

**Limited Objections**

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**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

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*In the matter of an application under  
and in terms of Article 17 and 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**S.C.F.R. Application No. 212/2022**

- 1. CHANDRA JAYARATNE**  
No. 2, Greenland Avenue,  
Colombo 05.
  - 2. JULIAN BOLLING**  
No. 72, 5<sup>th</sup> Lane,  
Colombo 05.
  - 3. JEHAN CANAGARETNA**  
No. 5, Bullers Lane, Apartment 3B,  
Colombo 07.
  - 4. TRANSPARENCY  
INTERNATIONAL SRI LANKA**  
No. 366, Nawala Road,  
Nawala, Rajagiriya.
- PETITIONERS**

-Vs-

- 1. HON. ATTORNEY GENERAL**  
Attorney General's Department,  
Colombo 12.
- 2. MAHINDA RAJAPAKSHA**  
Former Prime Minister,  
Former Minister of Buddhasasana,  
Religious and Cultural Affairs, Former  
Minister of Urban Development &  
Housing, Former Minister of  
Economic Policies and Plan  
Implementation and Former Minister  
of Finance.  
No. 117, Wijerama Mawatha,  
Colombo 07.

- 3. HON. BASIL RAJAPAKSE,**  
Former Minister of Finance  
No. 1315, Jayanthipura,  
Nelum Mawatha,  
Battaramulla.  
No. 1316, Jayanthipura,  
Nelum Mawatha,  
Battaramulla.
- 4. HON. M.U.M. ALI SABRY PC**  
Former Minister of Finance  
No. 5, 27<sup>th</sup> Lane,  
Colombo 03.
- 5. HON. RANIL WICKREMESINGHE**  
Prime Minister  
Minister of Finance, Economic  
Stability and National Policies,  
No. 117, 5<sup>th</sup> Lane,  
Colombo 03.
- 6. DESHAMANYA PROFESSOR  
W.D. LAKSHMAN**  
Former Governor of the Central Bank  
No. 224, Ihalayagoda,  
Imbulgoda.
- 7. MR. AJITH NIVARD CABRAL**  
Former Governor of the Central Bank  
of Sri Lanka.  
No. 32/7, School Lane,  
Nawala.
- 8. DR. P. NANDALAL  
WEERASINGHE**  
Governor of the Central Bank of Sri  
Lanka.  
P.O. Box 590,  
Colombo 01,  
Sri Lanka.
- 9. THE MONETARY BOARD OF  
THE CENTRAL BANK OF SRI  
LANKA**  
Central Bank of Sri Lanka,  
P.O.Box 590,  
Colombo 01,  
Sri Lanka.

**10. MR. S.R. ATTYGALA**

Former Secretary to the Treasury/Ministry  
of Finance  
No. 23, Madapatha,  
Piliyandala.

**11. MR. K.M. MAHINDA SIRIWARDANA**

Former Secretary to the Treasury/Ministry  
of Finance,  
The Secretariat,  
Colombo 01.

**12. MR. SALIYA KITHSIRI MARK  
PIERIS, P.C.,**

President of the Bar Association of Sri  
Lanka,  
No. 153, Mihindu Mawatha,  
Colombo 12.

**13. MR. ISURU BALAPATABENDI, AAL.,**

Secretary of the Bar Association of  
Sri Lanka,  
No. 153, Mihindu Mawatha,  
Colombo 12.

**RESPONDENTS**

**TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THEIR  
LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUDGES OF  
THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

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**On this 15<sup>th</sup> day of July, 2022**

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The **STATEMENT OF LIMITED OBJECTIONS** of the **7<sup>TH</sup> RESPONDENT**  
above-named appearing by Sarravanan Neelakandan and Thulasica Neelakandan practising  
in partnership under the name style and firm of

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**SARRAVANAN NEELAKANDAN LAW ASSOCIATES**

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and their Assistants, Mohottige Don Raja Mannapperuma, Asurappuli Hewage Sumathipala,  
Francis Julian Pratheep, Amali Anuradha Mallikarachchi, Chandravathana Sachithanathan,  
Dumini Nathasha Perera and Amani Mackie Muzammil, its Registered Attorneys, state as  
follows:

1. The 7th Respondent states that these limited objections are filed according to the 7th Respondent's memory as he has no access to the documents in the custody of the Central Bank of Sri Lanka and of the Monetary Board since the 7th Respondent has relinquished his duties as the Governor of the Central Bank with effect from 04<sup>th</sup> April 2022.
2. The 7th Respondent reserves the right to file a more comprehensive set of objections if Your Lordship's Court provides an opportunity to do so after perusal of relevant documents.
3. The 7th Respondent's objections are filed based on his best recollection of the facts with regard to the several averments contained in the Petition and affidavit filed by the Petitioner, and documents in his possession and in the public domain.
4. The 7th Respondent denies all and several the averments contained in the Petition and affidavit save and except that which is specifically admitted hereinafter.
5. The 7th Respondent states that he last served as the Governor of the Central Bank during the period from 15<sup>th</sup> September 2021 to 4<sup>th</sup> April 2022.
6. The 7<sup>th</sup> Respondent states that he is unaware of the averments contained in paragraphs 1, 2, 3, 4 and 117 of the Petition.
7. The 7<sup>th</sup> Respondent admits the averments contained in paragraphs 5 and 7(a), (b), (f), (l) of the Petition.
8. Answering Averment 7 (c), the 7<sup>th</sup> Respondent admits that the 2nd respondent was the Minister of Finance from 21st November 2019 to 2nd March 2020, but specifically denies the rest of the averments contained therein and states that the 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.
9. Answering Averment 7 (d), the 7th Respondent admits that the 3rd Respondent was the Minister of Finance from 28th July 2021 to 3rd April 2022, but specifically denies the rest of the averments contained therein and states that the 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.

10. Answering Averment 7 (e), the 7th Respondent admits that the 4th Respondent was the Minister of Finance from 4th April 2022 to 9th May 2022.
11. Answering Averment 7 (g), the 7th Respondent admits that the 6th Respondent was the Governor of the Central Bank from December 2019 to 14th September 2021, but specifically denies the rest of the averments contained therein and states that 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.
12. Answering Averment 7 (h), the 7th Respondent admits that the 7th respondent was the Governor of the Central Bank from 15th September 2021 to 4th April 2022, but specifically denies the rest of the averments contained therein and states that the 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.
13. Answering Averment 7 (i), the 7th Respondent admits that the 8th respondent is the present Governor of the Central Bank from 8th April 2022 onwards, The 7th respondent also states that the 8th respondent has been a career officer at the Central Bank for nearly 3 decades upto January 2021. During such period, the 8<sup>th</sup> Respondent has held office as a Deputy Governor since September 2012, and served as the as the Chairman of the Monetary Policy Committee and the Foreign Reserve Management Committee and overseen the Departments of Economic Research, Statistics, International Operations, Domestic Operations, Macroprudential Surveillance, Exchange Control, Currency and Communication. He has functioned as the Senior Deputy Governor while also acting as the Chief Executive Officer of the Central Bank during the Governor's temporary absence, from 1<sup>st</sup> November 2017 upto 31st January 2021. According to official documents, the 8<sup>th</sup> Respondent had retired from the Central Bank as the Senior Deputy Governor only in January 2021, and therefore bears collective responsibility for the management and operations of the Central Bank in the various senior capacities that he has held upto that time.
14. Answering averments in Paragraph 7 (j), the 7<sup>th</sup> Respondent states that the 9<sup>th</sup> Respondent has the power to do and perform all acts as may be necessary as per the Monetary Law Act and its responsibilities and objectives are set out in the said Act.
15. Answering averments in paragraph 7 (k), the 7th Respondent admits that the 10th respondent was the Secretary to the Treasury/Ministry of Finance from 20th

November 2019 to 7th April 2022, but specifically denies the rest of the averments contained therein and states that the 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.

16. Answering averments in paragraph 7 (l), 7th respondent admits that the 11th respondent is the present Secretary to the Treasury/ Ministry of Finance from 8th April 2022 onwards. The 7th respondent also states that the 11th respondent has been a career officer at the Central Bank for over 3 decades and has held office upto the level of the Deputy Governor of the Central Bank during the period upto 7th April 2022 and therefore bears collective responsibility for the management and operations of the Central Bank in the various senior capacities that he has held upto that time.
17. Answering the averments in paragraph 7 (m) in general, the 7th Respondent specifically denies the averments contained therein and states that the 7<sup>th</sup> Respondent bears no responsibility insofar as violations of any Fundamental Rights of the Petitioners are concerned.
18. The 7th Respondent specifically denies the averments contained in paragraphs 8, 9 (a), (b) (i),(iii),(iv),(v), 10, 11, 12, 13, and 14 and states that the 7th Respondent's bears no responsibility in so far as violation of any Fundamental Rights of the Petitioners are concerned.
19. By way of further answer to the averments contained in the Petition and Affidavit, the 7<sup>th</sup> Respondent states as follows;

<p><i>(i) Reckless Debt Default of 12<sup>th</sup> April 2022</i></p>
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20. Answering paragraph 10(b), the 7th Respondent states that since the 7th Respondent was not the Governor of the Central Bank after 4<sup>th</sup> April 2022, he bears no responsibility for the decisions taken after such date.
21. **The 7<sup>th</sup> Respondent states that after his relinquishment of duties, the Government had decided to default on its sovereign debt (without even the necessary approvals) which had resulted in catastrophic long-term and short-term repercussions to the economy and caused the country to default on the repayment of foreign debts for the first time in its history, thus leading to the relegation of Sri Lanka to a state of bankruptcy/ insolvency.**

22. The 7<sup>th</sup> Respondent states that the decision to default on 12<sup>th</sup> April 2022 was highly suspicious, irrational, arbitrary, illegal, and wrongful and it is inexplicable that it had been hastily carried out in view of the fact that, by end March 2022, the “pipeline” of expected forex inflows showed a healthy position which had obviously been recklessly and callously disregarded.

**That “pipeline” of expected inflows is given below:**

<b>“Pipeline” of additional expected inflows in 2022</b>	<b>USD million</b>	<b>Status by 4<sup>th</sup> April 2022</b>
India – Oil Facility (Trade Finance)	500	Confirmed
India - Goods Facility (Trade Finance)	1,000	Confirmed
India - ACU postponement in addition to existing USD 1,500 m	500	Confirmed
China – Special Refinance Facility (Cash)	1,000	Confirmed
China - Goods (Trade Finance)	1,500	Confirmed
West Coast Power divestment proceeds	250	Very likely
Hilton and other hotel projects divestment	500	Very likely
Tourism inflows @ USD 100 per month for 9 months upto end 2022	900	Very likely
Green Bond – June 2022 – Discussion on-going	1,000	Very likely
Green Bond – September 2022 – Discussion on-going	1,000	Likely
Peoples Bank of China (PBOC) SWAP facility, likely to be made operative after negotiations	1,550	Likely, after the receipts of cash loans
Qatar Central Bank SWAP facility - Discussion on-going	1,000	Likely, after China & India inflows materialize
Existing SWAP facilities from India and Bangladesh to be rolled over with a possible further SWAP facility of USD 1 billion from the Reserve Bank of India		Very likely
<b>Total</b>	<b>10,700</b>	

23. **The 7<sup>th</sup> Respondent states that the sudden “default” announcement of 12th April 2022, completely disrupted all the above expected inflows,** with the possible exception of the roll-over of the India and Bangladesh SWAPs that had been previously negotiated. In fact, the Chinese Ambassador in Sri Lanka has specifically alluded to this situation as well. Of the above pipeline, a sum of USD 4,500 mn was confirmed as being in the final stages by 3<sup>rd</sup> April 2022, and a further amount of about USD 2,650 mn was very likely to materialize over the short term, which would have enabled the Government to settle the maturing payments due in 2022, while also rolling over several other existing loans, including Sri Lanka

Development Bonds and FCBU loans. Hence, the decision to default payment was inexplicable and utterly reckless. That irresponsible and illegal decision plunged Sri Lanka into a serious chasm of economic and financial isolation as a “bankrupt” nation, with the consequential severely damaging repercussions due to haunt the nation for many years to come.

24. The 7<sup>th</sup> Respondent states that, as set out in the table above, Sri Lanka was on the verge of receiving a significant inflow of funds of USD 1 billion and access to a trade loan of USD 1.5 billion from China that were expected to materialize towards the latter part of April 2022 or early May 2022. These inflows were officially announced by both the Chinese Ambassador in Sri Lanka on 21<sup>st</sup> March 2022 (True Copies of the Documents evidencing the aforesaid are **marked as Annexes “7R1(a)”, “7R1(b)”, “7R1(c)” & “7R1(d)”** and **pleaded as part and parcel of these Limited Statement of Objections**) and subsequently re-confirmed by the Sri Lanka Ambassador in China on 12<sup>th</sup> April 2022. (True Copies of the Documents evidencing the aforesaid are **marked as Annexes “7R2(a)”, “7R 2(b)”, “7R2(c)”, “7R2(d)” & “7R2(e)”** and **pleaded as part and parcel of these Limited Statement of Objections**). At the same time, negotiations were at an advanced stage on the Indian line of credit for a further USD 1 billion for goods, and USD 500 million for oil, as well as a further financial accommodation of about an additional USD 500 million by the Reserve Bank of India through the postponement of the Asian Clearing Union (ACU) settlements. That is why it is inexplicable as to why a hasty decision was taken to announce the sudden “debt default” and non-payment of all forex debt and interest (including the July 2022 USD 1,000 mn International Sovereign Bonds ISB) from 12<sup>th</sup> April 2022 onwards, and thereby risk major adverse consequences, together with a massive “cross-default” as well.
25. The 7<sup>th</sup> Respondent states that there had been an ill-advised and erroneous claim that there was no other option but to default since by defaulting forex loans and thereby not paying the maturing debts, there would be sufficient forex resources “freed” and available in the country to import the requirements of all essential items needed by the people. However, the fallacy of that contention and the recklessness of that decision is now exposed, since by 12<sup>th</sup> July 2022, although the Forex loans and interest had been unpaid since 12<sup>th</sup> April 2022 for 3 months, there is now even less Forex available for the country to import any of the essential supplies. **Shortages and queues are increasing with no end in sight, because no country or overseas supplier now wishes to do business with Sri Lanka without an up-front payment, as the country has officially announced that it is bankrupt. Based on that announcement, the International Ratings Agencies have also**



**placed Sri Lanka's sovereign debt rating at a default status, while also downgrading all Sri Lankan banks, further aggravating the situation.**

26. The 7<sup>th</sup> Respondent states that the former Governors Professor W. D. Lakshman and A. N. Cabraal (6<sup>th</sup> and 7<sup>th</sup> Respondents) and former Treasury Secretary S. R. Attygalle (10<sup>th</sup> Respondent) had secured the required Forex inflows to pay loans and interest, as well as taken the required steps to roll-over maturing debt, while also sourcing Forex to buy fuel, coal, medicine, gas, and foodstuffs, and to clear the containers of imports, even with some delays. Not only did the Government settle the maturing ISB of USD 500 mn in January 2022 and all other maturing debts and interest in the months of January and February 2022, during the month of March 2022, the Government paid back and rolled-over sovereign Forex debt payments of a substantial sum of USD 1,166 million out of the total amount of repayments of approximately USD 7,100 million that was due in 2022. Thereafter, in April 2022, the Forex debt servicing was comparatively less at only USD 244 million, while the Forex debt servicing for May and June was only another USD 789 million. The repayment and roll-over of these amounts were comfortably manageable with the likely inflows from the 25% export conversions to be mandatorily sold to the Central Bank by the commercial banks and the roll-over of maturing SLDBs being arranged as in the past, in addition to the new cash inflows expected from China and India.
27. The 7<sup>th</sup> Respondent states that it is well known that when an ordinary person defaults on a loan to a bank and is named as a delinquent debtor in the Credit Information Bureau (CRIB), such person will not be able to get any more loans from any bank or from other lenders. Even if they do, it will be a very difficult endeavour. Shockingly, the Sri Lankan authorities did not seem to have anticipated that would happen to Sri Lanka as well, when it was hurriedly decided to unilaterally default on Sri Lanka's sovereign debt with an announcement being made to that effect.
28. The 7<sup>th</sup> Respondent states that it must be appreciated that it is not possible to have selective defaults of particular sovereign loans, since many loan agreements with international creditors have “**cross-default**” clauses which are far-reaching. It is also likely that those persons who were calling for the sovereign default of the ISB of January 2022, including the Petitioners did not realise or appreciate the fact that, as per the Offering Circular for the ISBs, the Sri Lankan Government had solemnly assured all prospective investors that “*the full faith and credit of the Democratic*

*Socialist Republic of Sri Lanka will be pledged for the due and punctual payment of the principal of, and interest on, the Bonds.”*

29. **The 7<sup>th</sup> Respondent states that when a sovereign forex loan is not repaid, the credibility of the country will be lost, and investors will shun that country.** It will be very difficult for the defaulting country to obtain new forex loans thereafter. The access to International Bond Markets may be lost for at least 5 to 10 years after the default. The country’s banking system will be placed under a lot of pressure and face very serious difficulties when opening letters of credit and carrying out forex transactions. Forex loans and investments that were previously forthcoming to the local banks would be halted or postponed. Most forex-funded infrastructure projects will stop. Foreign Direct Investors will adopt a “wait and see” attitude. Small and medium sized import-based businesses and entrepreneurs will face the risk of collapse. Hundreds of thousands of jobs and livelihoods will be in jeopardy. Inflation and interest rates will rise. The Government will be compelled to sell valuable assets at low prices. The country’s foreign policy will be compromised. Certain forex creditors will file legal action to recover their dues and the Government will incur huge litigation costs. Some creditors may call for the re-structure of local debt, which, if done, could lead to serious socio-economic consequences. Issue of Treasury Bills to the Central Bank (money printing) may increase significantly. The local currency will lose value. The Government’s local currency payments, including salary and pension payments, will be stressed. **In a nutshell, grievous prejudice will be caused to the economy and the country. In fact, almost all of the above outcomes have been experienced by the country already after the reckless announcement of the debt default by the 4<sup>th</sup>, 8<sup>th</sup> and 11<sup>th</sup> Respondents about 3 months ago.**
30. The 7<sup>th</sup> Respondent states that it would have been vital to have a well-structured strategy to deal with the challenge of default if there was a compelling need to default the external debt, and not do so hurriedly as the failure to do so will definitely lead to unmanageable problems. It is also likely that those persons who proposed default (including think-tanks and INGOs) will not, at a later stage, assume responsibility when the default repercussions arise, and it will be the Government and the people that will have to face the consequences. That is why if a sovereign debt default was contemplated, it was the responsibility of the authorities to initiate and undertake a discussion on the subject and thereafter take a considered decision. In fact, a decision to default by a country is so serious that it should have properly received the formal approval of the Monetary Board and the Cabinet of Ministers with the advice of the Attorney General as well. Further, in view of the

fact that the Parliament had already voted the necessary funds for debt servicing at the time of approving the Budget and Parliament has the final responsibility for finances, obtaining Parliament's approval would have also been a pre-requisite for a default. Unfortunately, according to available information, Sri Lanka's unnecessary and reckless debt default had been carried out without any such prior approval.

31. **The 7<sup>th</sup> Respondent states that as a consequence of Sri Lanka's debt default there is now an increasing likelihood of forex creditors calling for local debt also to be re-structured, since the major part of the Sri Lankan Government's debt servicing is that of local debt.** Their contention may be that for "debt sustainability" to be achieved, a local debt re-structuring must also be carried out. It is possible that the International Monetary Fund (IMF) may also agree with such a contention given their past record in responding to debt sustainability situations in other countries. The Government and the Central Bank have of course stated that there is no need or intention to re-structure local debt. However, if the Government is compelled to do so, perhaps at the behest of the IMF, the fall-out from such a decision could be quite challenging to handle socially, economically and politically.
32. The 7<sup>th</sup> Respondent states that in any event, the 7<sup>th</sup> Respondent cannot be held responsible for the current crisis which has arisen mainly from the hasty and reckless decision to default on the sovereign forex debt, and thereby putting Sri Lanka into an almost irretrievable position of despair and hopelessness, particularly because such default did not have the prior approval of the Monetary Board, the Attorney General, the Cabinet of Ministers or the Parliament.

**(ii) *Downturn of economy from 2015 to 2019***

33. The 7<sup>th</sup> Respondent states that it has been averred that the unprecedented economic crisis driven by "debt unsustainability" has been due to, *inter alia*, the gross mismanagement of the economy by several respondents including the 7<sup>th</sup> Respondent. However, it would be noted that the Sri Lankan economy had its most remarkable growth and progress during the period 2006 to 2014 when the 7<sup>th</sup> Respondent was the Governor of the Central Bank of Sri Lanka. For purposes of record, a summary of the economic progress from 2006 to 2014 was as follows:
- Gross Domestic Product (GDP) grew from USD 24 bn in 2005 to USD 79 bn in 2014, with an average growth of about 6.4% over the final 5 years, 2010 to 2014.

- Local and Foreign Investment increased, year on year.
  - There was growing confidence in the economy, particularly after the conflict.
  - Single digit inflation was maintained an uninterrupted period for about 6 years.
  - The LKR was stable with a gentle appreciation of the LKR in 2013 and 2014.
  - A healthy forex reserve cover was achieved, where reserves increased from USD 2.6 bn in 2005 to USD 8.2 bn in 2014.
  - Public Debt to GDP ratio reduced sharply from 91% in 2005 to 72% in 2014. Low Forex debt-servicing was at manageable levels with only about USD 280 mn needed for ISB debt-servicing in 2014.
  - Modest growth was recorded in exports and remittances, on a yearly basis.
  - Tourism experienced exponential growth, particularly after the conflict.
34. The 7<sup>th</sup> Respondent states that, in contrast, from 2015 to 2019 the economy suffered a continuous downturn, resulting in the IMF determining that the economy of Sri Lanka was “vulnerable” at the “eve” of the Covid-19 Pandemic. In particular, the forex borrowing of the Government ballooned by 65% from USD 23.4 bn to USD 38.7 bn from 2014 to 2019, as a result of a major forex borrowing blitz in 2018 and 2019: the ISBs volume grew from a modest level of USD 5.0 bn (6% of GDP) in 2014 to a highly vulnerable level of USD 15.0 bn (18% of GDP) by 2019. The average interest rate for ISBs also increased significantly and the ISB debt servicing rose to nearly USD 1 bn in 2020 from about USD 280 mn in 2014, although there was only a very slight improvement in the GDP over the five years. In addition, GDP Growth was sluggish and down to around 2% by 2019. High tax rates had been introduced, but the Fiscal Deficit remained high due to the high interest cost consuming the additional tax revenue. Further, Government revenue actually decreased in 2019 although the tax rates were high, due to the economic downturn. Even after a net ISB increase of USD 10 bn, other term loans of USD 2 bn, and inflow from Hambantota Port sale of USD 1 bn (total forex cash inflows of USD 13 bn), forex reserves were down to just USD 7.6 bn by end 2019 from USD 8.2 bn by end 2014. Only marginal growth in exports was recorded in the 5 years, and almost no growth in remittances. Tourism was badly affected after the Easter Sunday bombing. The IMF Article 4 Report for 2022 (first paragraph) (True Copies of the Documents evidencing the aforesaid are **marked as Annex “7R3” and pleaded as part and parcel of these Limited Statement of Objections**) referred to Sri Lanka’s economy being highly vulnerable at the eve of the Covid Pandemic, which means that the vulnerability was already prevalent at the beginning of 2020.

*Please also see CBSL Road Map of 1<sup>st</sup> October 2021 (True Copies of Documents evidencing the aforesaid are **marked as Annex “7R4” and pleaded as part and parcel of these Limited Statement of Objections**) (where many of those matters have been explained), and where the Way Forward for different stakeholders had been communicated by the Central Bank, as soon as the 7<sup>th</sup> Respondent assumed duties as the Governor.*

In fact, the 7<sup>th</sup> Respondent also referred to many of these matters in his **Presentation to Cabinet on: “ශ්‍රී ලංකාවේ ණයබරතාවය, දැනට මුහුණ දෙන අභියෝග සහ යෝජිත විසඳුම්”** on 26<sup>th</sup> October 2020, while serving as the State Minister of Money Capital Markets and State Enterprise Reforms. (A True Copy of the Document evidencing the aforesaid are **marked as Annex “7R5” and pleaded as part and parcel of these Limited Statement of Objections**))

The 7<sup>th</sup> Respondent also made a Presentation as the Governor of the Central Bank at the All-Parties Conference on 23rd March 2022, which is found at the following web link:

[https://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/press/notices/notice\\_20220328\\_Governors\\_speech\\_in\\_all\\_party\\_conference\\_e.pdf](https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/press/notices/notice_20220328_Governors_speech_in_all_party_conference_e.pdf)

35. The 7<sup>th</sup> Respondent states that the following extracts from that presentation at the All-Party Conference may also be relevant:

**Quote:**

***The current economic crisis***

35.1 *The whole world is aware of the massive economic crisis we are facing today. We witnessed how economies of many countries were falling into massive crises over the past two years when hit by the COVID-19 pandemic. This was experienced by almost every country. When COVID-19 pandemic started to escalate gradually into a global crisis, some countries were on a strong economic foundation, but some countries were weak due to various reasons. Unfortunately, Sri Lanka belonged to the latter category as the economic growth rate in Sri Lanka had gradually fallen from 7 percent to 2 percent during 2015-2019. Forex reserves had dropped by almost USD 1 billion, despite the growth of foreign debt by a significant USD 15 billion. The GDP had grown to only USD 84 billion from USD 79 billion. The tourism industry had stalled following the Easter Sunday attack. The total of foreign debt servicing payable per year had increased from about USD 2 billion to nearly USD 6 billion. The Sri Lankan rupee had depreciated to Rs.182 from Rs.131 against the USD. Therefore, the already weakened Sri Lankan*

*economy was not economically prepared to withstand the shock of the pandemic. Thus, the Government and the Central Bank of Sri Lanka had to face the crisis by implementing various innovative methods and new ways.*

- 35.2 *As a result of the pandemic and its aftermath, Sri Lanka had to allocate large amounts of money for vaccines: a debt moratorium amounting to over Rs. 4 trillion had to be granted to the pandemic affected individuals and businesses. The loss of economic activities to the country due to the lockdown amounted to more than Rs. 1,000 billion: the drastic decline in government revenue compelled the Central Bank to finance government payments: the annual average foreign exchange inflows from the tourism industry fell from USD 4.5 bn per annum to near-zero levels: there was a severe decline in forex remittances since mid-2021 due to various reasons: a steep increase was experienced in crude oil prices to USD 130 per barrel due to the war between Russia-Ukraine: and inflation all over the world recorded its' highest rates over many decades.*
- 35.3 *As a result of these effects, it is no secret that prices in Sri Lanka have moved well beyond expectations due to supply side pressures coupled with the pick-up in aggregate demand. At the same time, due to the scarcity of foreign exchange, the scarce forex inflows had to be distributed among various needs, such as debt servicing, financing fuel and other essential imports, and other essential forex outflows. Unfortunately, at the same time, scarce foreign exchange had also been expended on financing non-essential and non-urgent imports that kept pouring into the country. Meanwhile, the electricity supply had been interrupted from time to time due to the declining water levels in the reservoirs and shortage of fuel for electricity generation.*
- 35.4 *The weakening financial conditions of the relevant state-owned business enterprises due to the continuous maintenance of prices and tariffs below cost, had also emerged as another crisis. Therefore, it was by supplying more than USD 1,800 mn in foreign exchange to the forex market since August 2021 to date, for the importation of essentials such as food items, medicine, fuel, coal and gas, even amidst severe difficulties, that the Central Bank was able to ease the severity of the situation to a certain extent. In the circumstances, we will be compelled to state without doubt that the current economic crisis is extremely severe.*

***The primary reasons for this foreign exchange crisis: External debt crisis***

- 35.5 *One of the main reasons for the present day external debt challenge in Sri Lanka is the steep rise in external indebtedness during the 5 years, from 2015 to 2019. In that regard, we need to acknowledge an increase in external debt is a lot riskier than an increase in domestic debt. During the 5 years from 2015 to 2019, Sri Lanka's external debt stock increased by a massive 65% from USD 23.4 billion to USD 38.7 billion. Even more seriously, International Sovereign Bonds outstanding, which is a form of commercial debt increased 200%, from USD 5*

*billion to USD 15 billion, even though the GDP increased only by 5.8%, from USD 79 to 84 billion.*

35.6 *This huge mis-match made it very challenging to meet the payments on account of debt servicing amounting to nearly USD 6 billion from 2019 onwards, although in 2014, it was only about USD 2 billion. If the economy which was at USD 79 billion in 2014, had grown by 65% to around USD 131 billion by 2019, this challenge would not have been serious. However, by 2019, the economy had grown only up to USD 84 billion and therefore, this repayment of foreign debt and debt servicing had become extremely challenging.*

**Table: Outstanding Foreign Currency Denominated Central Government Debt**

*(USD. million)*

	31 Dec. 2014	31 Dec. 2019	31 Dec. 2020	31 Dec. 2021	28 Feb. 2022
<b>Debt Instruments/ Types of Debt</b>					
Sri Lanka Development Bonds	2,984	3,084	2,639	2,295	2,089
Foreign Currency Banking Unit Loans	150	925	1,220	695	449
Syndicated and Term Loans	-	1,333	1,500	2,223	2,224
Projects Loans	15,309	18,293	19,084	18,943	19,017
International Sovereign Bonds	5,000	15,050	14,050	13,050	12,550
Other		63	55	49	48
<b>Total Foreign Currency Denominated Debt</b>	23,443	38,748	38,548	37,255	36,377
<b>Gross Domestic Production</b> <i>(US Dollar. billion)</i>	79.4	84.0	81.0	n/a	n/a

*USD million*

	2014	2019	2020	2021	2022
<b>Foreign Currency Denominated Debt Service Payments</b>	2,102	5,560	5,940	6,366	7,024

***Loss due to the COVID-19 pandemic and the imposition of lockdown measures***

35.7 *At the same time, the economic growth rate further decreased alongside the imposition of lockdown measures, and the GDP deteriorated significantly to USD 81 billion by the end of 2020, further worsening the situation. Therefore, arresting the continuing recession despite some modest growth in 2021, had become a very difficult proposition for the new government. In the face of the COVID-19 pandemic, many were of the view that the country should be in a strict lockdown to*

*save the lives of the people. Accordingly, the country was in a lockdown in 2020 and 2021 for very long periods. As a result, industries and businesses were hit hard, while the small and medium-sized enterprises (SMEs) were also severely affected.*

- 35.8 *As a result, Sri Lanka's economy contracted by 3.5% by 2020, while in 2021, the growth rate is set to record a modest rate of around 4% only. It is true that this loss has led to serious economic downturn in the country, and the consequences were even more severe, since the economy had already been in a major downward spiral by the end of 2019. In fact, the challenge posed was severe, especially to the external sector, for several reasons. The first is that the amount of public debt borrowed in foreign exchange had increased by 65% during the 5-year period from 2015 to 2019. The second is that the regular foreign exchange inflows received by the tourism sector alone in 2020 and 2021 had declined by about USD 9 billion. Third, in 2021, the foreign exchange inflows through workers' remittances had declined by about USD 1.5 billion.*
- 35.9 *The lesson that could be learnt here is that while the lives of people are to be valued, it is important to value the livelihoods of the people as well. Although some persons may insist that the country should be in a lockdown in times of a pandemic, it should also be understood that the situation and the pressure which a country and the economy would have to face later as a consequence may be also extremely challenging. Therefore, going forward, it should be kept in mind that all persons must adhere to health guidelines while adapting to the new normal, as the country cannot afford any further lockdowns.*

**End of Quote**

36. **The 7<sup>th</sup> Respondent states that from the above it is clear that the down-turn the Sri Lankan economy had been ongoing since 2015, and that with the onset of the Covid pandemic in early 2020, the situation had worsened quite significantly.** In that context, it is very strange that the Petitioners had ignored this vital and significant aspect in relation to the downturn and not sought to hold the then key officials accountable for the decline. By deliberately attempting to place blame only upon those who assumed office from late 2019 onwards, the Petitioners have displayed their clear bias and an ulterior motive that their only focus is a “witch-hunt” to assign blame on certain selected individuals as specifically chosen by the said Petitioners which includes an “International” Non-Governmental Organization which is well-known for “selected” interventions.



**(iii) Erosion of Reserves during 2015 to 2019**

37. The 7<sup>th</sup> Respondent states that, if the Petitioners had carried out un-biased and professional evaluation of Sri Lanka’s external sectors, they would have noted that the **Forex Reserves that should have been available at the Central Bank as at the end of 2019 should have been at least USD 25 bn higher if the external sector had been more prudently managed. In fact, by end 2019, the Forex Reserve was only USD 7.6 bn, although the Forex Reserve was USD 8.2 bn as far back as 5 years earlier as at end December 2014.** Of course, at various times, certain persons have attempted to make out that the Forex Reserve by end 2019 was substantial, and that it had been irresponsibly squandered by the subsequent administrations. However, when a deep analysis is done, it is clear that the Forex Reserve available by end 2019 was much less than what should have been available, and that **the deficiency in the Reserve would be as much as a staggering USD 25 bn.** A simple computation of specific inflows that would have impacted the Gross Forex Reserves is given below:

<b>Sources of Forex Inflows /Savings from 2015 to 2019</b>	<b>USD bn</b>
Benefit of global fuel prices decrease from 2015 to 2019 (minimum)	7.5
Net ISB issues (Issues of USD 12.0 bn – settlements of USD 2.0 bn)	10.0
Additional tourism receipts (minimum)	4.0
Hambantota Port - Sales proceeds	1.0
China Development Bank – Term loans	2.0
<b>New inflows and savings that should have been added to the Reserves by 31.12.2019</b>	<b>24.5</b>
Add: brought forward Forex Reserves on 01.01.2015	8.2
<b>Forex Reserves that should have been available on 31.12.2019</b>	<b>32.7</b>
Less: Actual Forex Reserves on 31.12.2019	(7.6)
<b>Unexplained Short-fall of Forex Reserves as at 31.12.2019</b>	<b>25.1</b>

38. The 7<sup>th</sup> Respondent states that the above table indicates that Forex Reserves as at 31st December 2019 had only been an actual amount of USD 7.6 bn, instead of USD 32.7 bn which should have been the minimum amount at hand by that date. **Needless to say, if USD 32.7 bn had been available in the official Forex Reserves at end 2019, Sri Lanka would have possessed sufficient Forex Reserves to comfortably absorb and navigate the shock of the Covid 19 pandemic and its after-effects on the country’s external account.** This significant “short-fall” was confirmed by the IMF Article IV Report in March 2022 which highlighted that Sri Lanka was “vulnerable” at the “eve” of the Pandemic and

that there were “inadequate external buffers” at the time of the new Government taking office around the end of 2019.

39. The 7<sup>th</sup> Respondent states that the above short-fall further confirms the IMF statement in March 2022 that there were “**inadequate external buffers**” at the time of the new Government taking office, around the end of 2019. In this background, the new Government had to follow a “non-debt” forex inflows strategy as there was very little policy space for Sri Lanka to increase its external borrowings any further. In fact, such strategy was prudently followed from 2020 onwards, and was re-iterated when the “CBSL Road Map” was announced in October 2021. **In any event, the market opportunities to issue new ISBs in the wake of Covid-driven inactivity in the global bond markets also made it almost impossible to issue any new Sovereign Bonds, as did the ratings downgrade that had been imposed on more than 100 countries in the wake of the economic uncertainty that arose after the onset of the Covid Pandemic.**
40. The 7<sup>th</sup> Respondent states that if the officials who held office from late November 2019 to early April 2022 are being requested to explain their roles in the management of the economy during their period in office and even for outcomes after their terms of office, it is fair that those who held office prior to November 2019 should also be held answerable and responsible for the “vulnerability” of the economy (as also stated by the IMF) by that time. In such circumstances, it is suspicious, surprising and inexplicable that the Petitioners has carefully avoided any reference to those in office previously, and only alluded to the actions of a few selected individuals only.

***(iv) Consideration of macro-economic fundamentals in a holistic manner***

41. The 7<sup>th</sup> Respondent states that it is observed that there is a tendency for many persons to consider specific economic macro-fundamentals in isolation, instead of considering the impact of each of the macro-fundamentals on the behaviour and function of other inter-connected macro-fundamentals. As a result, there is often a dis-connect *vis-à-vis* the commentaries regarding the overall behaviour of the macro-fundamentals since that aspect is often over-looked by certain analysts. Nevertheless, the Monetary Board and the Central Bank have to view and consider all macro-fundamentals in a holistic manner and not each one in isolation. In doing so, the country’s and people’s present and future vital needs have to be often balanced against Central Bank’s own liquidity needs in the usage of the country’s forex and local currency reserves. It must be noted that the Central Bank has a

responsibility to secure both “economic and price stability” and “financial system stability” as per the Monetary Law Act. Accordingly, all competing issues have to be “balanced” against one another in working towards those objectives. For example, “excess” issues of Treasury Bills by the Government to the CBSL was at times a dire necessity to keep Sri Lanka from defaulting on its sovereign debt and for the Government to be able to make vital payments on many occasions, and had to be resorted to, even with a future risk of demand-driven inflation. On several occasions, forex also had to be directly provided by the CBSL to the two systematically important state banks to prevent those institutions from defaulting, even when the CBSL reserves were at low levels, in keeping with the CBSL’s “financial system stability” objective. There was also a vital and long-term need to keep the country solvent, in keeping with the 74-year old Government policy of honoring its debts, as otherwise obtaining new loans or even opening a simple letter of credit by a local bank would have been almost impossible.

42. The 7<sup>th</sup> Respondent states that it is also noted that all matters and issues raised by the Petitioners are matters where the decisions had been taken by the 9<sup>th</sup> Respondent in a legal manner, based on the existing facts as presented, expectations of future events and the best judgement of the persons vested with decision-making authority in relation to the economy, including the 7<sup>th</sup> Respondent during the period he served as the Governor. Further, the decisions taken and actions implemented by the 9<sup>th</sup> Respondent while the 7<sup>th</sup> Respondent was in office as the Governor, were not for the 7<sup>th</sup> Respondent’s individual or personal benefit, but as an integral part of implementing Government or Monetary Board policies that were lawful. At the same time, it was always ensured that the decisions of the Monetary Board were taken either unanimously or by majority vote so that all decisions were lawful.
43. The 7<sup>th</sup> Respondent states that in the case **S.C.F.R. Application No. 457/2012 - *Senasinghe vs Cabraal***, Justice K. Sripavan has judicially pronounced that certain economic decisions will need to be taken at the ground level at the particular time, based on the information available and the reasonable expectation and judgement of the members of the decision-making authority, namely the Monetary Board. The following dicta in *Senasinghe vs Cabraal* is very relevant to explain this principle: *“We must not forget that in complex economic policy matters every decision is necessarily empiric and therefore its validity cannot be tested on any rigid formula or strict consideration. The Court while adjudicating the constitutional validity of the decision of the Governor or Members of the Monetary Board must grant a certain measure of freedom considering the complexity of the economic activities.*

*The Court cannot strike down a decision merely because it feels another policy decision would have been fairer or wiser or more scientific or logical. The Court is not expected to express its opinion as to whether at a particular point of time or in a particular situation any such decision should have been adopted or not. It is best left to the discretion of the authority concerned”.*

([https://www.supremecourt.lk/images/documents/scfr\\_application\\_457\\_2012.pdf](https://www.supremecourt.lk/images/documents/scfr_application_457_2012.pdf))

44. The 7<sup>th</sup> Respondent states that any person could do a post-mortem on any matter with subsequent outcomes and post acquired information, in relation to a prior decision. However, it must be appreciated that the Monetary Board has to take decisions in real time, taking the then existing circumstances, exigencies, priorities and available information into consideration. Also, it must be remembered that many competing issues may need to be considered and suitably balanced from a national point of view as well, without only viewing a particular issue or subject in isolation or from a specific angle or view point. In any event, it is also noted that although the Petitioners have questioned the judgment of the decisions taken by the 7<sup>th</sup> and 9<sup>th</sup> Respondents, not a single instance of *mala fide* or bad faith on the part of the 7<sup>th</sup> Respondent has been levelled by the Petitioners.

***(v) Allowing flexibility of the (Sri Lankan Rupee (LKR)***

45. The 7<sup>th</sup> Respondent states that the Petitioners have alleged that the depreciation of the Sri Lankan Rupee (LKR) was not done in an “orderly” manner. It is of course well known that different stakeholders have different view-points about the value at which the currency should be maintained or traded, or what policy should be followed to determine the value of the currency, or the timing of those decisions, depending on their own preferences and circumstances. However, the Central Bank has to take a holistic view since the value of the currency will have a major impact on the debt stock, the debt repayments, cost of living, inflation, price and economic stability, financial system stability, exports, imports, remittances, forex inflows, forex outflows, etc. The Central Bank also has to be very conscious of the timing of these decisions as well. That is why the several factors that affect those decisions have to be carefully considered and the Monetary Board has to take such decisions after a proper and structured discussion.
46. **In that background, the decision to allow flexibility in the exchange rate was taken by the Monetary Board of the CBSL on 7th March 2022, and that decision was based on a Monetary Board Paper dated 7th March 2022 submitted by all three Deputy Governors (11<sup>th</sup> Respondent, Mahinda**

**Siriwardene, Dammika Nanayakkara & Mrs Yvette Fernando), Director Economic Research Department Dr. Anil Perera and Director International Operations Department Dr. Sumila Wanaguru.** The Board Paper stressed the need for changing the exchange rate policy immediately in order that the exchange rate acts as a “shock absorber” in the face of adverse developments in the global front on Sri Lanka’s already fragile Balance of Payments, including the increase of the crude oil price to nearly USD 140 per barrel and the worsening Russia-Ukraine war.

47. The 7<sup>th</sup> Respondent states that based on that Board Paper and the discussion at the meeting, the Monetary Board accordingly decided to “*allow the market to have a greater flexibility in the exchange rate with immediate effect and communicate that the Central Bank is of the view that forex transactions would take place at levels which are not more than Rs. 230 per US dollar*”. From the above it will be clear that, while the Monetary Board had expressed its “view” as to the level at which forex transactions would take place as a market guidance, a clear decision had been taken to allow for the flexibility of the LKR in the forex market. On the same day, a statement was issued to the media in line with the above decision.

Refer:

[https://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/press/pr/press\\_2022\\_0307\\_policy\\_package\\_to\\_support\\_greater\\_macro-economic\\_stability\\_e.pdf](https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/press/pr/press_2022_0307_policy_package_to_support_greater_macro-economic_stability_e.pdf).

Further, within about a week of floating the LKR, the President Gotabaya Rajapaksa made a formal announcement that the government had initiated discussions with the International Monetary Fund for a programme.

48. The 7<sup>th</sup> Respondent states that at the time of the 7<sup>th</sup> Respondent’s resignation on 4th April 2022, the LKR was trading at Rs. 289.73/299.99 per USD in accordance with the new “flexible” exchange rate policy as announced by the Monetary Board. In fact, prior to the exit of the 7<sup>th</sup> Respondent as Governor, there had been an assurance from the Sri Lanka Bank’s Association that their intention is to maintain the LKR at a range between Rs. 294.00/299.00 per USD, and that arrangement had been somewhat instrumental in restoring stability in the exchange rate at that time. (Documents evidencing the aforesaid are **marked as Annex “7R6” and pleaded as part and parcel of these Limited Statement of Objections**). Even after the 7<sup>th</sup> Respondent’s exit as Governor, the Monetary Board chaired by the new Governor Dr. Weerasinghe (8<sup>th</sup> Respondent) continued with the “flexible” exchange rate policy whilst the Government and CBSL also took a series of far reaching decisions which included the hotly-debated decisions to sharply increase policy interest rates

by 700 bps from 8th April 2022 onwards, and the sudden discontinuation of repayments of forex loans and interest from 12th April 2022 onwards. In the meantime, the LKR continued to depreciate to a range of Rs. 364.23/377.50 against the USD by 12th May 2022, at which point, the Monetary Board under the 8<sup>th</sup> Respondent had apparently once again decided to "fix" the exchange rate at a new range between Rs.355.00/Rs.365.00 per USD, with the move to "fix" the exchange rate being titled "*Middle Rate of USD/LKR Spot Exchange Rate and Variation Margin*" (Documents evidencing the aforesaid are **marked as Annex "7R7" and pleaded as part and parcel of these Limited Statement of Objections**) although it was quite similar to the policy adopted by the Monetary Board chaired by Governor Professor W D Lakshman (6<sup>th</sup> Respondent) which "fixed" the LKR exchange rate at a range of Rs.199.00/203.00 per USD from 6th September 2021 onwards. Thereafter, on 6<sup>th</sup> June 2022, the Central Bank issued a statement explaining the new "exchange rate policy" (Documents evidencing the aforesaid are **marked as Annex "7R8" and pleaded as part and parcel of these Limited Statement of Objections**) which "fixed" the exchange rate under Governor Dr. Nandalal Weerasinghe (8<sup>th</sup> Respondent). Hence, if the Petitioners have any concerns about the conduct of the exchange rate policy under the 7<sup>th</sup> Respondent, they would also need to refer to the policy adopted by the Monetary Board under the 8<sup>th</sup> Respondent which had resulted in the LKR depreciating from Rs. 294.00/299.00 per USD to Rs. 364.23/377.50 per USD, and for the increase in inflation from 18.7% in March 2022 to 54.6% in June 2022 fueled by the currency depreciation and the massive policy interest rate hike of 7% on 8<sup>th</sup> April 2022. The sharp increase in the Government's borrowing costs due to the resulting increase in the Treasury Bills and Bonds yield rates are also matters that have been impacted by the policies followed after 4<sup>th</sup> April 2022, as may be noted from the following table.

<b>Period of T/Bills</b>	<b>1<sup>st</sup> April 2022</b>	<b>8<sup>th</sup> July 2022</b>	<b>Increase</b>
91 – day (%)	12.92	28.08	15.16
182 – day (%)	12.25	28.74	16.49
364 – day (%)	12.28	28.11	15.83

*Source: CBSL Weekly Indicators*

49. The 7<sup>th</sup> Respondent states that it is of course likely that if Sri Lanka pursues an IMF programme the IMF will insist that the "flexible" exchange rate policy must be continued once again. In any event, exports, remittances and other forex earnings have still not picked up sufficiently, even through such an outcome was expected by the authorities when the exchange rate was allowed to float. Hence, even though the IMF will probably insist that the LKR "float" policy be restored, the Sri Lankan

authorities will need to take a carefully considered position in this regard as inflation is presently expected to exceed 70% (as per the 8<sup>th</sup> Respondent), and further depreciation of the LKR could drive inflation to “hyper-inflation” unmanageable levels, with resulting dire consequences.

**(vi) Why was the IMF not accessed earlier?**

50. The 7<sup>th</sup> Respondent states that the Petitioners have also referred to an alleged continued “refusal” to seek the assistance of the IMF and that such action was wrong and misconceived. What the Petitioners have attempted to technically opine is that all economic problems of Sri Lanka would have been solved if the authorities had sought the assistance of the IMF, thereby giving the impression that the only course of action available to Sri Lanka was to have an IMF programme. In that regard, the Petitioners seem to have deliberately withheld a large number of instances and case studies where social tensions of serious proportion had erupted and the political systems had failed in certain countries in the face of IMF programmes. The Petitioners also seem to have conveniently overlooked the fact that there would be tough conditions (prior-actions, tight monetary and fiscal targets, unpopular structural reforms etc) that may need to be agreed to by the Government and CBSL in order to access new IMF funding, and that fulfilling those conditions could sometimes lead to serious social up-heavels as well. Some of disadvantages of an IMF programme which many persons including the Petitioners, often prefer not to discuss, would be:

- *The IMF is likely to require Sri Lanka to raise tax revenue by increasing taxes.*
- *The IMF is likely to require Sri Lanka to cut down expenditure. Given the rigidity of expenditure, there is likely to be an impact on welfare expenditure.*
- *The IMF is likely to require liberalization of pricing of public utilities and petroleum prices.*
- *The IMF is likely to request for adjustments in interest rates and exchange rates, which will amplify Sri Lanka’s debt burden. Sharp and unpredictable adjustments of the exchange rate may hamper investor confidence.*
- *The above adjustments will increase cost of living, at a time when the increase in cost of living is already high.*
- *Debt renegotiations will be a tedious process with at least a 2-3 year adjustment period. External financial sector/legal experts will be required for this process.*
- *During the period of restructuring/reprofiling of debt, Sri Lanka is unlikely to be able to secure foreign financing. This will result in a significant*

*overshooting of the exchange rate, along with further curtailment of spending of imported goods and services during this period.*

- *Sri Lanka may also be requested to restructure/reprofile domestic debt. This will have serious repercussions on mobilizing financing for day-to-day operations of the Government.*
- *Sri Lanka's impeccable track record will be broken, which will tarnish long term credibility of the country.*
- *Ability of the country to carry out home-grown reforms to support non-debt build up of reserves and reduce the current account gap may get hampered.*

From the above, it will be noted that the disadvantages set out above are extremely serious and some of the possible conditions could be almost impossible to implement. That would mean that it may even not be possible to fulfil the likely conditions given the political environment, which would, in turn, mean that the country could be completely starved of finances after an approach to the IMF. The 7<sup>th</sup> Respondent states that a possible new IMF programme, if pursued, will need to be managed and negotiated very skillfully and carefully, both politically and economically. Otherwise, the programme itself could lead to the serious destabilisation of the country and the economy and even widespread social unrest. Several countries have experienced severe challenges in recent times due to the negative fall-out of IMF programmes. These include experiences in Greece, Indonesia, Pakistan, and Argentina. Please also see following Annexes:

**Annex 7R 9 (a)** – IMF bailout – road to stability or recipes for disaster?

**Annex 7R 9 (b)** – Insights into the IMF bailout debate: A review and research agenda;

**Annex 7R 9 (c)** – China “sad” that Sri Lanka went to IMF and defaulted: envoy

**Annex 7R 9 (d)** – How to the IMF bungled the Greek debt crisis

**Annex 7R 9 (e)** – Government's discussions with IMF has affected SL's request for \$ 2.5 billion from China: Chinese Envoy

**Annex 7R 9 (f)** - Sri Lanka and Argentina

(Documents evidencing the aforesaid are **marked as Annexes “7R9(a)”, “7R9(b)”, “7R9(c)”, “7R9(d)”, “7R9(e)” & “7R9(f)”** and pleaded as part and parcel of these Limited Statement of Objections)

51. The 7<sup>th</sup> Respondent states that in any event, since early 2020, the government under President Gotabaya Rajapaksa has implemented a plan consisting of several components for the external sector. These components included:

- (a) securing of multi-lateral and bi-lateral loans;



- (b) monetization of selected assets;
- (c) obtaining Central Bank SWAPs;
- (d) promoting Hambantota Industrial & Pharmaceutical Zones, Colombo Port City and other FDIs; and,
- (e) increasing non-debt inflows, remittances and exports.

That official government stance was well known and pursued quite diligently (although not all components were too successful) until the President announced that he was seeking an IMF programme on 15th March 2022.

52. The 7<sup>th</sup> Respondent states that in the period upto March 2022, the analysis of publicly available data shows that the Government secured forex cash loans of almost USD 1,300 million from the China Development Bank while the Central Bank of Sri Lanka (CBSL) obtained a SWAP facility of USD 1,550 million from the Peoples Bank of China. The CBSL also secured “bridging finance” of over USD 1,500 million from India through the post-ponement of the Asian Clearing Union (ACU) settlements, and a further SWAP facility of USD 400 million from the Reserve Bank of India. In addition, another SWAP facility from the Bangladesh Bank was obtained for USD 200 million. **The cumulative value of all those inflows was around USD 4,950 million.** Incidentally, such sum is well over the USD 3 bn that many have claimed as being the amount that would have been received by the Sri Lankan Government and the CBSL, had the Government embarked on an IMF programme. In fact, it was by using these new funds, and the “brought forward” forex reserves of USD 7.6 bn as at 31st December 2019 of the CBSL, that the three International Sovereign Bonds totaling USD 2,500 million were settled in 2020, 2021 and 2022, together with other maturing debt, while also providing significant liquidity support of nearly USD 2,000 million to the State Banks, and supplying forex for urgent essential imports of around USD 1,800 million for food, fuel, gas, coal, medicines, etc., at the request of the Government.
53. The 7<sup>th</sup> Respondent states that, in addition, the Government finalized a trade credit line of USD 1,000 million for oil imports and USD 1,000 million for other essential imports from the Government of India and access to these facilities had commenced from late March 2022 onwards. Further, based on an appeal from the President of Sri Lanka to the President of the Peoples’ Republic of China in January 2022, China had also indicated that it was ready to provide a liquid finance facility of USD 1,000 million and another facility of USD 1,500 million for import financing. In fact, these facilities were officially referred to by China’s Ambassador in Sri Lanka on

21<sup>st</sup> March 2022 and Sri Lanka's Ambassador in China on 12th April 2022. **On the basis of the above assurances from China and India, further commitments of USD 4,500 million were also assured.**

54. **The 7<sup>th</sup> Respondent states that in the light of the materialized receipts of USD 4,950 million by end March 2022 (as set out elsewhere in this document) and credible commitments of USD 7,150 million, the decision taken by the Government to pursue its stated path could be justified.** In fact, the situation would have been grave from about 2021 onwards, if the aforementioned forex inflows had not been diligently planned and arranged by the authorities and the commitments not obtained, whilst only relying on a possible IMF programme, which could have been delayed or dragged on for whatever reason, even if the IMF had been approached earlier. In all probability, if Sri Lanka had reached out to the IMF, Sri Lanka would not have received the other finances (as seen and experienced today), where financing sources or other countries are not extending funds and merely stating that they are awaiting the “IMF talks outcome” which is very uncertain and unpredictable. In fact, already all possible funding agencies and traditional bi-lateral development partners have announced that they have decided to wait for the IMF programme to be in place, before any bi-lateral funds or “bridging finance” could be committed, and since Sri Lanka as the recipient country is dependent on such bi-lateral funds, the economy is now starved of new funds, and consequently, in serious jeopardy.
55. **The 7<sup>th</sup> Respondent states that in any event, it must be clearly understood that seeking a programme with the IMF is a decision that has to be taken by the President and the Cabinet of Ministers, and not by an official such as the 7<sup>th</sup> Respondent.** If the Cabinet had taken a policy decision one year or even two years ago to approach the IMF and informed the country of the Government's intention to do so, the entire governmental machinery including the CBSL and Ministry of Finance (MOF) would have complied with that decision. In fact, that happened on 15th March 2022, when the President made the official announcement that the Government would seek an IMF programme.
56. The 7<sup>th</sup> Respondent states that it is now 4 months since the Government approached the IMF on 15<sup>th</sup> March 2022, and that since then, most “bridging financing” and other arrangements have not been forthcoming since all such possible lenders are awaiting the outcome of the discussions and negotiations with the IMF. Meanwhile, the country is facing a serious shortage of forex and the present authorities are struggling to even provide for the basic necessities, even after defaulting on the

forex debt. Inflation has risen to over 50%, and is expected to exceed 70% according to the 8<sup>th</sup> Respondent. The cut-off levels of Treasury Bill interest rates have already soared beyond 35% per annum. Rumours abound about certain drastic likely IMF conditions and many persons are highly apprehensive as to what may happen, if those conditions are to be met by the Government and the CBSL. In any case, there appears to be no finality of a Programme, and conflicting statements emanate from various authorities at intervals, eroding what little confidence that is left. If, as the Petitioners claim, the IMF was the panacea for all Sri Lankan economic ills, even after 4 months of approaching the IMF, there does not appear to be any encouraging signs of such a benefit, although many negative outcomes could of course be pointed out. The limited progress seems to also indicate that Sri Lanka is slowly but surely being strangled by outside forces on whom the Government is now compelled to rely upon, and needless to say, over a very short period, the economy is likely to shrink further, and the country will be at risk of plunging towards despair and destruction. It is also now observed that fresh conditions are being proposed by powerful and influential IMF members which may make it even more challenging for Sri Lanka to ever access an IMF Programme and its funds, without first making contentious social and foreign policy changes as well.

***(vii) Settlement of the ISB of USD 500 mn in January 2022***

57. The 7<sup>th</sup> Respondent states that the Petitioners have gone to great lengths to suggest that Sri Lanka should not have serviced its Sovereign debt, including the maturing ISB of USD 500 mn on 18<sup>th</sup> January 2022. In fact, the 1<sup>st</sup> Petitioner had been one such proponent who had actively and publicly canvassed that Sri Lanka should not honour its ISB maturities and other commitments. At the same time, there are many others, including the present Prime Minister and Finance Minister (5<sup>th</sup> Respondent), who have clearly stated that it would be highly counter-productive if Sri Lanka were to default. **In that context, the 7<sup>th</sup> Respondent re-iterates that it was quite possible for Sri Lanka to service its debt even with certain difficulties and that it is only by defaulting its forex debt that the country and economy had been subjected to most grievous prejudice and catastrophe.**
58. The 7<sup>th</sup> Respondent states that the International Sovereign Bond settlement of USD 500 million on 18th January 2022 was a routine and Parliament-approved budgeted debt repayment out of a total of approximately USD 7,100 million forex debt-servicing payments and Rs.3,000 billion local debt-servicing payments that were maturing in the year 2022. According to published information, that amount of USD

500 million accounts for about 7% of the Government's forex debt-servicing and about 2.3% of the total debt-servicing in 2022.

59. The 7<sup>th</sup> Respondent states that as per Section 113 of the Monetary Law Act, the Central Bank of Sri Lanka *via* its Public Debt Department (PDD) manages the public debt as the Agent of the Government. It is therefore the primary responsibility of the Government, and not the CBSL to borrow and to repay the Government Debt. As the Agent, the Central Bank has to act on the direction and instructions of the Government in relation to public debt management and cannot unilaterally decide to pay or not to pay any debt of the Government. Further, it is the Government that makes funds available for local and foreign debt-servicing from the funds which have been specifically appropriated by Parliament for that purpose.
60. **The 7<sup>th</sup> Respondent states that, if therefore, for any reason, the Government were to decide to default on its debt repayments, that would have to be a decision of the Government.** If the Government so decides, the Government, through the Ministry of Finance (MOF) must instruct the Central Bank not to re-pay any or all of the Government's debts. Further, if such a far-reaching and vital decision were to be taken, it will obviously have to be the Government that would have to take the responsibility for the repercussions that would follow such a default as well. **The above position is clearly confirmed by the fact that it was the MOF that announced the new “Interim External Public Debt Servicing Policy” on 12th April 2022.** Through the enunciation of that new policy, all forex debt repayments due to be settled by the Government upto that day, were to be stopped immediately, and restructured eventually. That announcement, inter alia, stated: *“It shall therefore be the policy of the Sri Lankan Government to suspend normal debt servicing of All Affected debts (as defined below), for an interim period pending an orderly and consensual restructuring of those obligations in a manner consistent with an economic adjustment program supported by the IMF. The policy of the Government as discussed in this memorandum shall apply to amounts of Affected Debts outstanding on April 12, 2022. New credit facilities, and any amounts disbursed under existing credit facilities, after that date are not subject to this policy and shall be serviced normally”*. The entire MOF statement is reported by Daily FT at : <https://www.ft.lk/top-story/Sri-Lanka-declares-bankruptcy/26-733409>
61. **The 7<sup>th</sup> Respondent states that it should therefore be clear that until the above decision to default with effect from 12th April 2022 was taken by the Government, it was the bounden duty and solemn responsibility of the**

**Borrower (i.e, the Government) and its Agent (i.e, the Central Bank) to take all steps to honour the repayments of all Government debts falling due upto that date.** In addition, Finance Minister Basil Rajapaksa (3<sup>rd</sup> Respondent) had also specifically given a re-assurance in Parliament about the repayment of the ISBs when winding up the Budget debate on 10th December 2021 (as reported in the Hansard page 2830) a translation of which is as follows: *“Frankly, we are facing a massive economic crisis. We are facing a foreign reserves crisis as well. However, as the Finance Minister, with the permission of the President and the Prime Minister, I must very solemnly confirm in this august assembly that we would pay every dollar that is due to be paid next year. I give that assurance with responsibility. First, we have to pay 500 million dollars in January. Next, we have to pay 1000 million dollars in July. In between, we have to pay other interest and capital repayments in our debt servicing. I hereby confirm to this august assembly that we will pay all that. We have a plan to do that. We will implement that plan”.*

62. The 7<sup>th</sup> Respondent states that it must be appreciated that defaulting sovereign debt is a very complicated matter with grave consequences. It must also be understood that settling or not settling the country’s sovereign debt or a specific part of it, is not a matter where a single individual or even the Monetary Board (9<sup>th</sup> Respondent) can unilaterally decide. Nevertheless, there have been claims by various persons including the Petitioners and even some Members of Parliament, that the settlement of the maturing ISB of USD 500 million on 18th January 2022 was done at the behest of, and/or the sole discretion of the 7<sup>th</sup> Respondent as the then CBSL Governor in order to enable certain unspecified investors to make undue profits, ignoring the advice of various so called “experts”. Ironically, when it was initially believed that the Sri Lankan Government may default on the January 2022 ISB, most of those same so-called experts had warned about the grave consequences and grievous prejudice of a possible default and urged the Government not to default, but to source the funds through any means to avoid such a default. However, when it was subsequently known that the Government had secured the funds to settle the ISB, the same persons robustly and publicly advised sovereign default, and inexplicably found fault with the then Governor (7<sup>th</sup> Respondent) when their new amended “advice” to default was not heeded. In that context, the *bona fides* of some of those persons would need to be questioned.
63. **The 7<sup>th</sup> Respondent states that in any event, at the time in question (January 2022), the official Government policy was to pay its sovereign debt, which policy, the MOF and the CBSL (as Agent) had followed faithfully and**

**diligently, since independence.** Needless to say, such deep-rooted policy could not, and should not have been unilaterally or legally abrogated by the then Governor (7<sup>th</sup> Respondent) and the Monetary Board (9<sup>th</sup> Respondent) on 18th January 2022, as lobbied and advised by certain persons and politicians. In fact, during the month of March 2022 alone, the government honoured and/or rolled-over sovereign Forex debt payments as stated elsewhere in this “Limited Statement of Objections”. In that context, it must also be noted that the repayment exercise is mainly dependent on the cash/funds inflows and outflows, and not only dependent upon the quantum of the available reserves. If the only criteria for debt repayment was the availability of liquid funds in possession, it would have not been possible to manage the debt repayment programmes of the government over the past many years. The simple example of this phenomenon is the settlement of Treasury Bills and Bonds of the Government where each week about Rs.100 bn matures and is rolled-over without the Treasury having to advance any new funds from its own coffers towards its settlement. Therefore, it is vital that the authorities ensure public confidence in the financial system and carefully arrange the cash flows in anticipation of the payments due, and thereby skillfully manage the inflows and outflows of funds efficiently, particularly in times of financial stresses. That was what was done over the past several months and years under previous Governors, Treasury Secretaries and Finance Ministers until early April 2022, and that was what was needed to be done thereafter as well, without jeopardizing the entire nation’s future by defaulting on the loan repayments and interest payments to international creditors. In fact, it is reported that the Forex debt servicing was only about USD 244 million in April 2022, while the Forex debt servicing for May/June 2022 was only another USD 789 million, adding to a total of USD 1,033 million. The repayment and roll-over of these amounts were therefore comfortably manageable with the likely inflows into the Central Bank reserves from the 25% export conversions, other planned inflows that were expected to materialize in the next few months, together with the successful roll-over of maturing SLDBs and FCBU loans.

***(viii) Priority is to meet the overall objectives of the Central Banks***

64. The 7<sup>th</sup> Respondent states that the Petitioners have, at various points of their Petition, referred to comments or statements of certain persons who are claimed to be experts in order to suggest various responsibilities and specific duties relating to the 9<sup>th</sup> Respondent’s functions, duties and responsibilities. In this regard, the 7<sup>th</sup> Respondent states that the 9<sup>th</sup> Respondent’s functions, responsibilities and objectives are set out clearly in **Section 5 of the Monetary Law Act** which reads as follows:

**Section 5:** *An institution, which shall be called and known as the Central Bank of Sri Lanka (hereinafter referred to as "the Central Bank") is hereby established as the authority responsible for the administration, supervision and regulation of the monetary, financial and payments system of Sri Lanka, and without prejudice to the other provisions of this Act, the Central Bank is hereby charged with the duty of securing, so far as possible by action authorised by this Act, the following objectives, namely -*

**(a) economic and price stability; and**

**(b) financial system stability,**

*with a view to encouraging and promoting the development of the productive resources of Sri Lanka.*

65. The 7<sup>th</sup> Respondent asserts that during the period he held office as the Governor of the 9<sup>th</sup> Respondent organization, he had made every effort to enable the 9<sup>th</sup> Respondent to deliver the above objectives in a holistic, practical and legal manner and that he had also been assured by the relevant officials of the Central Bank that the 9<sup>th</sup> Respondent had taken all steps to achieve its objectives to the maximum extent possible, in a holistic manner in the very difficult and challenging circumstances. At the same time, all statutory obligations to keep the government hierarchy notified of the economic situation was duly observed, and all such communications as required by the Law were made in a formal and official manner as well. At the same time, it must also be stated that many differing strategies had been implemented from time to time based on the need and availability of resources, and the desired overall outcomes. At certain times, such strategies may have even appeared to be in conflict with certain pre-determined values, notions or concepts of various analysts or outside "experts" who sometimes may not have sufficiently appreciated the stresses experienced by the economy as the result of the massive global and local economic crises.
66. The 7<sup>th</sup> Respondent states that throughout these Limited objections statement, the 7<sup>th</sup> Respondent has clearly explained that the Petitioners' Fundamental Rights had not, in any way, been violated by the execution of the functions under the purview of the 7<sup>th</sup> Respondent, as claimed by the Petitioners.
67. Based on the above facts, the 7<sup>th</sup> Respondent is advised to state that the Petition of the Petitioners cannot be maintained, and that the Petitioners are not entitled to the reliefs prayed for, and that the Petitioners' Petition shall be dismissed *in limine*.

**WHEREFORE** the 7<sup>th</sup> Respondent pray that Your Lordships' Court be pleased to -

- (a) reject and dismiss the Petition of the Petitioners *in limine*;
- (c) grant costs; and
- (d) grant such further and other relief in the premises as to Your Lordships' Court shall seem meet.

Colombo, 15<sup>th</sup> July 2022

**REGISTERED ATTORNEYS OF  
THE 7<sup>TH</sup> RESPONDENT**

Settled by:

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