

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

*In the matter of an Application under Article 126 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka*

Vasudeva Nanayakkara  
Attorney-at-Law  
Advisor to His Excellency the President  
Secretary, The Democratic Left Front  
49 1/1, Vinayalankara Mawatha  
Colombo 10.

**Petitioner**

**SC FR Application No. 158/2007**

**Vs**

1. K.N. Choksy M.P.  
President's Counsel  
Former Minister of Finance  
23/3, Sir Ernst De Silva Mawatha  
Colombo 7.
2. Milinda Moragoda M.P.  
Former Minister of Economic Reform  
3/2, Allen Methiniyarama Road  
Colombo 5.
3. Sripathy Sooriyarachchi M.P.  
Attorney-at-Law  
Former Minister, Public Enterprise Reforms  
22, Niwasa Mawatha  
Rilaulla  
Kadana.
4. Charitha Ratwatte  
Former Secretary to the Treasury  
16, Jawatte Road  
Colombo 5.
5. Faiz Mohideen  
Former Deputy Secretary to the Treasury  
5/2, Liberty Plaza Flats  
250, R.A. De Mel Mawatha  
Colombo 3.
6. N. Pathmanathan  
Former Deputy Secretary to the Treasury  
16, Gregory's Place  
Dehiwela.
7. P.B. Jayasundera  
Secretary to the Treasury / Former Chairman,  
Public Enterprises Reform Commission (PERC)  
The Secretariat  
Colombo 1.

8. Chrisantha Perera  
Former Chairman, PERC / Sri Lanka Insurance Corporation Ltd. (SLIC)  
40/10, Lake Garden, Off Lake Drive  
Rajagiriya.
9. M. Kandasamy  
Member of the Steering Committee / General Manager SLIC  
"Rakshana Mandiraya"  
21, Vauxhall Street  
Colombo 2.
10. V. Kanagasabapathy  
Chartered Accountant  
Member of the Steering Committee /  
Former Member of PERC  
79/3, W.A Silva Mawatha  
Colombo 6.
11. Dayanath Jayasuriya  
Member Steering Committee /  
Former Director General SEC / Member PERC  
Apt. 3/1, Seagull Appartments  
12, Melbourne Avenue  
Colombo 4.
12. Rani Jayamaha  
Member Steering Committee / Deputy Governor  
Central Bank  
30, Janadhipathi Mawatha  
Colombo 1.
13. Nihal Sri Ameresekere  
Chartered Accountant  
Former Chairman, PERC  
167/4, Vipulasena Mawatha  
Colombo 10.
14. M.D. Bandusena  
Chairman, PERC  
11-01, West Tower, World Trade Center  
Colombo 1.
15. Shamalee Gunawardene  
Attorney-at-Law  
Former Director Legal, PERC  
500/111, Thimbrigasyaya Road  
Colombo 5.
16. Aneela De Soysa  
Chartered Accountant  
Former Director PERC / Later Partner  
PricewaterhouseCoopers, Sri Lanka  
207/22, Dharmapala Mawatha  
Colombo 7.

17. PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasuna Said, Kav C - 3  
Jakarta 12920  
Indonesia.
18. Roger De Montfort  
Chartered Accountant  
Former Attorney – In Fact  
PT PricewaterhouseCoopers FAS  
Gedung PricewaterhouseCoopers  
J1 H.R., Rasunasaid, Kav C - 3  
Jakarta 12920  
Indonesia.
19. Devasiri Rodrigo  
Chartered Accountant  
Former Senior Partner  
PricewaterhouseCoopers  
42/8, Rosmead Place  
Colombo 7.
20. Y. Kanagasabai  
Chartered Accountant  
Senior Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.
21. S. Manoharan  
Chartered Accountant  
Partner  
PricewaterhouseCoopers  
100, Braybrooke Place  
Colombo 2.
22. Asite Talwatte  
Chartered Accountant  
Senior Partner  
Ernst & Young  
201, De Saram Place  
Colombo 10.
23. Ruwan Fernando  
Chartered Accountant  
Partner  
Ernst & Young  
201, De Saram Place  
Colombo 10.
24. Distilleries Company of Sri Lanka Ltd.  
110, Norris Canal Road  
Colombo 10.

25. Aitken Spence & Company Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
26. Aitken Spence Insurance (Pvt) Ltd.  
305, Vauxhall Towers  
Vauxhall Street  
Colombo 2.
27. Sri Lanka Insurance Corporation Ltd.  
"Rakshana Mandiraya"  
21, Vauxhall Street  
Colombo 2.
28. Milford Holdings (Pvt) Ltd.  
110, Norris Canal Road  
Colombo 10.
29. Greenfield Pacific EM Holdings Ltd.  
C/o Asia Box Consultancy Services (Pte) Ltd.,  
61, Club Street  
Singapore 069436.
30. Channa De Silva  
Director General  
Securities & Exchange Commission of Sri Lanka  
(SEC)  
Level 11-01, East Tower  
World Trade Center  
Echelon Square  
Colombo 1.
31. President  
Institute of Chartered Accountants of Sri Lanka  
30 A, Malalasekera Mawatha  
Colombo 7.
32. F.H. Puvimanasinghe  
Chartered Accountant  
Senior Partner,  
F.H. Puvimanasinghe & Co.  
126-2/1, 2<sup>nd</sup> Floor, YM.B.A. Building  
Sir Baron Jayatilleke Mawatha  
Colombo 1.
33. Wijeyadasa Rajapakse M.P.  
President's Counsel  
Chairman, Parliamentary Committee on Public  
Enterprises (COPE)  
17, Wijeba Mawatha  
Off Nawala Road  
Nugegoda.
34. Inspector General of Police  
Police Headquarters  
Colombo 1.

35. Deputy Inspector General of Police  
Criminal Investigation Department  
4<sup>th</sup> 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**

We respectfully tender herewith Affidavit dated 30.10.2008 of the Petitioner, together with copies of the Documents "X1", "X2", "X3" and "X4" annexed thereto, for the kind information of and action by Your Lordships' Court, as Your Lordships' Court shall seem meet.

Colombo 3<sup>rd</sup> day of November 2008

*Abdulla Assaath*

Attorneys-at-Law for the Petitioner

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

*In the matter of an Application under Article 126 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka*

Vasudeva Nanayakkara  
Attorney-at-Law  
Advisor to His Excellency the President  
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49 1/1, Vinayalankara Mawatha  
Colombo 10.

**Petitioner**

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29. Greenfield Pacific EM Holdings Ltd.  
C/o Asia Box Consultancy Services (Pte) Ltd.,  
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30. Channa De Silva  
Director General  
Securities & Exchange Commission of Sri Lanka  
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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 38<sup>th</sup> 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 38<sup>th</sup> Respondent's Affidavit dated 31.10.2007 with paragraph 5 highlighted, wherein the 38<sup>th</sup> Respondent has stated that **he had no management or financial interest in the 29<sup>th</sup> Respondent Company – Greenfield Pacific EM Holdings Ltd.,** annexed marked "X3"

(c) Copy of Affidavit dated 31.10.2007 of the 29<sup>th</sup> Respondent Greenfield Pacific EM Holdings Ltd., also signed by the 38<sup>th</sup> Respondent, with paragraph 25 sidelined, wherein it is stated that the 29<sup>th</sup> 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 38<sup>th</sup> Respondent is the beneficial owner of the 29<sup>th</sup> 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 1<sup>st</sup> 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](mailto:info@stassen.com)

26<sup>th</sup> 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,

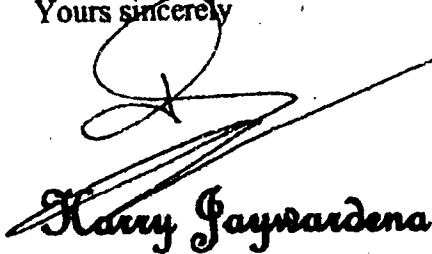
**GREENFIELD PACIFIC EM HOLDINGS LTD.**  
**VILLA C000 - PURCHASE PRICE - AED 4 196 262 00**

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 2926000  
 Fax: 79037  
 D: 70274  
 E:  
 Tel: 74850

In case of missing page please call

**Subject** **Gibraltar Pacific EM Holdings Limited - AED 600 - Purchase price**  
**ARD 4.196.262.00**

Dear Mr Harry

The new Sales Agreement with the plot as described as 147602 is in the possession of Maraca 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 MARACA 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  
4<sup>th</sup> Floor,  
New Secretariat Building  
Colombo 1
36. Chairman,  
Commission to Investigation Allegations of  
Bribery or Corruption  
36, Malalasekera Mawatha,  
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Attorney General's Department  
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38. D.H.S.Jayawardane  
C/o.Milford Holdings (Pvt) Ltd.  
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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.**

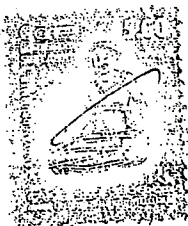
**Objections of the 38<sup>th</sup> Respondent**

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 38<sup>th</sup> Respondent to this application in order to facilitate the service of notice on the 29<sup>th</sup> Respondent Company in view of the fact that I have signed the Share Sale and Purchase Agreement P13 on behalf of the 29<sup>th</sup> Respondent, a Company registered in Gibraltar.
3. I state that I am a Director of the 24<sup>th</sup> and 25<sup>th</sup> Respondent Companies. I have signed the Share Sale and Purchase Agreement dated 11.04.2003 on behalf of the 24<sup>th</sup> and 25<sup>th</sup> Respondent Companies and on behalf of the 26<sup>th</sup> 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 28<sup>th</sup> 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 28<sup>th</sup> Respondent.
5. I state that I have no management or financial interest in the 29<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> Respondent.
6. I state that the specific allegations against the 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> Respondents will be specifically dealt with by them.
7. I admit that the 1<sup>st</sup> 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 33<sup>th</sup> 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  
 Telephone 0714132136

35. Deputy Inspector General Police,  
Criminal Investigation Department  
4<sup>th</sup> Floor,  
New Secretariat Building  
Colombo 1
36. Chairman,  
Commission to Investigation Allegations of  
Bribery or Corruption  
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**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 29<sup>th</sup> 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, I have been added in my personal capacity as the 38<sup>th</sup> Respondent to this application inter alia in order to facilitate the service of notice on the 29<sup>th</sup> Respondent Company in view of the fact that I have signed the Share Sale and Purchase Agreement P13 on behalf of the 29<sup>th</sup> Respondent, a Company registered in Gibraltar.
3. In the circumstances I state that I am duly authorized by the 29<sup>th</sup> Respondent, by Power of Attorney dated 09.07.2007 to execute this affidavit for and on behalf of the said 29<sup>th</sup> Respondent. (A copy of the Special Power of Attorney of the 29<sup>th</sup>



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 29<sup>th</sup> Respondent and to averments that are relevant to the 29<sup>th</sup> Respondent. The paragraphs of the petition that makes reference to and/or which are relevant to the 29<sup>th</sup> 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 29<sup>th</sup> Respondent refrains from answering the averments in the petition which are irrelevant to the 29<sup>th</sup> 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 29<sup>th</sup> Respondent are not executive and / or administrative action. Similarly, the actions of the 24<sup>th</sup> and/or 25<sup>th</sup> and/or 26<sup>th</sup> and/or 27<sup>th</sup> and/or 28<sup>th</sup> Respondent Companies and of the 38<sup>th</sup> 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 24<sup>th</sup> and/or 25<sup>th</sup> and/or 26<sup>th</sup> and/or 27<sup>th</sup> and/or 28<sup>th</sup> and/or 29<sup>th</sup> and/or 38<sup>th</sup> 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 28<sup>th</sup> and 29<sup>th</sup> Respondents in any manner cannot be granted in view of the fact that:

a) The 29<sup>th</sup> Respondent and the 28<sup>th</sup> Respondent are bona fide successful purchasers of 90% of the shares of the 27<sup>th</sup> 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 29<sup>th</sup> Respondent and the 28<sup>th</sup> Respondent have purchased 90% of shares of the said 27<sup>th</sup> Respondent having paid the highest consideration of LKR 6,050 million for 90% of the shares of the 27<sup>th</sup> 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 28<sup>th</sup> 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 27<sup>th</sup> 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 28<sup>th</sup> 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 27<sup>th</sup> and 28<sup>th</sup> 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 27<sup>th</sup> 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 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> 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 24<sup>th</sup> and 25<sup>th</sup> 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 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 29<sup>th</sup> 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 27<sup>th</sup> Respondent.
23. In the circumstances, I state that the 29<sup>th</sup> Respondent is a SPV specially incorporated to enable the Foreign Institutional Investor namely the Hambros (Gibraltar Nominees) Ltd., to invest in the 27<sup>th</sup> 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 29<sup>th</sup> Respondent) was established after the Distilleries Consortium bid had been successful in as much as incorporating a company to purchase shares of the 27<sup>th</sup> Respondent would be futile unless and until it is known that the purpose has materialized.
25. I state that the 29<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> 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 27<sup>th</sup> Respondent Company have been transferred to the 29<sup>th</sup> 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 27<sup>th</sup> 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.

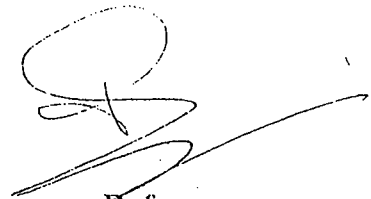
31. I state that the Government of Sri Lanka acting through PERC gave short notice in relation to the signing of the Share Sale and Purchase Agreement. Accordingly the 29<sup>th</sup> Respondent at a meeting of the Board of Directors held on 08.04.2003 arrived at a resolution to authorize myself as the Managing Director of the lead company of the Distilleries Consortium to sign the Share Sale and Purchase Agreement on behalf of the 29<sup>th</sup> Respondent. (A copy of the minutes of the meeting of the Board of Directors of the 29<sup>th</sup> Respondent dated 08.04.2003 and a letter addressed to PERC by two directors of the 29<sup>th</sup> 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,

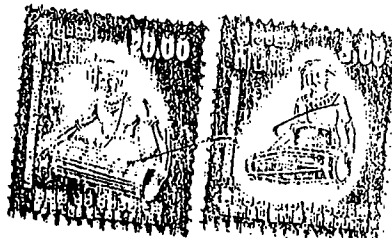
- a. the appointment of the Tender Board is not within the purview of the 29<sup>th</sup> Respondent. However on a perusal of the document P2 annexed to the Petition; it is clear that the permanent Cabinet Appointed Tender Board had been assigned the task of handling the tender for the restructuring of the 27<sup>th</sup> 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 27<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> Respondent invested almost 10 Million US\$ as a passive investor on the understanding that the shares of the 27<sup>th</sup> 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 29<sup>th</sup> Respondent is incorrect and that the correct address for the 29<sup>th</sup> Respondent is PO Box 375, No. 32, Line Wall Road, Gibraltar. (A copy of a letter from the 29<sup>th</sup> Respondent to the 27<sup>th</sup> 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 28<sup>th</sup> Respondent) in order to purchase shares of the 27<sup>th</sup> 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 27<sup>th</sup> 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 29<sup>th</sup> 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 29<sup>th</sup> 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 31<sup>st</sup> day of October 2007 in Colombo.



Before me



Justice of the Peace.

A. A SENEVIRATHNE  
 B. A (Sri Lanka)  
 Attorney-at-Law, Notary Public<sup>4</sup>  
 Commissioner For Oaths  
 Company Secretary  
 No. 286 DAM STREET  
 COLOMBO 10