

Hon. Ranil Wickremesinghe
Prime Minister of Sri Lanka

Dear Ranil,

A) I was pleased to see by the attached Notice in today's *Daily News* that you had taken action, *vis-à-vis*, giving effect to the implementation / enforcement of the Public Contracts Act No. 3 of 1987, which I drew your kind attention to by my Note of 9.4.2015.

It would be further strengthened, if the Foreign Supplier / Contractor is also required to co-sign such registration, and a certified copy of which be attached to the Bids in Tenders. I draw your kind attention to Section 2 of the Public Contracts Act No. 3 of 1987 in this regard - *viz*:

"Application of the Act to public contracts.

2. (1) Subject to subsection (2), the provisions of this Act shall apply to every public contract where the contract cost exceeds five million rupees.
- (2) The provisions of this Act shall not apply-
 - (a) to any public contract or any class of public contracts that the President may in the interest of national economy, exempt by general or special order;
 - (b) to a sale by public auction by any public body."

As in the case of RMV and the Registrar of Lands, who forward information of purchase of Vehicles or Lands to the Inland Revenue Department, the Registrar of Public Contracts similarly could be required to do so to ensure and enhance correct Tax Revenues to the State.

B) I also draw your kind attention to the following Section 209 of the Inland Revenue Act No. 10 of 2006. This Section has been there in the Inland Revenue Act from as far back as 1979, but to my knowledge has never been given effect to / implemented.

"209. (4) Notwithstanding anything contained in this section, any officer of the Department of Inland Revenue may communicate any matter which comes to his knowledge in the performance of his duties under this Act or under any other written law administered by the Commissioner-General, to—

- (b) the Commissioner of Revenue of any Provincial Council, being a matter which relates to the turnover for any period commencing on or after January 1, 1991, of any wholesale or retail trade or business carried on by any person or partnership within the Province for which such Provincial Council is established, to such an extent as the Commissioner-General may deem necessary to enable such Commissioner to ascertain such turnover;
- (5) Notwithstanding anything contained in the preceding provisions of this section, the Commissioner-General shall-
 - (d) report to the Attorney-General for investigation any case where he suspects from information available to him, that any person is guilty of bribery.

(10) Notwithstanding anything contained in the preceding provisions of this section, where it appears to the Commissioner-General from any matter which comes to his knowledge in the performance of his duties under this Act, that any person has committed an offence under the Exchange Control Act or the Customs Ordinance, he may communicate or deliver to the Controller of Exchange or the Director- General of Customs, as the case may be, any information relating to the commission of the offence or any articles, books of account or the documents necessary or useful for the purpose of proving the commission of such offence."

The Commissioner General of Inland Revenue should be required to report in his Annual Report the number of instances reported under the above Sections.

This would ensure and enhance correct Tax Revenues, and also enforce the rule of law, *vis-à-vis*, violations of Customs, Exchange Control and Bribery & Corruption Offences.

C) Another matter of importance is to require the SEC to regulate that Accounts of Private Limited Companies, which own Listed Public Companies, to disclose their Annual Accounts to reveal the transactions between the holding Private Limited Company and the subsidiary Listed Public Companies. The Companies Act No. 7 of 2007 does provide for same, and hence, for the purpose of disclosure, transparency and market regularization, the SEC could require the same through Regulations.

The Section 22 of the Fiscal Management (Responsibility) Act No. 3 of 2003 provides for the public disclosure through Parliament of Companies in which the Government owns Shares – viz:

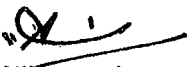
"Power of Secretary to obtain information.

22. (1) The Secretary to the Ministry of the Minister in charge of the subject of Finance, may in writing, request any Ministry, Department, Public Corporation or Company in which the Government owns shares, to furnish to him or her, such information as is necessary for the preparation of the Statement referred to in section 4 and the Reports referred to in sections 7, 10, 13 and 16.

(2) A Ministry, Department, Public Corporation or Company to which a request is made in terms of subsection (1) shall forthwith comply with such request so as to enable the Secretary to take the information requested into account in the preparation of the Statement or Report, as the case may be."

I am aware that you are in the midst of leading an Election campaign, but I believe you also attending to the matters of the State |

Sincerely,


Nihal

23.7.2015

cc: Ravi K



Ministry of Industries and Commerce
Department of Registrar of Companies

Public Contracts Act No. 3 of 1987

Provisions of Public Contract Act shall apply to every public contract where the contract cost exceeds rupees five million unless the application of act to such public contract is exempted by His Excellency the President under section 2(2).

This notice is intended to draw attention to some of its main provisions.

- (1) If any tenderer or any person who acts as an agent, representative or nominee for or on behalf of any tenderer that person shall register themselves through form P.C.A. 01 as mentioned in the Public Contract Act where the contracts cost exceeds rupees five million (Rs. 5,000,000.00) as per the section 08 of the Public Contract Act No. 03 of 1987.
- (2) Further, if tender applicant and the tenderer is the same person and in case tenderer appoints an agent, sub agent, representative or nominee to act for or on behalf of the tenderer, the certificate of such appointment of the said person or institution i.e. form P.C.A. 10, as per the Public Contract Act should be submitted along with form P.C.A. 01.
- (3) When the award of a tender is made under quotations with prior approval, without calling for tenders, the contractors who have been registered as mentioned in the para (1), should apply for registration along with form P.C.A. 2 within 60 days of the award of the contract.
- (4) With that, P.C.A. 3, i.e. the certificate of the registration of the tender or the certified true copy of the said certificate, should be annexed and sent.

Any person who contravenes the provisions of registration in the Public Contract act of 1987, shall be guilty of an offence and be liable on conviction to a fine not exceeding rupees one hundred thousand or imprisonment for a term of not exceeding two years.

For further details:

D.N.R. Siriwardena
Registrar of Public Contracts,
No. 400, "Samagam Medura",
D.R. Wijewardena Mawatha,
Colombo 10.
Tel: 2689208

Email: registrar@dvc.gov.lk

Dear Ranil,

'National Procurement Commission'

Re - the establishment of a National Procurement Commission, I forward a copy of the Public Contracts Act No. 3 Of 1987, which to my knowledge has not been implemented / enforced ! It could be modified taking into account contemporary needs.

Sometime back, there was a National Procurement Agency established with commendations from International Agencies, but suddenly with no rhyme or reason, it was abolished during the former regime, including the closing of the Public Enterprise Reform Commission, thereby burying a number of questionable transactions, such as Air Lanka, which had been queried.

Re - my Note of 7.4.2015, I wish to extend the final para, that in addition to the Duties and Responsibilities of the Directors, the question of negligence and/or culpability of the Auditors of Sri Lankan Airlines arises, *since their responsibility and accountability was to the Shareholders, which was the Government ?*

I had a long working discussion with Ravi W last night on the progress of the purported Hedging Deals, actually 'derivative deals' tantamounting to 'betting', which is illegal in Sri Lanka. I stressed on the importance of investigating this systematically and correctly, in view of complexity, to succeed with prosecution, bearing in mind that the best of Lawyers will come to defend !

Thanking you,

Sincerely,


Nihal

9.4.2015

Dear Ranil,

'Committee to Inquire into the Supervision of Financial Market Institutions'

Amidst many challenges, including *vis-à-vis* the constitution, I am amazed that you found the time to go into the financial market institutions, which directly have a bearing on the SEC and Stock Market. I know Harsha Soza, and already communicated offering my services.

A large circle of accountants, brokers and investors are indeed very happy, with the prompt action you have taken, thereby sending out a 'strong signal'. I intend to galvanize them into groups to ensure that the Chartered Institute would take a new path to steer the Stock Market to be on a level playing field, devoid of manipulations and unjust enrichment, with cheating; actively assisting the SEC.

As you are aware, I have been advising and assisting Ravi W with the Hedging investigation. This is a very complex matter, and not easy to be handled by one person ! I advised him to focus on the offences Against Public Property Act No. 12 of 1982 *viz*:

- that any person, whether public servant or otherwise, is liable for the following Offences:
 1. Mischief of public property
 2. Theft of public property
 3. Robbery of public property
 4. Misappropriation or criminal breach of trust of public property
 5. Cheating, forgery of falsification in relation to public property
 6. Attempting to commit any one of the above offences

- Punishment for any one of the Offences is imprisonment not exceeding 20 years and a fine of 3 times (i.e. 300%) the value of the public property in respect of which such offence was committed.

- "Public property" is defined in the said Act No. 12 of 1982 thus – "*Public property*" means the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operate union."

I commend you on the prompt action, *vis-à-vis*, Sri Lanka Airlines. It being a public company coming under the ambit of the Companies Act No. 7 of 2007, all Directors would be responsible, as per the 'Duties of Directors' statutorily stipulated. The definition of Directors in respect of certain provisions of the Act, extends beyond those on the Board alone. (*Relevant Section attached*).

Thanking you,

Sincerely,

Nihal

7.4.2015