

**BY COURIER**

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**Supreme Court Determination on the Appropriation Bill  
Annual Report 2006**

Attention is drawn to the following:

1. Supreme Court in its Determination on the Appropriation Bill 2007 recognising that there is severe criticism *vis-à-vis* absence of transparency and prudential financial management, *inter-alia* observed thus:

"But, considering the severe criticism made, we have to observe that for purposes of ensuring transparency and prudential financial management, the transfers made in terms of Clause 6 that are deemed to be supplementary estimates should be specifically included in the relevant reports submitted in terms of the Fiscal Management (Responsibility) Act. No. 3 of 2003, with reasons for the particular deviation."

**"But we note that in the Reports submitted there is no specific reference to the transfers made by the Secretary, in terms of Sections 5(3) or 6 of the previous Appropriation Acts" (Emphasis added)**

The foregoing is in reference to the Annual Report 2006 tendered to the Supreme Court by an Officer representing you, who endeavoured to mislead the Supreme Court in such regard.

2. In determining that the Appropriation Bill is not inconsistent with the Constitution, the Supreme Court, however, subjected the same to the following direction:

"We wish to however note the observation stated above that any transfer made from the "Development Activities" Program, in terms of Clause 6 to any other Programme under any other Head by order of the Secretary to the Treasury should be specifically included in the respective Reports submitted in terms of Fiscal Management Responsibility Act No. 3 of 2003 with reasons for such deviation."

Section 22 of the Fiscal Management (Responsibility) Act. No. 3 of 2003 mandates the disclosure of information in the Reports referred to in the said Act, *inter-alia*, **pertaining to public corporations and companies in which the Government own Shares.**

3. Since the Fiscal Management (Responsibility) Act. No. 3 of 2003 mandates reporting of estimated and actual expenditures, revenues, cash-flows and borrowings in terms of Section 15 thereof in the Final Budget Position Report in relation to the Budget Economic & Fiscal Position Report tabled on the day fixed for the Appropriation Bill in Parliament, and since the Appropriation Bill specifically deals with 'Consolidated Fund' and **any other fund**, such reporting should be in comparison of actual data, with the data at the Appropriation Bill stage, and also be in respect of **all other Funds** being operated utilising public monies.

4. Furthermore, in relation to the foregoing, the Supreme Court in its Determination stated thus:

"In any event the expenditure would be subject to audit and the Auditor General would report on the matter to Parliament in terms of Article 154 of the Constitution."

"..... Parliament finally retains full control of public finance not only in the matter of allocation of expenditure but also by supervision of the actual expenditure for which there is adequate legislative provision in Article 154 of the Constitution ....."

5. Attention is drawn to the following data, as per the respective Documents referred to therewith:

As per the detail Budget estimates presented to Parliament in December 2005 for the Financial Year 1.1.2006 to 31.12.2006, the Total Budget for Head 801- 'Department of National Budget' Rs. 23,257,026,000/-

As per Appropriation Act No. 39 of 2005 in December 2005, the Total Budget for Head 801- 'Department of National Budget' Rs. 62,232,026,000/-

As per the Committee Stage Amendments to Appropriation Bill in December 2005, the Total Budget for Head 801- 'Department of National Budget' was increased by Rs. 39,590,000,000/- to a total of Rs. 77,960,775,000/-.

As per the Audited Financial Statements for the Year Ended 31.12.2006, the Total Expenditure incurred for Head 801- 'Department of National Budget' has been reported as only Rs. 4,587,324,120/-

Therefore difference Rs. 73,373,450,880/-

6. Attention is also drawn to the following extracts from the Report of the former Auditor General, Mr. S.C. Mayadunne, present Project Director of the Office of the Committee on Public Accounts and the Committee on Public Enterprises, titled – "Proposals for Strengthening of Parliamentary Control over Public Finance", forwarded in September 2007 to the Committee on Public Accounts and Committee on Public Enterprises, for review and action:

**"This position has led to an aggravated situation due to the very wide gap between the Budget approved by our Parliament and the budget actually executed and the practice of not obtaining a special approval or authority of Parliament for such variances.**

**The revision of the Budget approved by the Parliament for the year 2006 by Rs. 220.2 Billion at the discretion of the Officers, as explained in detail in (2) Paragraph of Part II of this report can be cited as an example.**

**The revision of the budget by Rs.220.2 Billion at the discretion of the officers in terms of provisions in Section 5 of the Appropriation Act, No. 39 of 2005 including Rs.166 Billion in terms of authority granted under Section 6 of the said Act raises the question whether it tantamount to a partial abdication of the powers of full control over the Public Finance vested in the Parliament by Article 148.**

**As compared with Rs.609 Billion originally approved for expenditure for the year 2006 and Rs.1,072.8 Billion stated as the actual expenditure, that sum of Rs.220.2 Billion represents a very high percentage.**

**This becomes more serious as this form of version left to the discretion of the Officers has been arranged in such manner, it does not need the approval or sanction of the Parliament as well as that of the Cabinet of Ministries or even the Minister.**

In addition to such revisions made to the provisions at the full discretion of the officers, instances of non-implementation of Budgets approved by Parliament properly abound as follows.

- i. Savings of approved provisions due to non-release of funds for Budget implementation.
- ii. Savings of approved provisions due to various other reasons
- iii. Irregular excess spending over the provisions
- iv. Discretionary expenditure within the approved provision contrary to estimates.
- v. Non-achievement of expected Performance despite expenditure incurred.

Even though provision has been made in Sections 13, 14 and 15 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 for carrying out a statements of the approved Budget and the actual Budget and report thereon to Parliament, the Annual Report for the year 2006 presented by the Ministry of Finance and Planning does not clearly and adequately facilitate a comparison.

**Therefore the opportunity afforded to report the actual position to the Parliament had been abandoned." (Emphasis added)**

7. Reference is drawn to the Supreme Court 'dicta' at 1. and 2. above and to the fact that the utilization of funds and the deviations giving the reasons therefor, have not been transparently disclosed demonstrating prudential financial management in the Annual Report 2006, as also confirmed by the former Auditor General, as aforesaid.
8. **Hence, in compliance with the direction of the Supreme Court, please have the said data disclosed to Parliament and the public, without delay, inasmuch as such data ought to be readily available in the Department of State Accounts, which would have kept an accounting record thereof.**
9. With reference to the Supreme Court 'dicta' referred to at 4. above, pointing out that in any event the aforesaid data would be subject to audit by the Auditor General in terms of Article 154 of the Constitution, it has to be pointed out in the public interest and in the context of the said 'dicta' of the Supreme Court, that the Government's Financial Statements for the Year 2006 had been certified (presumably) in August 2007 by Auditor General, Mr. P.A. Pematilaka, who had given an 'unqualified' report on the said Government's Financial Statements of 2006.
10. Such 'unqualified' report has been notwithstanding the adverse Special Audit Report submitted to Parliament in July 2006 by former Auditor General, Mr. S.C. Mayadunne, adverting to a loss caused to government tax revenue amounting to about Rs. 389 billion due to failure to collect in accordance with legal provisions therefor, which is very material in comparison to the total revenue of Rs. 477 billion in the Year 2006.

**"According to test checks carried out during the course of audit it was observed that the annual loss of the Government Tax Revenue is extraordinarily large. According to audit test checks the computable value of the loss of Government Tax Revenue and the failure to collect in accordance with the legal provisions during the last few years amounts to about Rs.389 billion while the amount that cannot be computed is extremely large."**


The said Special Audit Report forwarded to Parliament in terms of the Constitution stands uncontradicted, without any evidence to have controverted the same.

11. It is indeed shocking that Auditor General, Mr. P.A. Pematilaka, who had given an 'unqualified' audit opinion on the Government's Financial Statements for the Year 2006, had in fact been the Director General, State Accounts, General Treasury during the very Year 2006, presumably at least upto 20<sup>th</sup> October 2006, as disclosed by the Government's Financial Statements for the Year 2005 issued by him on 20<sup>th</sup> October 2006, as Director General, State Accounts, under your very direction, purview and control, as Secretary to the Treasury.
12. Thus, Auditor General Mr. P.A. Pematilaka had been involved in and responsible for the maintenance, supervision and processing of the Government's Accounts during the Year 2006, as Director General, State Accounts, General Treasury. (*Relevant pages of documents attached*).
13. The aforesaid Special Audit Report to Parliament *inter-alia* in its Executive Summary has stated thus:

**"The institutions dealing with the Tax Revenue had not maintained an adequate tax management co-ordination with their supervisory institutions that is, the General Treasury and the Ministry of Finance."**

**"The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly." (*Emphasis added*)**

14. Furthermore, whilst the audit opinion given for the Year 2006, notwithstanding the foregoing adverse Special Audit Report of July 2006 forwarded to Parliament, had been an 'unqualified' opinion, on the other hand, the audit opinion given on the Government's Financial Statements for the Year 2005 on 13<sup>th</sup> September 2006 by the Actg. Auditor General, Mr. W.D. Hemaratne had been a 'qualified' audit opinion, with comments and observations pertaining thereto. (*Audit Report attached*).



Nihal Sri Ameresekere

15<sup>th</sup> November 2007

cc: Mr. P.A. Ratnayake P.C., Addl. Solicitor General *vis-à-vis* the SC Determination  
Mr. S.C. Mayadunne, former Auditor General, present Project Director, Office of the Parliamentary Committees on Public Accounts and Public Enterprises *vis-à-vis* Reports referred to above  
Mr. M.N. Peiris, Secretary, Parliamentary Committees on Public Accounts and Public Enterprises  
*- Copies to be given to Hon. Members*

Hon. Minister Rauf Hakeem, M.P. Chairman, Parliamentary Committee on Public Accounts  
Hon. Wijeyadasa Rajapakshe P.C. M.P., Chairman, Parliamentary Committee on Public Enterprises  
Hon. Ranil Wickremesinghe M.P., Leader of the Opposition, Parliament of Sri Lanka  
Hon. Minister Nimal Siripala de Silva M.P., Leader of the House, Parliament of Sri Lanka  
Hon. W.J.M. Lokubandara M.P., Speaker, Parliament of Sri Lanka