 3, 4, 7, 8, 9, *inter-alia*, specify authorised limits for expenditure, including limits for receipts, and any variation thereof to be by an Order of the Minister of Finance, with approval by Parliament by resolution, with any advances from the Consolidated Fund to be refunded.
- f) contrary to the above, Clauses 5 and 6, on the other hand, have given authority for varying specified authorised limits to the Secretary to the Treasury, including transfers from one specified authorised limit to a another, without any Order of the Minister of Finance and/or without Parliamentary approval for exceeding specified authorised limits, and **'deeming' that money so transferred to have been covered by 'Supplementary Estimates' submitted by the Minister of Finance for Parliamentary approval, which is also 'impliedly deemed'**.
- g) transfer to an 'authorised and approved limit', would be an **'increase'** in the allocation approved by Parliament for that limit, and such **'increase'** would require approval by Parliament.
- h) Impliedly, allocations for **"Development Activities"** Programme, under the Head "Department of National Budget", appear to be mere 'provisionings', with the 'specified public services' and/or 'specific public purposes' not being specified, as mandated by the Constitution.

- i) the 'creation' of and 'transfer' of funds to any 'new activity' would require the approval by Parliament, as provided for in Clause 9 of the Appropriation Bill (P3), in conformity with the dictates of the Constitution.
- j) Clause 5 historically providing for approval for transfer of unutilised 'Recurrent Expenditure' is an old inherited British practice, then referred to as a 'virement', which means 'the transfer of items from one financial account to another'. **At that time of the British, it was under the strict enforcement of financial accountability by the Englishmen, where civil servants were severely dealt with, unlike the current era of financial chicanery !**
8. The Petitioner to apprise Your Lordships' Court, respectfully cites the following 'extracts' (*Emphasis added*) from a very recent (August 2007) draft Report for review and action titled – "Proposals for Strengthening of Parliamentary Control over Public Finance", formulated and forwarded by the former Auditor General, present Project Director of the Office of the Committee on Public Accounts and Committee on Public Enterprises, forwarded to the Committee on Public Accounts, Committee on Public Enterprises, Parliamentary Secretariat, Auditor General and General Treasury:

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

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

- **The revision of the budget by Rs.220.2 Billion at the discretion of the officers in terms of provisions in Section 5 of the Appropriation Act, No. 39 of 2005 including Rs.166 Billion in terms of authority granted under Section 6 of the said Act raises the question whether it tantamount to a partial abdication of the powers of full control over the Public Finance vested in the Parliament by Article 148.**
- **As compared with Rs.609 Billion originally approved for expenditure for the year 2006 and Rs.1,072.8 Billion stated as the actual expenditure, that sum of Rs.220.2 Billion represents a very high percentage.**
- This becomes more serious as this form of version left to the discretion of the Officers has been arranged in such manner, it does not need the approval or sanction of the Parliament as well as that of the Cabinet of Ministries or even the Minister.
- In addition to such revisions made to the provisions at the full discretion of the officers, instances of non-implementation of Budgets approved by Parliament properly abound as follows.
  - i. **Savings of approved provisions due to non-release of funds for Budget implementation.**
  - ii. **Savings of approved provisions due to various other reasons**
  - iii. **Irregular excess spending over the provisions**
  - iv. **Discretionary expenditure within the approved provision contrary to estimates.**
  - v. **Non-achievement of expected Performance despite expenditure incurred.**

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

Therefore the opportunity afforded to report the actual position to the Parliament had been abandoned."

Extracts from Paragraph (2) of Part II of Report

"A substantial authority has been vested in the officials to execute budgets which vary heavily from the approved budgets without the approval or sanction of the Parliament.

Parliament can revise the originally approved budget through approving Supplementary Estimates. Nevertheless, it appears that the Supplementary Estimates are presented at present only in connection with obtaining approval for supplementary provisions and not for obtaining the approval of Parliament for revisions within the approved budget.

**The Parliamentary approval for the revision of the approved budget at the discretion of the officials without the approval or sanction of Parliament has been granted by Acts of Parliament.**

**The provisions in Section 5(1) and 6 of the Appropriation Act, No. 39 of 2005 can be cited as an example in that connection.**

**The total provision of the Department of the National Budget under Head 801 - "Resources Management Programme" appearing in that Act can be transferred to any Programme under any Head and according to Section 6 of that Act, such transfers should be considered as covered by Supplementary Estimates. That is, it is not necessary to even inform Parliament.**

**According to that Appropriation Act, out of the total expenditure of Rs.609 Billion approved for the year 2006 provision amounting to Rs.62.2 Billion which exceeds 10 percent of the total approved expenditure has been made available to Head 801. Parliament has approved the increase of the provision under Head 801 for the year 2006 by Rs.109 Billion to Rs.171.2 billion.**

**Officials have been allowed to revise the budget approved by Parliament subject to limitations specified in Section 5(1) of the said Act and it appears there is no need whatsoever to report those to Parliament.**

**The bureaucrats have spent Rs.220.2 Billion of Public Funds in the year 2006 through the opportunity granted in terms of Section 5(1) and 6 of the said Act at their discretion against the approved budget without any knowledge or approval of the Parliament.**

According to Section 7 of the said Appropriation Act, the Minister has the power to limit the expenditure approved by Parliament thus resulting in the revision of budget execution. As no provision has been made for such revisions to be approved by Parliament such practice adversely affects the right and responsibility of Parliament to exercise over Public Finance.

Even though provision has been made in Section 15 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 that a statement of the approved budget and the budget actually approved should be presented to Parliament, such details do not appear to be presented to Parliament adequately and appropriately. An examination of the Annual Report for 2006 presented under that to Parliament by the Ministry of Finance and Planning would confirm such situation."

*A true copy of the said Report titled – "Proposals for Strengthening of Parliamentary Control over Public Finance" is annexed hereto marked ("P4"), pleaded as part and parcel hereof*

9. a) The Secretary to the Treasury, also the Secretary, Ministry of Finance, is appointed by the President

Article 52 (1) – "There shall be for each Ministry a Secretary who shall be appointed by the President."

b) In a voluminous Special Audit Report to Parliament submitted in terms of Article 154 (6) of the Constitution by the Auditor General in July 2006, in the 'Executive Summary, *inter-alia*, it was reported as follows:

- **According to test checks carried out during the course of audit it was observed that the annual loss of the Government Tax Revenue is extraordinarily large. According to audit test checks the computable value of the loss of Government Tax Revenue and the failure to collect in accordance with the legal provisions during the last few years amounts to about Rs.389 billion while the amount that cannot be computed is extremely large.**
- **The institutions dealing with the Tax Revenue had not maintained an adequate tax management co-ordination with their supervisory institutions that is, the General Treasury and the Ministry of Finance.**
- **The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly.**

*A true copy of the 'Executive Summary' of the said Special Audit Report of July 2006 to Parliament by the Auditor General is annexed hereto marked ("P5"), pleaded as part and parcel hereof*

10. In the Opinion pronounced by a 5-Member Bench of Your Lordships' Court on the Inland Revenue (Special Provisions) Act No. 10 of 2003, in a Reference made by the President, and reiterated by Your Lordships' Court in SC (SD) Determination No. 26/2004 Your Lordships' Court, *inter-alia*, observed thus;

- a) "It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka, who cannot be denied its benefit"
- b) "It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, are inconsistent with Article 12 (1) of the Constitution, which guarantees to every person equal protection of the law; in that, it grants, immunities and indemnities to persons who have contravened the laws that had been referred to and thereby defrauded public revenue causing extensive loss to the State."

11. The 7-Member Bench of Your Lordships' Court in the Determinations made on the proposed 18<sup>th</sup> and / or 19<sup>th</sup> Amendments to the Constitution, *inter-alia*, observed thus;

- a) "Article 3 of the Constitution, which is an entrenched provision, deals with the Sovereignty of the People and reads as follows;

"3 In the Republic of Sri Lanka Sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise" "

- b) "In fact this Court has ruled in a series of cases that Article 3 is linked up with Article 4 and that these two Articles must be read together. Article 4 of the Constitution deals with the exercise of sovereignty and provides that; - The Sovereignty of the People shall be exercised and enjoyed in the following manner:-

- (a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People *and* by the People at a Referendum,
- (b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People,

- (c) the judicial power of the People shall be exercised by Parliament, through courts, tribunals and institutions created and established, or organised by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and/or his Members, wherein the judicial power of the People may be exercised directly by Parliament according to law,
  - (d) the fundamental rights, which are by the Constitution declared and recognised shall be respected, secured and advanced by all organs of the Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided; and
  - (e) the franchise shall be exercisable at the election of the President of the Republic and of the Members of the Parliament, and at every Referendum by every citizen, who has attained the age of eighteen years, and who, being qualified to be an elector as hereinafter provided has his name entered in the register of electors."
- c) "We determine that Clause 4 of the Bill is inconsistent with Articles 3 and 4 of the Constitution. We also state that the Bill in its present form therefore requires to be passed by a special majority in terms of the provision of paragraph (2) of Article 84 and approved by the people at a Referendum by virtue of the provisions of Article 83."
- d) "This specific reference to the power *of the People* in each sub paragraph which relates to the three organs of government demonstrates that the power remains and continues to be reposed in the People who are sovereign, and its exercised by the particular organ of government being its custodian for the time being, is for the People.

Therefore the statement in Article 3 that sovereignty is in the People and is "inalienable", being an essential element which pertains to the sovereignty of the People should necessarily be read into each of the sub paragraphs in Article 4. The relevant sub paragraphs would then read as follows:

- (a) the legislative power of the People *is inalienable* and shall be exercised by Parliament;
- (b) the executive power of the People *is inalienable* and shall be exercised by the President; and
- (c) The judicial power of the People *is inalienable* and shall be exercised by Parliament through Courts.

The meaning of the word "alienate," as a legal term, is to transfer anything from one who has it for the time being to another, or to relinquish or remove anything from where it already lies. Inalienability of sovereignty, in relation to each organ of government means that power vested by the Constitution in one organ of government shall not be transferred to another organ of government, or relinquished or removed from that organ of government to which it is attributed by the Constitution.

Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution.

It necessarily follows that the balance that had been struck between the three organs of government in relation to the power that is attributed to each such organ, has to be preserved if the Constitution itself is to be sustained"

- e) "The powers of government are included in the sovereignty of the People as proclaimed in Article 3 of the Constitution".

"These powers of government continue to be reposed in the People and they are separated and attributed to the three organs of government; the Executive, the Legislature and the Judiciary, being the custodians who exercise such powers in trust for the People.

"The powers attributed to the respective organs of government include powers that operate as checks in relation to other organs that have been put in place to maintain and sustain the balance of power that has been struck in the Constitution, which power should be exercised only in trust for the People."

"The exercise of the sovereignty of the People can only be perceived in the context of the separation of powers as contained in Article 4 and other connected provisions of the Constitution, by the respective organs of the government."

"The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution"

- f) "The People in whom sovereignty is reposed have entrusted the organs of government, being the custodians of the exercise of the power, as delineated in the Constitution. It is in this context that we arrived at the conclusion that any transfer, relinquishment or removal of a power attributed to an organ of government would be inconsistent with Article 3 read with Article 4 of the Constitution"
- g) "We are of the view on the application of the reasons set out in the preceding section of this determination with regard to the exercise of the sovereignty of the People relevant to the executive power, that this amendment would amount to an alienation, relinquishment or removal of the legislative power of the People. The amendment as contained in Clause 3 (2) would then be inconsistent with Article 3 read with Article 4 (a) of the Constitution and require to be passed by the special majority provided in Article 84 (2) and approved by the People at a Referendum"
- h) "The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People. This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the 'trust' that is implicit in the conferment of power has been stated as follows:

"Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended" – (Administrative Law 8<sup>th</sup> Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356)

It had been firmly stated in several judgments of this Court that 'rule of law' is the basis of our Constitution.

"A.V. Dicey in Law of the Constitution" postulates that 'rule of law' which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-

"It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone .... "

"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective" \_ (Cited from Indian Judgment)

- i) "The concept of judicial review of administrative action, being a predominant feature of Constitutional jurisprudence, prevents total immunity being given to any body, created under the Constitution as such restriction of judicial scrutiny, would impair the very foundation of the Constitution and the Rule of Law.

They are – (1) that it would alienate the judicial power of the People; (2) that it creates a special class of People in violation of Article 12 (1) of the Constitution, who would not be subjected to judicial review.

The proposed Amendment thus undermines the Parliamentary control over the Rule making powers of an institution established by the Constitution, which in turn is an application as well as an alienation that affects the sovereignty of the People, which is inconsistent with Articles 3 and 4 of the Constitution."

- j) "The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"

- k) "In terms of the preamble, the Constitution has been adopted and enacted as the Supreme Law of Democratic Socialist Republic of Sri Lanka. All State authority flows from the Constitution, which establishes the organs of government; declares their powers and duties; proclaims the sovereignty of the Peoples, which is inalienable; declares and specifies the fundamental rights and the franchise that form part of the sovereignty of the People. It necessarily follows that Constitution should apply equally in all situations that comes within the purview of its provisions. It is in this context that a strict bar has been put in place in Article 75 on the suspension of the operation of the Constitution or any part thereof."
- l) "That Clause 6 of the Bill has the effect of suspending the operation of a part of the Constitution and cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution".
- m) "We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to "uphold and defend the Constitution"

12. The Petitioner respectfully submits that one or more of the Clauses of the **Appropriation Bill ("P3")**

- a) amount to the alienation, relinquishment or removal of the legislative powers of the People and are inconsistent with Article 3 read with Article 4 of the Constitution.
- b) usurp and subvert the Constitutional mandate that Parliament shall have full control over public finance, thereby violating Article 148 of the Constitution.
- c) violate the scheme set out in Chapter XVII of the Constitution for full control by Parliament over public finance.
- d) violate Article 76 (1) of the Constitution which stipulates that Parliament shall not abdicate or any manner alienate its legislative power.
- e) Secretary Treasury appointed by the President and being under the control and direction of the Executive, the power attributed to Parliament cannot be alienated, relinquished, removed or transferred to the Executive.
- f) vest unfettered discretion or authority on the Secretary to the Treasury or any other officer authorised by him, when the Constitution does not attribute any such unfettered discretion or authority, and such is antithetic to the 'rule of law' .
- g) violate the basic premise that public finance is held in trust for the people of Sri Lanka, who cannot be denied of the due and proper accountability therefor, which is against the 'rule of law'.
- h) are themselves contradictory, as morefully disclosed hereinabove.
- i) seek Parliamentary approval for allocations of public funds, without specifying the public services or specific public purposes for such funds, in violation of Articles 150(2) and 149(1) of the Constitution.
- j) violate the Constitutional mandates by not disclosing the other funds of the Government and the utilisation of such funds.

13. Article 27 of the Constitution defining the "Directive Principles of State Policy and Fundamental Duties", *inter-alia*, stipulates that;

- a) 'Directive Principles of State Policy' contained in the Constitution shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.

- b) the State is pledged to establish in Sri Lanka a Democratic Socialist Society, the Objectives of which include –
- i) the full realization of the fundamental rights and freedoms of all persons;
  - ii) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political), shall guide all the institutions of the national life;
  - iii) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;
  - iv) the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity towards social objectives and the public weal;
  - v) the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good;
  - vi) the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the State, state agencies or in the hands of a privileged few, but are dispersed among, and owned by, all the People of Sri Lanka;
  - vii) raising the moral and cultural standards of the People, and ensuring the full development of human personality;
  - viii) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels
- c) the State shall eliminate economic and social privilege and disparity, and the exploitation of man by man or by the State.
- d) the State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.
- e) the State shall ensure social security and welfare.
- f) the State shall endeavour to foster respect for international law and treaty obligations in dealings among nations.

14. In Judgment in SC (FR) Applications Nos. 10/07, 11/07, 12/07 and 13/07 Your Lordships' Court, *inter-alia*, observed thus:

"The relevant principle of interpretation with particular reference to the interpretation of provisions in a Constitution is set out in Bindra's Interpretation of Statutes – 9<sup>th</sup> Ed, page 1182 as follows:

*"The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that not one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument."*

"In applying these principals of interpretation I am of the view that the broad phrase "National Policy" appearing at the top List II should be interpreted together with the relevant provisions in Chapter VI of the Constitution which contains the "Directive Principles of State Policy."

"The limitation in Article 29 which states that the provisions of Chapter VI are not justiciable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. Article 27 of Chapter VI lays down that the 'Directive Principles of the State Policy' contained therein shall guide "Parliament, the President and the Cabinet of Ministries in the enactment of 'laws and the governance of Sri Lanka for establishment of a just and free society.'" Hence the restriction added at the end in Article 29 should not detract from the noble aspirations and objectives contained in the Directive Principles of State Policy, lest they become as illusive as a mirage in the desert."

15. It is humbly submitted that the foregoing demonstrates that even the mandatory provisions of the Constitution for the '**control of public finance**' have become '**as illusive as a mirage in the desert**' ! The following data would illustrate the gravity of the matter:

- a) Total Expenditure authorised by Appropriation Act No. 39 of 2005 for the Financial Year 1.1.2006 to 31.12.2006 was Rs. 609,266,083,000/-

As per the Financial Statements for the Year Ended 31.12.2006 the actual Total Expenditure for the Financial Year 1.1.2006 to 31.12.2006 Rs. 1,072,780,996,515/-  
- **A 76% increase over the original Estimate !**

As per Appropriation Bill ("**P3**") the Total Expenditure for the Financial Year 1.1.2008 to 31.12.2008 is estimated as Rs. 925,057,284,000/-

The expenditure estimated for the Financial Year 1.1.2008 to 31.12.2008 is 86% of the actual expenditure for the Financial Year 1.1.2006 to 31.12.2006, **which was two years ago !**

**The exchange parity rates would be much higher in 2008 than in 2006, and the price levels also much higher ! Taking these factors into account, puts into serious question, the Total Expenditure of Rs. 925,057,284,000/- estimated for the Financial Year 1.1.2008 to 31.12.2008 !**

- b) As per the detail Budget estimates presented to Parliament in December 2005 for the Financial Year 1.1.2006 to 31.12.2006, the Total Budget for Head 801- 'Department of National Budget' was given as Rs. 23,257,026,000/-

As per Appropriation Act No. 39 of 2005 in December 2005, the Total Budget for Head 801- 'Department of National Budget' was given as Rs. 62,232,026,000/-

As per the Committee Stage Amendments to Appropriation Bill in December 2005, the Total Budget for Head 801- 'Department of National Budget' was increased by Rs. 39,590,000,000/- to a total of Rs. 77,960,775,000/-.

As per the Financial Statements for the Year Ended 31.12.2006, the Total Expenditure incurred for Head 801- 'Department of National Budget' has been reported as only Rs. 4,587,324,120/-

As per the Appropriation Bill (**P3**) the estimated Total Expenditure for the Financial Year 1.1.2008 to 31.12.2008 for the 'Department of National Budget' has been given as Rs. 50,671,419,000/-  
**(This could be further increased during Committee Stage as in 2005)**

- c) As per the Financial Statements for the Year Ended 31.12.2006 it has been reported that:

i) Total Revenue in 2006		Rs. <u>477,382,179,094/-</u> (100%)
Interest payments in 2006		Rs. 150,777,518,682/- (31.5%)
Foreign Loan repayments in 2006	Rs. 48,850,521,704/-	
Local Loan repayments in 2006	<u>Rs. 246,842,854,169/-</u>	Rs. 295,693,375,873/- (61.9%)
		<u>Rs. 446,470,894,555/-</u> (93.5%)

**Therefore 'Debt Service' in 2006 has been 93.5% of Total Revenue !**

ii)	Consolidated Fund balance as at 31.12.2006 stood at a <u>deficit</u> of	(Rs. 113,034,062,956/-)
	Consolidated Fund balance as at 31.12.2005 stood at <u>deficit</u> of	(Rs. 43,242,407,556/-)
	Increase in level of <u>deficit</u> of the Consolidated Fund during the Financial Year 2006	(Rs. 69,791,655,400/-)
iii)	Total Liabilities as at 31.12.2006 has been reported as	Rs. 2,577,989,569,708/-
	Total Liabilities as at 31.12.2005 has been reported as	Rs. 2,178,367,382,024/-
	Increase in level of Total Liabilities during the Financial Year 2006	Rs. 399,622,187,684/-.

**Therefore increase in Total Liabilities in 2006 has been 83.7% of Total Revenue !**

*True copies of the relevant pages of the derail Budget Estimates in December 2005, Appropriation Act No. 39 of 2005, Committee Stage Amendments to the Appropriation Bill in December 2005 and the Financial Statements for the Financial Year Ended 31.12.2006 published in September 2007 are annexed hereto marked ("P6(a)", "P6(b)", "P6(c)") and ("P7"), respectively, pleaded as part and parcel hereof*

16. The kind attention of Your Lordships' Court is also respectfully drawn to the under-mentioned Articles of the Constitution, *vis-à-vis* the Audit of the Accounts of the Government by the Auditor General;

- a) Article 154 (1) – “The Auditor General shall audit the accounts of all Departments of Government, the Offices of the Cabinet of Ministers, the Judicial Service Commission, the Public Service Commission, the Parliamentary Commissioner for Administration, the Secretary General of Parliament and the Commissioner of Elections, local authorities, public corporations and business or other undertakings vested in the Government under any written law.”
- b) Article 154 (6) – “The Auditor General shall within ten months after the close of each financial year and as and when he deems it necessary report to Parliament on the performance and discharge of his duties and functions under the Constitution.”
- c) Article 170 – Interprets a ‘public corporation’ thus – “‘public corporation’ means any corporation, board or other body which was or is established by or under any written law **other than the Companies Ordinance**, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.”

17. Therefore, where the Government invests **public funds** and forms a company, more particularly, a private company, under the Companies Act No. 7 of 2007 (previously Companies Act No. 17 of 1982 / Companies Ordinance), such company and the control over and management of such public funds and review of its operations, **then go outside the control of Parliament**, in that,

- such company is not subject to examination by the Public Accounts Committee or the Committee of Public Enterprises, of Parliament
- its Accounts are not subject to Audit by the Auditor General and presented to Parliament
- if it be a private company, then its Accounts are not required to be filed, even with the Registrar of Companies, thereby denying transparent disclosure for public scrutiny.

- the utilization of **public funds** by such companies are not disclosed for public scrutiny and evaluation by the public in violation of the dictates of the Fiscal Management (Responsibility) Act No. 3 of 2003.

The foregoing tantamounts to an usurpation of Parliamentary powers and a subversion of the Constitutional mandate **for 'full control over public finance by Parliament'**, denying the right of the public to scrutinize and evaluate the accountability for such public funds, **in violation of the stipulations in the Fiscal Management (Responsibility) Act No. 3 of 2003, whereby the public are entitled to scrutinize and evaluate the utilization of public funds.**

Within the meaning of Article 148 of the Constitution, any such funding by the Government to any body, other than a public corporation, where Parliament's mandate to have full control over public finance is rendered nugatory, would be patently unconstitutional and illegal.

18. The provisions of the Appropriation Bill (**P3**) are not in compliance with the statutory provisions in the Fiscal Management (Responsibility) Act No. 3 of 2003. The Head Note of the said Act and Sections 2, 3 and 26 are cited below:

"AN ACT TO ENSURE THAT THE FINANCIAL STRATEGY OF THE GOVERNMENT IS BASED ON PRINCIPLES OF RESPONSIBLE FISCAL MANAGEMENT; TO FACILITATE PUBLIC SCRUTINY OF FISCAL POLICY AND PERFORMANCE ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

2. The fiscal strategy of the Government shall be based on the principles of responsible fiscal management hereinafter referred to.
3. The objectives underlying responsible fiscal management which need to be adhered to, by the Government in outlining the fiscal strategy of the government are as follows :-
  - (a) reduction of government debt to prudent levels, by ensuring that the budget deficit at the end of the year 2006, shall not exceed five *per centum* of the estimated gross domestic product and to ensure that such levels be maintained thereafter ;
  - (b) prudent management of the financial risks faced by the government, having regard to the changing economic circumstances ;
  - (c) adoption of policies relating to spending which do not increase government debt to excessive levels ;
  - (d) adoption of policies relating to spending and taxing, as are consistent with a reasonable degree of stability and predictability in the level of tax rates in the future ;
  - (e) ensuring that the sum which is calculated as the guarantee and given as a percentage of the gross domestic product for the current financial year along with the two preceding financial years, does not in the aggregate exceed 4.5 *per centum* ;
  - (f) ensuring that at the end of the financial year commencing on January 1, 2006, the total liabilities of the Government (including external debt at the current exchange rates) do not exceed eighty-five *per centum* of the estimated gross domestic product for that financial year ; and that at the end of the financial year commencing on January 1, 2013, the total liabilities of the Government (including external debt at the current exchange rates) do not exceed sixty *per centum* of the estimated gross domestic products for that financial year ; and
  - (g) ensuring that the policy decisions of the Government have regard to the financial impact of such decision on future generations.
26. (1) The Government may in exceptional circumstances, with the approval of Parliament granted by way of a Resolution of Parliament and for such period as may be specified in such Resolution, depart from the requirements of this Act.

(2) The Minister shall in every instance where a departure from the requirements of this Act is made, inform Parliament of –

- (a) the reasons for such departure ;
- (b) the steps that the Government will be taking to overcome the causes necessitating such departure ;
- (c) the period of time within which the Government expects such departure from the requirements, to come to an end.

(3) The Minister shall in every instance where a departure is made –

- (a) if Parliament is sitting on the date when such departure is necessitated, inform Parliament within two weeks of the date of the departure of the matters specified in subsection (2) relating to such departure ; or
- (b) if Parliament is not sitting on the date of such departure, take steps to ensure that Parliament is informed within two weeks of the next sitting of Parliament of the matters specified in subsection (2) in relation to such departure.

19. a) In the foregoing premises, the Petitioner respectfully states that he stands entitled to invoke the jurisdiction of Your Lordships' Court in terms of the applicable Articles of the Constitution for the reliefs prayed for herein.

b) The Petitioner respectfully submits that the foregoing is of national and public importance, warranting the invocation of the jurisdiction of Your Lordships' Court for the exercise of the judicial power of the people and for the intervention of Your Lordships' Court in this matter.

c) The timely passage of the Appropriation Bill (“P3”) being of importance, has necessitated the Petitioner to plead in *ex-tenso* as aforesaid, so as to enable Your Lordships' Court to Hear and Determine this matter expeditiously

d) With the pressure of work and having very limited time, the Petitioner is tendering this Petition in the national and public interest, and respectfully seek the permission of Your Lordships' Court, to tender further facts and documents at the Hearing.

20. Affidavit of the Petitioner in support of the averments contained herein is annexed hereto.

**WHEREFORE** the Petitioner respectfully prays that Your Lordships' Court be pleased to:

a) summon and hear the Project Director, Office of the Committee of Public Accounts and Committee on Public Enterprises of the Parliament of Sri Lanka, in terms of Article 134 of the Constitution, should Your Lordships' Court so deem necessary,

b) determine that in terms of Article 148 and Article 152 of the Constitution, the full control over public finance shall be exercised only by Parliament, except under and in terms of Articles 150(3) and 150(4) of the Constitution,

c) determine that Parliament is debarred from abdicating and / or alienating and/or transferring its Constitutional duty to exercise full control over public finance, in terms of Article 148 and Article 152, read with Article 76(1) of the Constitution,

d) determine that Parliament could approve the withdrawal of public funds from the Consolidated Fund only for specified public services and/or for specific public purposes, in terms of Articles 150(2), 149(1) and 151(3) of the Constitution,

- e) determine that Parliament is debarred from approving the withdrawal of public funds from the Consolidated Fund, where the public service and/or the specific public purpose is not specified, in terms of Articles 150(2), 149(1) and 151(3) of the Constitution,
- f) determine that any urgent and/or unforeseen expenditure for any specified public service or specific public purpose approved by Parliament, in respect of any Head and/or Programme in the Appropriation Bill ("P3"), could only be made from the Contingencies Fund and replaced thereafter by a Supplementary Estimate approved by Parliament in terms of Article 151 of the Constitution,
- g) determine that any excess expenditure, over and above the authorised limit for any specified public service or specific public purpose approved by Parliament, could only be approved by Parliament, as and by way of Supplementary Estimates and/or Amendments to the Appropriation Act, prior to such expenditure being incurred, in terms of Article 150 of the Constitution,
- h) determine that the grant of power to the Secretary to the Treasury in terms of Clauses 5 and/or 6 of the Appropriation Bill ("P3") amounts to the abdication and / or the alienation and/or transfer of the powers of Parliament and such abdication and / or alienation and/or transfer of powers by Parliament is prohibited, in terms of Article 148 and Article 152, read with Article 76(1) of the Constitution,
- i) determine that all funds of the Government not allocated by law to specific purposes shall form one Consolidated Fund in terms of Article 149(1) of the Constitution,
- j) determine that the Appropriation Bill ("P3") should disclose all other funds of the Government and the utilisation thereof, in terms of Article 149(1), read with Articles 148, 150(1), 150(2) and 152 of the Constitution,
- k) determine that one or more of the Clauses of the Appropriation Bill ("P3") is / are inconsistent with the provisions of the Constitution,
- l) determine that one or more of the Clauses of the Appropriation Bill ("P3") require a Special Majority in Parliament and approval by the People at a Referendum under and in terms of the Constitution, for such Clauses to become law,
- m) determine that one or more of the Clauses of the Appropriation Bill ("P3"), could not be legitimately passed by Parliament to become law, in view of the specific prohibitions in the Constitution,
- n) determine that public finance cannot be put beyond the reach, supervision, direction and control of Parliament by the Government investing such funds, wholly or partly, in limited liability companies, excluded in the definition of 'public corporations' in terms of Article 170 of the Constitution, and that the investment of public funds in any such company, wholly or partly, is prohibited in terms of the Constitution,
- o) determine that Clauses of the Appropriation Bill ("P3"), read with the Schedules thereto, are not in conformity with the mandatory requirements of the Fiscal Management (Responsibility) Act No. 3 of 2003,
- p) communicate to the Hon. Speaker of Parliament any or all the Determinations made by Your Lordships' Court,
- q) grant such other and further reliefs as to Your Lordships' Court shall seem meet,

**TRUE COPY**



  
Petitioner