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SUPPORT

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BY COURIER

15th May 2015

Mr. Thilak Karunaratne
Chairman
Securities & Exchange Commission of Sri Lanka (SEC)
East Tower, World Trade Center
Echelon Square
Colombo 1..

Dear Mr. Karunaratne,

I write with reference to the recent interviews and statements by you in the *media*.

I have never participated in the Stock Market, since in my professional practice, I have been *privy* to the decision making of several listed public companies.

However, I have extensively exchanged communications with the SEC in the 1990s, when I made legitimate complaints *vis-à-vis* the fraud perpetrated in Hotel Developers (Lanka) PLC, with endeavour to defraud the State.

The SEC shockingly avoided and evaded the issue, and did not act upon my complaints, which were made in deference to request made by then SEC Director General late L. Namasivayam, himself, a Lawyer, upon the SEC Act being amended by Act No. 26 of 1991, whereby the SEC had been empowered under Section 46 to *hear and determine upon complaints in relation to the professional conduct or activities of a listed public company*, and where necessary, to refer for further investigation to the appropriate authority.

Then Hon. Attorney General, Tilak Marapana P.C., determined that I was right, and that action ought have been taken by the SEC.

I find that the foregoing has been further strengthened by being added on to the Powers, Duties and Functions of the SEC by the amendment of Section 13 of the SEC Act, by Section 4(6)(i) of Act No. 18 of 2003.

It is in such background, that I addressed Letter dated 10.8.2012 containing *severe criticisms* to then Secretary to the President, when the President publicly had a Meeting of the SEC, a *quasi-judicial* body, and criticized the conduct of an SEC Executive in his absence; I believe merely on hearsay, *sans* any inquiry, which Letter was copied to you, and you thanked me therefor by Letter of 16.8.2012.

Having acted in the public interest, recently I made representations to the Hon. Prime Minister, who promptly appointed a Committee to probe *vis-à-vis* the conduct of statutory functionaries, appointed to the SEC, as *ex-officio* Members by the legislature. I kept you informed of this by my Letter of 6.4.2015. *This Committee is yet to commence sittings.*

I refer to your recent pronouncement *vis-à-vis* Audit Firms, Director's Duties and Whistleblowing. In 1992, the Central Bank published a Notice cautioning Auditors of Finance Companies, when a *debacle* took place in the sector. *Copy attached.*

I draw your kind attention to Sections 151 and 153 of the Companies Act, whereby 'Financial Statements' have to be prepared, not only in terms of the requirements of the Companies Act, but also in terms of the requirements under any other applicable law. I cite from Sections 151 and 153 of the Companies Act:

- "151.(1) The financial statements of a company shall give a true and fair view of—
- (2) Without limiting the provisions contained in subsection (1), the financial statements of a company shall comply with—
 - (a) any regulations made under this Act which specifies the form and content of financial statements; and
 - (b) any requirements which apply to the company's financial statements under any other law."
- "153.(1) The financial statements of a group shall give a true and fair view of —
- (2) Without limiting the provisions contained in subsection (1), the financial statements of a group shall comply with -
 - (a) any regulations made under this Act which specifies the form and content of group financial statements; and
 - (b) any requirements which apply to the group financial statements under any other law.
 - (5) Subject to the provisions of subsections (3) and (6), group financial statements shall incorporate the financial statements prepared in accordance with section 151, of every subsidiary of the company.
 - (7) Group financial statement prepared by a company may not omit the financial statements of a subsidiary of that company under subsection (6), without the prior approval in writing of the Registrar, which may be given on such terms or conditions as the Registrar thinks fit."

Section 163 of the Companies Act stipulates that, the Auditors' Report shall state that the 'Financial Statements' referred to above, comply with the requirements of Sections 151 and 153, which therefore includes being in conformity with the stipulations made under any other law viz:

- "163. (1) The auditor of a company shall make a report to the shareholders on the financial statements audited by him.
- (2) The auditor's report shall state -
 - (f) whether in the auditor's opinion the financial statements and any group financial statements comply with the requirements of section 151 or section 153, as the case may be, and if they do not, the respects in which they fail to do so."

Rules gazetted on 27.8.1990 under Section 53 of the SEC Act, stipulate that the Auditors shall certify the Financial Statements are presented in accordance with the Accounting Standards of the Institute of Chartered Accountants of Sri Lanka viz:

"(4) (a) Every listed public company shall prepare and furnish to the Council accounts in accordance with the provisions of the companies Act No. 17 of 1982 in respect of each financial year ;

(b) The Auditors shall certify that such accounts are presented in accordance with accounting standards as laid down by the Institute of Chartered Accountants of Sri Lanka,

(3) The report of a listed public company shall disclose any occurrence or events which in the view of the Directors may materially affect the following—

- (a) Nature of the business ;
- (b) Objectives ;
- (c) Consideration as a going concern ;
- (d) Valuation of assets ;
- (e) Assessment of liabilities including contingent liabilities ;
- (f) Profits and/or losses ;
and the extent to which provision had been made in the accounts in respect of such occurrence or event."

Duties of Directors have been statutorily stipulated, particularly in Sections 187 to 190, and some other Sections of the Companies Act No. 7 of 2007, with the definition of Directors going beyond those on the Board of Directors, and *according to whose directions a Company is accustomed to act.*

Hence, whilst there may be need for new statutory provisions, at least the existing statutory provisions ought to be complied with and/or enforced, particularly by the Auditors, who I regret even when put on notice, *have acted otherwise!*

As an Article Clerk, I remember one of the basic requirements was to have checked and verified the Share Ledger, including the Share Transfers. In this day of computerization, this task would be much easier, and would reveal questionable transfers done in a systematic manner for market *manipulation / price spiraling.*

In a lighter vein, whilst I note that you have called for '*whistleblowing*' by Auditors, in fact '*whistleblowing*' by certain female executives, exposed the corporate frauds of Enron and Worldcom, resulting in the then reputed Auditors, namely, Arthur Andersen being exposed and non-existent today! I attach a recent Flyer, which was released to *moot* Whistleblower Protection provisions, to be included in the proposed Right to Information Statute.

Kind regards,



Nihal Sri Ameresekere

cc: Mr. Arjuna Herath, President, Institute of Chartered Accountants of Sri Lanka

CENTRAL BANK OF SRI LANKA



NOTICE ON AUDITED STATEMENT OF ACCOUNTS OF FINANCE COMPANIES

This is to inform the registered finance companies and their Auditors that the Monetary Board of the Central Bank of Sri Lanka will prosecute the Auditors who fail to comply with the provisions of the Finance Companies Act No.78 of 1988 as amended by Act No.23 of 1991.

Section 17 of the Finance Companies Act No.78 of 1988 reads as follows.

AUDITING OF ACCOUNTS

"17. The Auditor of a finance company shall inspect the accounts, the finances, the management of the finances and the property of that finance company. The Auditor shall, as far as possible and where necessary examine.

- (a) whether the conduct of the affairs of the finance company has been in accordance with the law, rules and directions issued by the Board (Monetary Board);
- (b) whether records relating to the acceptance of deposits and maintaining of accounts are satisfactory.
- (c) whether the accounting systems, procedures, books, records and other documents have been properly and adequately designed from the point of view of financial control purposes and from the point of view of the presentation of information to enable a continuous evaluation of the activities of the finance company and whether such systems, procedures, books, records and other documents are in effective operation;
- (d) whether the accounts audited have been so designed as to present a true and fair view of the affairs of the finance company in respect of the period under consideration, due regard being had to principles of accountancy, financing and valuation."

Any Auditor who fails to comply with the requirements of the above Section commits an offence under Section 35 of the Finance Companies Act No.78 of 1988 as amended by Act No.23 of 1991.

**Secretary
Monetary Board.**

October 04, 1991.

Central Bank of Sri Lanka,
Colombo 1.



Nihal Sri Ameresekere, FCA, FCMA, CMA, CGMA, CFE

Member, International Advisory Board of Hengchang Credit, Beijing, China

Associate Member, American Bar Association (ABA), Chicago, USA

Individual Member, International Association of Anti-Corruption Authorities (IAACA), Beijing, China

Director, International Consortium on Governmental Financial Management (ICGFM), Maryland, USA

Combating Fraud & Corruption

Encouraging Whistleblowing & Squealing **- a Pre-requisite to Combat Fraud & Corruption**

Right to Information Statues,

must necessarily be supplemented by

Whistleblower Protection Statutes, such as :

- 'Whistleblower Protection Act' of US, and
- 'Public Interest Disclosure Act' of UK

