BLUNDER OVER PLANTATIONS

In response to numerous requests from the reading public, *The Sunday Leader* this week turns the spotlight onto the privatization of the plantations, that had been carried out hitherto by the Public Enterprises Reform Commission [PERC].

The plantation sector was the base of the national economy, that was well developed and left behind by the British at the time the country got its independence in 1948. `Ceylon Tea' enjoyed a prestigious demand in international markets and the country achieved the position, as the leading tea exporter of the world. A mechanical engineering industry, manufacturing plantation machinery was well developed at that time, even exporting such machinery to many countries. The tea estates, together with the rubber and coconut estates, formed the plantation sector.

The plantation sector was then owned by a large cross section of public and private companies, with both foreign and local shareholdings, and by proprietorships. A considerable segment of the sector was then managed by Agency Houses, whilst a well developed brokering and export sector over the years handled the sale and export of the produce.

A Commission of Inquiry headed by, none other than, the present Minister Bernard Soya, appointed in June 1971 by the then government, having issued an interim report in August 1972, issued its final report in December 1974, on the management of the plantations by the Agency Houses and the operations of the brokering firms, making several recommendations. Amongst the members of the Commission, were Dr. S.T.G. Fernando, former Deputy Governor, Central Bank & Member SEC, P.M.W. Wijayasuriya, former Auditor General & Member of the Commission to Investigate Allegations of Bribery or Corruption and K. Shinya, a leading lawyer.

Under the Land Reform Law of 1972 and State Agricultural Corporations Act of 1975, the plantation sector estates were vested in the state, in the Land Reform Commission. President Chandrika Bandaranaike Kumaratunga was, herself, a then Director of the Land Reform Commission from 1972 to 1976. In 1978 the plantations were placed under the management of two state corporations, the Sri Lanka State Plantations Corporation [SLSPC] and Janatha Estates Development Board [JEDB].

With the consequent deterioration of the plantation sector, a vital sector in the national economy, the government in 1992, converted the plantation sector under the SLSPC and JEDB, into 22 Plantation Companies, in terms of the Conversion of Corporations & Government Owned Business Undertakings into Public Companies Act No. 23 of 1987. Thereafter, in 1992 the management of these 22 Plantation Companies were given out by the government to the private sector, on the basis of profit sharing management contracts.

Between August and November 1995, PERC carried out the privatisation of six of these Plantation Companies, namely, Bogawantalawa Plantations Ltd., Kotagala Plantations Ltd., Agalawatte Plantations Ltd., Kegalle Plantations Ltd., Horana Plantations Ltd., and Kelani Valley Plantations Ltd.

Under and in terms of the management contracts that had been entered into, these six plantation companies were being managed by the following management companies:

Bogawantalawa	-	Metropolitan Management Services (Pvt) Ltd.
Kotagala	-	George Steuarts Management Services (Pvt) Ltd.
Agalawatte	-	Mackwoods Plantation (Pvt) Ltd.
Kegalle	-	RPK Management Services (Pvt) Ltd.
Horana	-	Ceyexxe Plantations Ltd.
Kelani Valley	-	DPL Plantations Ltd.

UNIQUE STRATEGY!

Under the privatization strategies formulated by PERC, the respective management companies of these six plantation companies were given an exclusive option to purchase the controlling interest of 51% of the share capital of the respective plantation companies that were being managed by them. Such exclusive purchase option was on the basis of a ludicrously absurd price formula, that had been ingenuously innovated. The option to purchase the controlling interest of 51% was fixed at the lowest price of the offers received for the fragmented sale of 20% of the share capital of the respective plantation companies to the public through the Colombo Stock Exchange, subject to the minimum nominal price of Rs. 10/- per share.

Accordingly, PERC caused the issue by these six plantation companies, of Offer Sale Documents through the Colombo Stock Exchange for the fragmented sale of 20% of the Shareholdings of these plantation companies to the public, in a most intriguing manner. The share capital structures of these plantation companies being the same, the Offer Sale Documents were similar. The Share Capital of each of these companies was 20,000,001 ordinary shares of Rs. 10/- each, giving a Share Capital of Rs. 200,000,010 - one share being defined as a "Golden Share". 20% shareholdings of each of these plantation companies, i.e 4,000,000 shares of Rs.10/- each, were offered for sale through the Colombo Stock Exchange to the public in the following manner, as set out in the respective Offer Sale Documents:

" Fixed Price Portion

1.9 One million six hundred thousand (1,600,000) shares will be made available at a fixed price of Rs. 10 per share.

1.10 If there is under-subscription in this category, the remaining shares will be made available for allotment to applicants in the Tender portion. If there is under-subscription in both the Fixed Price and Tender portions, the remaining shares will be taken up by the Underwriters to the offer.

1.26 Applications under this portion must be for a minimum number of 100 shares and a maximum number of 1,000 shares."

" Tender Portion

1.11 Two million four hundred thousand (2,400,000) shares will be made available on a tender basis, where applicants will be allowed to offer varying prices for the shares."

1.42 The shares available for sale under this portion of the offer will be allocated among applications in the following manner:

- The application offering the highest price per share will be given its full requested number of shares at the offered price, up to the maximum limit of 800,000 shares per applicant.

- The application offering the next highest price per share will then be given its full requested number of shares at the offered price up to the maximum of the shares available after satisfying the request of the application offering the highest price with a limit of 800,000 shares.

- The above process will be continued for applications offering successively lower prices for shares till all shares available are exhausted or till all valid applications for shares are satisfied.

- The above allocation will be subject to the maximum aggregate allotment limit of 800,000 shares to a single person or body corporate."

51% AT LOWEST PRICE !!

The commitment to sell the controlling interest of 51% of the share capital in each of these plantation companies to the respective management companies had already been made and disclosed in the respective Offer Sale Documents, with clear denotation that the sale of such controlling interest of the 51% shareholding was fixed to be at the lowest price offered by the public for the fragmented sale of the 20% shareholdings.

Surely, such commitment to sell the controlling interest of 51% shareholding, absurdly fixed at such lowest price offered for the fragmented 20% shareholdings, would, in itself, have caused a disinterest and a depression in the prices offered for the fragmented 20% shareholdings by the public. Even more so, a substantial portion, i.e. 1,600,000 shares, of the 20% comprising 4,000,000 shares, being made available to the public at the fixed nominal price of Rs. 10/- per share, how could one expect to get prices, well above such nominal price of Rs. 10/- per share, for the other portion of 2,400,000 shares from the public, that too with the restriction of 800,000 shares placed for any given value or to any one person?

Therefore, would it not be fair and logical to postulate, that such intriguing formula was calculatedly designed to achieve the objective of a minimum price of Rs. 10/- per share ? If so, naturally the question arises, by whom and why? If not, the simple question that comes into focus is, why the deuce was such controlling interest of 51% shareholding not offered to the public for open competitive bidding "on an all or nothing basis" transparently through the Colombo Stock Exchange to determine the market price for such controlling interest of 51% shareholding; and the respective management companies, if at all, given the option of the first refusal, to purchase such controlling interest of 51% shareholding at the highest bid price registered on such open competitive bidding on the Colombo Stock Exchange ? Was this not the most simple and logical thing to have been done, without such questionable and intriguing price fixing formula ?

The plainly anticipatable effect resulted in the public issues of these fragmented 20% shareholdings being total failures, grossly under subscribed, and the inevitable result of the lowest price registered being the minimum nominal price of Rs. 10/- per share, and the conveniently arranged underwriters, state institutions, Bank of Ceylon, Merchant Bank of Sri Lanka and National Development Bank having to take up such unsubscribed shares, as stipulated in the Offer Sale Documents as follows:

" 1.43 The lowest price per share in cases where all shares in the Tender portion of the offer are taken up by applicants, or Rs. 10 per share if all shares on offer are not taken up by applicants and are taken up by the Underwriters to the offer, will be deemed to be the "market clearing price per share."

WHY SUCH EXCLUSIVE OPTION?

The Offer Sale Documents stipulated such exclusive option to purchase 51% shareholdings in the respective plantation companies, granted to the management companies at such intriguing "market clearing price per share", as follows;

" 2.8 [The management company] has been given an option to purchase a block of 51% of the issued ordinary shares of the Company -- consisting of ten million two hundred thousand (10,200,000) shares -- on an all or nothing basis at the "market clearing price per share" established on the basis of the initial offer for sale of 20% of the shares in the manner described in Section 1 of this document. In order to exercise the option [the management company] must, prior to the expiration of seven days from the date of establishment of the "market clearing price per share", make a down payment of 10% of the sum of the full value of the shares to be purchased and the related debentures to be taken up. The remaining payment in full must be made within thirty days of the date of establishment of the "market clearing price per share". If [the management company] does not make either the down payment or the full payment within the stipulated deadlines its option to purchase the controlling interest will expire at that time.

2.9 In the event that [the management company] chooses not to exercise its purchase option the Secretary to the Treasury will make these shares available for sale to the highest bidder through the Colombo Stock Exchange on a "all or nothing basis" at a minimum price of Rs. 10 per share within three months of the expiry of [the management company's] option to purchase 51% of the issued ordinary shares of the Company at the "market clearing price per share". If there are no acceptable bids for this "all or nothing" parcel of shares, the Government will decide on the appropriate course of action at that time.

2.10 [The management company] has submitted a non-refundable deposit of Rupees Five million (Rs. 5,000,000) to the Secretary to the Treasury in the form of a bank guarantee indicating its interest in purchasing the block of 51% of the issued ordinary shares of the Company. The full sum of Rs. 5 million will be drawn down upon immediately after the establishment of the "market clearing price per share". The sum will be credited towards the down payment in paragraph 2.8 if [the management company] chooses to exercise its option to purchase the block of shares at this price. If it does not exercise the option and subsequently purchases the shares by submitting the highest bid in the "all or nothing basis" sale through the Colombo Stock Exchange the Rs. 5 million will be credited towards this purchase. If [the management company] does not purchase the block of shares by either mechanism the Rs. 5 million will be forfeited."

ACTUALLY SOLD 60%-72% !!!

Name	51% Share capital Rs. (m)	Convertible debentures Rs. (m)	Share capital on conversion Rs. (m)	Ownership on conversion %	Effective purchase price Rs. (m)	Dilution of 20% shareholding %
Agalawatte Plantations Ltd	102	50	152	60.8%	121.6	16%
Horana Plantations Ltd	102	50	152	60.8%	121.6	16.%
Kegalle Plantations Ltd	102	50	152	60.8%	121.6	16%
Kotagala Plantations Lrd	102	120	222	69.4%	138.7	12.5%
Bogawantalawa Plantations Ltd	102	135	237	70.7%	141.5	11.9%
Kelani Valley Plantations Ltd	102	140	242	71.2%	142.3	11.7%

In addition to the exclusive option of purchasing such controlling interest of 51% shareholdings in the respective plantation companies, the management companies were also deviously given the exclusive opportunity of investing further monies, varying from Rs. 50 million to Rs. 140 million into the plantation companies to be converted into shareholdings, thereby effectively and actually giving such management companies, a much greater shareholding than the 51% held out to the public, going up to even as much as 71%. The given chart sets out the actual shareholding percentages that would be so acquired and the effective cost of such acquisitions. The relevant extracts from the Offer Sale Documents in such regard are as follows;

" 2.11 The following conditions will be attached to the purchase of the block of 51% of the ordinary shares of the Company, whether the purchaser is [the management company] or any other investor.

2.12 <u>Purchase of Debentures:</u> Simultaneous with the purchase of the shares on offer, the purchaser of these shares must purchase, or arrange for another party or parties to purchase, Rupees .... worth of debentures issued by the Company. This take up of debentures will improve the liquidity position of the Company significantly. The conditions applicable to the debentures will be as follows:

- The par value of each debenture will be Rs. 10.

- The purchase price per debenture will be the price paid per share by the buyer of the 10,200,000 ordinary shares of the Company.

- The total number of debentures to be issued will be Rs..... divided by the purchase price per debenture.

- The debentures will be freely transferable.

- The debentures will be exchangeable by the Company at the discretion of the purchaser, or any person to whom the debentures have been transferred by the purchaser, for ordinary shares of the Company any day on or after the second anniversary of their date of issue, each debenture with a par value of Rs. 10 being exchanged for a single ordinary shares of the Company also having a par value Rs. 10.

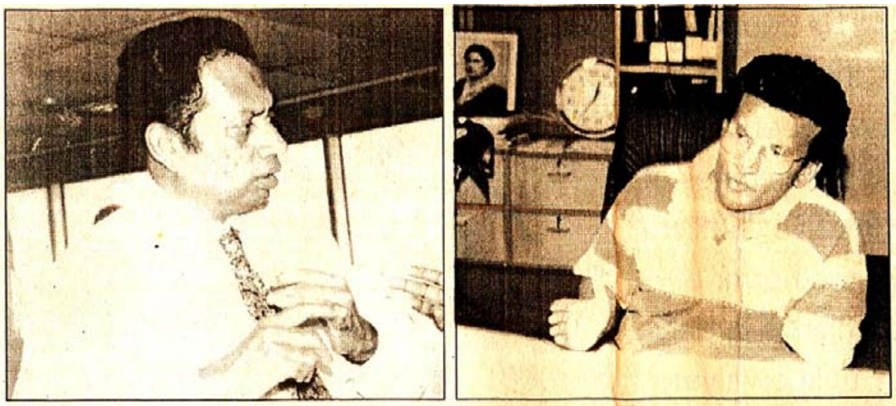
- All debentures which have not been exchanged for ordinary shares by the day prior to the fifth anniversary of their date of issue shall be mandatorily exchanged by the Company for ordinary shares on the fifth anniversary date. "

The monies advanced initially, treated as convertible debentures at 6% p.a., and thereafter being mandatorily converted into Share Capital, dilutes the 20% shareholdings that were being offered to the public, to as much as 11.7%; and this naturally would have caused further depression to the public offer prices for such supposedly offered 20% shareholdings to determine the unique "market clearing price per share".

Name	51% Share Capital Rs.Mn.	Convertible Debentures Rs.Mn.	Share Capital on Conversion Rs.Mn.	Ownership %
Agalawatte Plantations Ltd.	102	50	152	60.8%
Horana Plantations Ltd.	102	50	152	60.8%
Kegalle Plantations Ltd.	102	50	152	60.8%
Kotagala Plantations Ltd.	102	120	222	69.4%
Bogawantalawa Plantations Ltd.	102	135	237	70.7%
Kelani Valley Plantations Ltd.	102	140	242	71.2%

Was it a case of letting the cat out of the bag when, `Dr. Romesh Dias Bandaranaike at the presentation of a plantation company to the Colombo Stock Brokers said at Trans Asia Hotel, that it was not in the interest of the underwriters and present management company to promote the plantation company as they had an agreement between them to purchase the Shares' as was reported in *The Sunday Leader* of 14th January 1996.

COULD THEY EXPLAIN?



Then members of PERC who carried out the privatisation of plantations — then chairman, Rajan Asirwatham (left), chairman, BOI, Thilan Wijesinghe (right) and present chairman Dr. P.B. Jayasundera (below). Innovators of the price formula to give plantation companies an exclusive option to buy the controlling interest of the share capital — can they explain why?

The then members of PERC, who carried out these privatizations were, Partner, Ford, Rhodes, Thornton & Co., Chairman, Rajan Asirwatham, Chairman BOI, Thilan Wijesinghe, Managing Director, CTC Eagle Insurance Co. Ltd., Chandra Jayaratne, Director Institute of Policy Studies, Dr. Saman Kelegama, Director-General, SEC Arittha Wikramanayake, Deputy Secretary Treasury, present Chairman PERC, Dr. P.B. Jayasundera and Secretary to the Treasury, A.S. Jayawardena, who held these plantation company shareholdings on behalf of the government; also with the visiting consultant from London to the Ministry of Finance & Planning, Rajan Brito assisting PERC.

The Directors of all these six plantation companies and the signatories to the Offer Sale Documents issued to the public have been; Secretary Ministry of Plantation Industries, R.S. Jayaratne, Secretary Ministry of Food & Cooperatives, T.P.G.N. Leelaratne, Director-General External Resources, M.F. Mohideen, Director, Ministry of Plantation Industries, Dr. S.A.B. Ekanayake and Dr. Romesh Dias Bandaranaike, who was the Director, Plantation Management Monitoring Division that assisted PERC on the privatizations of the plantations.

The World Bank, USAID, and Asian Development Bank are known to have provided funds and rendered technical assistance, by way of expatriate consultants, to the privatization programme undertaken by PERC.

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