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Your Ref:

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BY COURIER

11th September 2007

Hon. Attorney General,
Attorney General's Department,
Colombo 2.

Attn.: Mr. Arjuna Obeysekere,
Senior State Counsel

Dear Sir,

CA Writ Application No. 1661 / 2003

We write on behalf of our Client, Mr. Nihal Sri Ameresekere, F.C.A, F.C.M.A., the Petitioner in the above Application.

As per the annexed Schedule, this Application has come up in the Court of Appeal from October 2005, on several days, for 'terms of settlement' to be entered into. Secretary to H.E. the President (11th Respondent) has filed papers in this Application, concurring and agreeing with the Application of our Client.

As per the discussions had with the late Hon. Attorney General, K.C. Kamalasekera, P.C. the settlement terms had been finalised – vide Consent Motion forwarded in August 2006 and amended in February 2007.

We draw your kind attention to the following Sections of the Exchange Control Act.

"39 (1) Without prejudice to any other provisions of this Act, the Bank may give to any person in, or resident in, Sri Lanka directions requiring him – (a) to furnish, within such time and in such manner as may be specified in such directions, to the bank or to any person designated in such directions as a person authorised to require it, any information in his possession which the bank or the person so authorised, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, the provisions of this Act, or where such person does not have the information in his possession, to obtain such information from any such person in Sri Lanka or abroad as may be specified in such directions and to furnish such information to the bank or to the person authorised; or"

"39 (5) In this section, "bank" includes any Officer of the Department of Inland Revenue or Department of Customs generally or specially authorised by the Monetary Board to exercise the powers conferred by this section."

"43 This Act shall bind the State and shall apply to transactions by a Government Department or any person acting on behalf of the State."

"51 (1) Any person in or resident in Sri Lanka who contravenes any provision of this Act or of any regulation made under this Act or fails to comply with any direction given or condition or requirement imposed under this Act shall be guilty of an offence, notwithstanding that the offence may, by virtue of Part IV of this Act, be also punishable under the provisions of the Customs Ordinance."

On the premise, that the Supreme Court had determined the said repealed 'amnesty', as a fraud perpetrated on public revenue, no protection, right or entitlement, or any legitimate expectancy, whatsoever, flows from such 'amnesty', to whomsoever.

Accordingly, the Controller of Exchange in terms of Section 39(5) of the Exchange Control Act, directed the then Commissioner General, Inland Revenue to forward the particulars of the persons, who had declared foreign assets and foreign income, but the Commissioner General of Inland Revenue evaded and avoided in complying with such direction, notwithstanding reminders.

We also draw your kind attention to the following Section 85 of the Bribery Act and Section 5 of the Commission to Investigate Allegations of Bribery or Corruption Act;

"85. Notwithstanding anything to the contrary in the Income Tax Ordinance or the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 28 of 1979) the Commissioner General of Inland Revenue shall report to the Bribery Commissioner for investigation any case where he suspects from information available to him that any person is guilty of bribery." (*emphasis added*)

"5.(1) for the purpose of discharging the functions assigned to it by this Act, the Commission shall have the power -

- (e) to direct by Notice in writing the Commissioner General of Inland Revenue, to furnish as specified in the notice, all information available to such Commissioner General relating to the affairs of any person in respect of whom a communication has received under section 4 or of the spouse or a son or daughter of such person and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to such person, spouse, son or daughter which is in the possession or under the control of such Commissioner General;"

Section 6 of the Inland Revenue (Special Provisions) Act No. 10 of 2003, which was repealed by the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, specifically excluded any amnesty, whatsoever, for bribery and corruption, due notice of which was taken by the late Hon. Attorney General, in finalising to the terms of settlement.

We appeal to you to have this long outstanding matter, as had been finalised, concluded by the next date, September 20, 2007.

This is not a matter of personal interest to our Client, but a matter of public interest and national importance, particularly *vis-à-vis* revenue administration, foreign exchange leakage, exchange rates and cost of living, and also the enforcement of the Rule of Law, particularly on the matter of bribery and corruption.

Yours faithfully,



Attorneys-at-Law

cc: Commissioner General of Inland Revenue
 Director General of Customs
 Director General of Excise
 Controller of Imports & Exports
 Controller of Exchange,
 Chairman, Commission to Investigate Allegations
 of Bribery or Corruption

Secretary to H.E. the President

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10.10.2005 Respondents' Counsel moving for further time to file Terms of settlement, fixed to be mentioned on 26.10.2005.

26.10.2005 Mentioned for Settlement
Respondents' wanting more time to file Terms of Settlement, fixed to be mentioned on 23.11.2005

23.11.2005 Re-fixed to be mentioned on 6.2.2006 to finalise settlement.

6.2.2006 Upon both Counsel informing Court that there is a possibility of a settlement, matter fixed to be mentioned on 24.4.2006.

24.4.2006 State Counsel appearing for the Respondents informing Court that there is possibility of a settlement, re-fixed to be mentioned on 12.6.2006.

12.6.2006 Upon Counsel for the Petitioner & the Respondents informing Court that there is a possibility of a settlement and moving that the application be mentioned in a month's time, order made to mention on 12.7.2006.

12.7.2006 Re-mentioned (to finalise terms of Settlement) 2.8.2006.

2.8.2006 Re-fixed to be mentioned (Settlement) 23.8.2006.

23.8.2006 Re-fixed to be mentioned (Settlement) 27.9.2006.

27.9.2006 Re-fixed to be mentioned 1.11.2006

1.11.2006 Re-fixed to be mentioned 20.11.2006

20.11.2006 Re-fixed to be mentioned 22.1.2006

22.1.2007 Re-fixed to be mentioned to finalise terms of settlement on 9.3.2007

9.3.2007 Re-fixed to be mentioned 15.5.2007

15.5.2007 Counsel for the Respondents informing that Attorney General is considering the terms of Settlement, re-fixed to be mentioned 18.7.2007.

18.7.2007. Re-fixed to be mentioned 20.9.2007.