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BY COURIER

10th August 2012

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

Dear Lalith,

Securities & Exchange Commission of Sri Lanka (SEC)

In the context of a certain matter my conscience required me to write to you earlier, but I could not do so, since I had a Book Presentation Ceremony at the Public Library Jaffna last week, making a presentation of the first 12 Books of my series to Libraries in Jaffna. (*Copies of Flyer and Brochure of the 12 Books and two newspaper reports on the presentation ceremony had at the Jaffna Public Library are attached*).

I do not consider the Stock Exchange to be of any material significance or a parameter of the country's economy, since it does not comprise of even a cognizable fraction of the country's economy and the vast masses. It is more akin to a Casino, patronized by a coterie of affluent, but statutorily regulated.

As a matter of principle, I have not traded in Shares in the Stock Exchange, since as a professional consultant, I was privy to information pertaining to several companies. The only Shares I had were a very minor Shareholding in Hotel Developers (Lanka) Ltd., (HDL), since I was a promotor thereof, and a very minor Shareholding in The Kandy Hotels Co. (1938) Ltd., in the context of a re-development envisaged in mid 1980s, but abandoned.

What disturbed my conscience to write to you was a comment reported in the *Daily FT* on July 23, 2012 under the Sub-headline – "Who is Epitawala?". The report went on to state as follows:

"During the meeting, President had inquired "Who is this Epitawala?" referring to the SEC's Director Surveillance, Chandu Epitawala, who is highly unpopular among brokers and some investors for his alleged high handedness and discriminatory approach.

Quick came an answer that Epitawala was a close buddy of UNP MP and vocal critic of bad governance and other crises both within and outside the stock market Dr. Harsha De Silva, having pursued higher studies together in the US. Some inferences were made that Epitawala was also the mole in the SEC for the UNP sharing valuable confidential information."

After the General Election in April 2004, in the context of the pivotal role I played, *vis-a-vis*, the perverse amnesties granted in 2003, President Chandrika Bandaranaike Kumaratunga coerced me into accepting Office, as Chairman, Public Enterprises Reform Commission (PERC), notwithstanding my resistance.

I met Chandu Epitawala for the very first time, as Chairman PERC, since he was a Director of PERC at that time. A few days after I assumed Office, Chandu Epitawala came to see me with the Director General of PERC Leel Wickramarachchi, who also was appointed at the same time as me. Chandu Epitawala, as Director PERC, had been pursuing to conclude the outstanding issue of the non-settlement of the purchase consideration on the sale of Shares of Sri Lanka Insurance Corporation Ltd., (SLIC) to the Consortium led by Distilleries Consortium Sri Lanka Ltd., chaired by Harry Jayawardene.

Chandu Eritawala was indeed very prompt in bringing the matter to my attention, without any lapse of time, thereby demonstrating his diligence and duty consciousness. He could very well have allowed it to ride, since there was a complexity of post privatisation issues. It is his correct briefing of the facts that enabled me to promptly troubleshoot the matter, which had dragged on for nearly 1½ years, exceeding the deadline for its conclusion.

I believe you are aware of what followed, which resulted in the annulment of the said privatisation, as wrongful, unlawful and illegal by the Judgment delivered by the Supreme Court in SC (FR) Application No. 158/2007, re-vesting the SLIC in the State. Today the Government is the beneficiary of a very valuable asset and a cash-flow, including the ownership of Lanka Hospitals Ltd. Chandu Eritawala surely should get due credit for his conduct and actions, which no doubt would not have been popular with those affected parties, but abhorred.

To the credit of President Chandrika Bandaranaike Kumaratunga, honouring her word given to me at my appointment, she did not in any manner, whatsoever, endeavour to stymie the investigations and actions of PERC *vis-a-vis* the privatisations of SLIC and the bunkering monopoly LMSL, regardless of her associations with the persons involved.

On the otherhand, you are well aware, that the Secretary, Ministry of Finance & Secretary to the Treasury, not only did not initiate legal proceedings, as had been advised by the Hon. Attorney General, now deceased, but also opposed the aforeasaid SC (FR) Application No. 158/2007, together with the Attorney General, who succeeded.

I have not known Chandu Eritawala personally, nor have I met him after I resigned, as Chairman PERC in November 2005, except phoning him to make some inquiries about a relation of his, late Justice F.N.D. Jayasuriya, who exposed irrefutable evidence of criminality in the construction of Hilton Hotel of HDL, as a Member of the Special Presidential Commission of Inquiry 1995.

It is pertinent in the context of the fraud in the construction of the Hilton Hotel of HDL, a listed public company to refer to the perverse role played by the SEC, notwithstanding that the Supreme Court had upheld my derivative action in law, as a serious *prima-facie* case of fraud, and affirmed the interim injunctions, which had been issued restraining any payments to the Japanese.

In July 1991 the SEC Act No. 36 of 1987 was amended, whereby Section 46 thereof was amended for the SEC to establish a Committee to hear and determine complaints by Shareholders of any listed public company, relating to the professional conduct or activities of such listed company, with the Commission given the discretion to take appropriate action or to refer to the appropriate authority for further investigation.

In such context, the then Director General SEC requested me to make a Complaint *vis-a-vis* the said fraudulent conduct of HDL, but after the demise of said Director General, the SEC was derelict in the discharge of its statutory duties and obligations, notwithstanding extensive correspondence exchanged.

In such circumstanes, then Attorney General and subsequent Solicitor General concurring, with then Secretary, Ministry of Finance & Secretary to the Treasury and the succeeding Secretary, Ministry of Finance & Secretary to the Treasury, Settlement Agreements signed in June 1995, as approved by the Cabinet of Ministers, contained the following Condition;

"The Government shall and will take appropriate independent actions on the conduct and actions of the Securities and Exchange Commission of Sri Lanka and/or Members of its Commission and the Colombo Stock Exchange and/or of its Directors, in relation to the representations made by Mr. Ameresekere to the said institutions on matters pertaining to HDL, which matters Mr. Ameresekere also reserves the right to pursue"

Then Minister of Justice & Deputy Minister of Finance, now Minister of External Affairs, having been a Member of the SEC at the aforesaid relevant time, being personally affected thereby, precipitated a perverse controversy, resulting in loss, detriment and damage to HDL and the Government. The aforesaid Condition was subsequently deleted at the earnest behest of then Attorney General and then Secretary, Ministry of Finance & Secretary to the Treasury, by an Addendum signed thereto in October 1996, witnessed by the present Secretary, Ministry of Finance & Secretary to the Treasury.

The Objects of the SEC are stipulated in Section 12 of the SEC Act, primarily to protect the interest of the investors, and its Commission Members include *ex-officio* Members, including the Registrar of Companies and the President, Institute of Chartered Accountants, and a Deputy Governor, nominated by the Governor, Central Bank.

Hence, the SEC has a mandate to ensure the conduct of listed public companies to be in conformity with the statutory provisions of the Companies Act No. 7 of 2007, and the Standards of the Institute Chartered Accountants of Sri Lanka, and the Statutes enforced by the Central Bank, including the Prevention of Money Laundering Act No. 5 of 2006, Financial Transactions Reporting Act No. 6 of 2006, Convention on the Suppression of Terrorist Financing Act No. 25 of 2005, *et al.* Furthermore, the obligations under the UN Convention Against Corruption, to which Sri Lanka is a party, requires focusing upon and due diligence on the conduct in Stock Exchanges.

The SEC is an independent autonomous *quasi-judicial* body established by the Legislature with Regulations made under the said Act. A party aggrieved by a decision of SEC could appeal to the Court of Appeal. The Colombo Stock Exchange is a Company incorporated under the Companies Act No. 7 of 2007, with Article 47 of its Articles empowering the Minister of Finance to appoint 4 of its 9 Directors, and has its Rules for the conduct of the market and has been licensed by the SEC to operate a Stock Exchange, and is subject to the stipulations of the SEC.

Had there been any Complaint against Chandu Epitawala, then it should have been made known to the Chairman, SEC to have conducted an inquiry thereinto, without him having been subjected to such question at a public forum, as aforesaid, on an apparent allegation by an undisclosed person/s, whereby his independence, as a regulator, would have been stymied, in addition to embarrassment caused to him in the face of his family and friends. I am forwarding a copy of this Letter to him.

Kind regards,


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cc: Mr. Thilak Karunaratne, Chairman, Securities & Exchange Commission of Sri Lanka (SEC)