

BY COURIER

6th February 2014

Mr. Ajith Nivard Cabraal
Governor
Central Bank of Sri Lanka
30, Janadhipathi Mawatha
Colombo 1.

Dear Nivard,

In the context of urgings by several parties in the public interest, as you are aware, a Seminar was conducted on Friday, January 31, 2014 on the subject 'Repetitive Debacles of Finance Companies'.

To be honest, I do not have much dealings with finance companies, except in the past, when assets of Directors were sold in one instance, and in another instance where property of an Associated Company was sold, to settle all Depositors under the supervision of the Central Bank. I am also aware of another instance, where certain Directors and Staff were sentenced to jail. Curiously, such did not occur in all instances ?

Whilst prior to the Seminar, on a mere perusal of the Finance Business Act No. 42 of 2011, I came across certain Sections, some of which I thought ought be brought to your kind attention.

1. Section 31. (6) (j)

“31. (6) (j) direct any shareholder of the finance company to divest or transfer the ownership of the shares owned by him, to a person nominated by the Board, on payment by such person of compensation as follows :-

- (i) where such shares are quoted, at the market value thereof; or
- (ii) where such shares are not quoted at a price to be determined by a valuer nominated by the Board.”

Identical provisions are there in Section 36 (2) in the instance of vesting of a finance company.

I cite the following extracts attributed to me reported in the *Mirror Business* of yesterday February 5, 2014

“where a closely held Finance Company, with less than Rs. 350 Mn., net assets, has had market valuations of 14,000 Mn., and 33,000 Mn., in terms of Share Prices of transactions effected, cautioning the Central Bank citing the instance of National Savings Bank and The Finance deal, which was annulled due to public hue and cry.”

Would not the foregoing provisions of the law make it mandatory for the Central Bank to purchase Shares of quoted loss making finance company at such artificially and/or manipulative Shares prices ? There would be ample eminent Counsel arguing such Cases regardless of losses of public monies.

2. Sections 25 and 31 provide for the re-organization and/or re-structuring and/or amalgamation of Finance Companies under the direction and/or supervision of the Central Bank.

Whereas Chapters IX and X of the Companies Act No. 7 of 2007, which came into force on May 3, 2007, provides for companies to be re-organized and/or re-structured under judicial supervision. Hence, is this not an instance of transgression on the part of the Central Bank in taking over a judicial function, which had been debarred, as had been determined by a 7 Judge Bench of the Supreme Court in October 2002, that powers of one organ of government could not be alienated by another organ of government, read with the *entrenched* provisions of Article 3 and 4 of the Constitution ?

3. In contrast to the above, Section 32 providing for winding-up of Finance Companies is to be under judicial procedure as provided for in the Companies Act No. 7 of 2007, except that it is unclear, as to why the Minister has to get involved in setting out the priority of claims, when the Companies Act No. 7 of 2007 as per the relevant Schedule specifies the priority of claims under judicial supervision ?
4. The 'definition' of Directors in Section 529 of the Companies Act No. 7 of 2007, in reference to certain Sections thereof includes those in accordance with whose directions companies act; thereby exposing those who give directions to fall within such ambit, unless such directions given are not to an individual company, but commonly given to all finance companies as a Regulatory.

All finance companies need not be of the same size, with same parameters. Some small finance companies catering to a niche market segment could indeed be viable, whereas a crash of a large mismanaged finance company would have detrimental effect on public confidence.

5. One cannot understand why the maximum percentage of Share Capital to be held by a body corporate and/or individual of a finance company has not been restricted yet, as in the case of banks, as provided for in Section 12 (1) (n) of the Act.

It had been disclosed in the COPE Report of June 2005, that the primary cause for the failure of finance companies had been uncontrolled / unsecured / imprudent / lending to businesses of the majority owners. This is a truism and reality even today. Should a finance company be a 'window' for collecting funds to finance one's own business, particulars of which are not made known to the depositing public ?

6. Attached is a simple format, subject to any modifications, suggested for periodic information to monitor finance companies and such disclosure alone would be an 'inbuilt' self-monitoring check and could also be used to educate the public depositors. – *Vide Page 12 of DailyFT and Page 7 of Mirror Business, both dated February 6, 2014.*
7. It is noted that Section 21 (1) (e) (i) of the Act, reiterated by Annex 1 to the Directions, Rules, Notices and Guidelines published by the Central Bank, disqualifies a person from being a Director of a finance company, if any investigation and/or inquiry is pending against such person, which is no doubt a salutary provision. To enforce such provision one would have to check with several relevant bodies conducting inquiries or investigations, particularly with the recent reports of a spate of inquiries disclosed to have been initiated by the SEC !

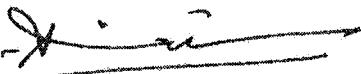
8. The COPE Report of June 2005 had extensively dealt with the Mercantile Credit Case – *Vide COPE Report of June 2005*

- *Mercantile Credit which had been operating under the Control of Finance Companies Act No.27 of 1979 had been issued a renewed License under Finance Companies Act No. 78 of 1988 in November 1990*
- *At the very same time, it had had liquidity problems, and had requested financing from the Central Bank in November 1990 itself !*
- *Monies amounting to Rs. 1,750 Mn. appear to have been advanced prior to vesting in February 1992 Mercantile Credit with the Monetary Board, whereas such advances as per the Statute could have been made only to a company already vested.*
- *Questionably, such cognizable advances of public monies had been with the net worth of this company misleadingly reported as Rs. 273 Mn., whereas the corrected net worth had been negative at Rs. 124 Mn.(with Rs. 647 Mn. dues in legal actions), and only just over Rs. 100 Mn. had been recovered on these advances of Rs. 1,750 Mn., resulting in a debt of Rs. 4.7 Bn.as at 31 December 2004 (now Rs. 13,000 Mn !).*
- *Furthermore, intriguingly 2 Banking Licenses had been subsequently given to the same Directors !*

I was prompted to bring the foregoing to your kind attention, particularly given the fact that you endeavoured to support my actions in the public interest on the purported oil hedging deals Cases, by retaining independent Counsel, and not the Attorney General, with instructions given not to oppose my actions, in view of your apprehensions and concerns.

On the other hand, the Attorney General, whilst affirming the *ultra-viries* nature, illegality and fraudulency of such deals, misled the Court opposing my actions as 'time-barred', which as you were aware were not, and with the Attorney General furthermore pompously assuring the Court in public that he was supremely confident in successfully in defending the foreign actions against the CPC / Government, whereas the Attorney General dismally failed, thereby causing colossal losses to public funds, having thwarted my actions in my own country, which were in the offensive and not in the defensive as the above, with the Court having previously held such transactions to be *ex-facie* dubious. In addition to the above colossal losses, the cost of such litigation alone I believe exceeded the annual cost budget of the Attorney General's Department !

Yours truly,



Nihal Sri Amersekere

cc: Mr. Lalith Weeratunga, Secretary to H.E. the President – *for H.E. the President to apprised, as the Minister of Finance*