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

*In the matter of the ordinary exercise of jurisdiction of the Supreme Court under Article 121 of the constitution of the Democratic Socialist Republic of Sri Lanka read with Rule 63 of the Supreme Court Rules of 1978 against the Bill titled **"CENTRAL BANK OF SRI LANKA ACT"***

Jehan Hameed,
No. 01, Manthri Road, Colombo 05

Petitioner

Vs

SC No. SD

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

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

On this 13th day of March 2023

The Petition of the Petitioner above named appearing by Attorney at law, states as follows;

1 The Petitioner is a Citizen of Sri Lanka and an entrepreneur who is actively engaged in activities which are impacted by and continuously encountered with the decisions taken by the Government relating to the economic and monetary policy of Sri Lanka.

2. The Petitioner states that she has a duty in terms of Article 28 of the Constitution, as a person living in Sri Lanka, inter-alia to-

   a. Uphold and defend the Constitution and Law;

   b. Further the National interest,

c. The rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and Co-coordinating such public and private economic activity towards social objectives and public wealth.

3. The Petitioner is making this Application to the Supreme Court as a citizen having sufficient and reasonable public interest with regard to the matters involving illegalities and the inconsistencies stated hereinafter.

4. The Honorable Attorney General is made the 1st Respondent to this application in terms of Article 134(1) of the Constitution.

5. The Petitioner states that a bill titled **"CENTRAL BANK OF SRI LANKA ACT"** (hereinafter sometimes referred to as "the Bill") was presented to the Parliament and placed on Order Paper of the Parliament on 7th March 2023 and having granted leave the first reading hereof was concluded. (True copies of the Sinhala and English Texts of the said Bill and the order paper are annexed hereto marked **X1, X2 and X3** respectively and pleaded as part and parcel of the Petition).

6. The Petitioner states that the long title of the proposed bill states as "AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE CENTRAL BANK OF SRI LANKA; FOR THE REPEAL OF THE MONETARY LAW ACT (CHAPTER 422); AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO".

7. The primary objective of the Bill is to establish an institution which is called and known as the Central Bank of Sri Lanka as an incorporated body as an authority responsible for the administration, supervision and regulation of the monetary, financial and payments system of Sri Lanka.

8. A salient feature of the bill is to empower the Central Bank for the first time in Sri Lanka with administrative and financial autonomy which should be respected at all times and no person or entity shall cause any influence on the Governor of the Central Bank or other members of the Governing Board and Monetary policy Board or employees of the Central Bank in the exercise and performance and discharge of their powers, duties and functions under the act or interfere with the activities of the Central Bank.

9. While appreciating the achievement and maintenance of domestic price stability, secure the financial system stability as its main objectives, the Central Bank may support the general economic policy framework of the Government,

10. Further the Central bank shall be entrusted with sole and discretionary powers to determine and implement monetary policy and exchange rate policy in Sri

Lanka and two authoritative bodies, namely Governing Board of the Central Bank and the Monetary Policy of Sri Lanka.

11. The Monetary Policy Board shall be charged with the formulation of the monetary policy of the Central the Central Bank and implementation of a flexible exchange rate regime in line with the flexible inflation targeting framework in order to achieve and maintain domestic price stability; Clause 11. The Bill also empowers the Central Bank to deal with international sovereign bonds without the sanction of the Parliament.

12. However, in creating the Central Bank as an autonomous body with wide discretionary powers to determine and implement monetary policy with secondary duty to support the Government economic policy, the provisions of the new law would remove the power of Parliament to have full control over public finance as provided by Article 148 of the Constitution. Further the provisions of the new bill would deprive the Parliament of its authority to determine and manage the Consolidated Fund as provided by Articles 149 and 150 of the Constitution.

13. Hence, the clauses of the Bill violates and deprives the people of their inalienable sovereignty, which includes economic sovereignty of the people as enshrined by Articles 3 and 4 of the constitution.

14. Accordingly, following clauses (inter-alia) of the Bill, namely;-

    a. Clause 5 which creates the Central Bank as an autonomous body;
    b. Clause 6 which regulates the objects of the Central Bank;
    c. Clause 7 which entrust the central Bank with powers to determine monetary and exchange policy, management of official international reserves and issue and manage currency of Sri Lanka with independence to corporate with public international organizations without the sanction of the Parliament (which includes Asian Development Bank and International Monetary Fund; Clause 123);
    d. Clauses 11 read with 12 and 13 which creates the Monetary Policy Board with powers to formulate monetary policy and implementation of exchange rate regime at its sole discretion;
    e. Clause 17(3) which vests with the discretion to the Governing Board to release Deputy Governors to serve in an office or position of public international financial institutions or non-financial institutions;
    f. Clause 24(2) which provides for the releasing of officers of the Central Bank to serve in public international financial institutions and other entities;
    g. Clause 26 (including 26(5)) which requires the Central Bank to sign a monetary policy framework agreement with the Minister with regard to setting out the inflation target to be achieved by the Central Bank;

h. Clause 29(3)(b) which authorizes the Central Bank to open and maintain cash, precious metals and securities accounts on the books of foreign banks and international organizations including public international financial institutions (without the sanction of the Minister or the Parliament);
i. Clause 39 which provides for Loans to and from foreign institutions and to act as an agent or correspondent of foreign entities at its discretion;
j. Clause 43 which entrusted with the Central Bank to decide and abolish the use of "cent" in transactions and Clause 47 (read with Clause 123) which vests with powers to authorize to use currencies other than Sri Lankan Rupees in executing transactions between residents in Sri Lanka;
k. Clause 61 which provides for Supervisory authority of the Central Bank;
l. Clause 80 which assures the unaccountability of the Central Bank to the Parliament;
m. Clause 81 read with Clause 84(3), which position the Central Bank (which can invite advice from foreign elements) as the financial advisor to the Government;
n. Clause 85 which empowers wide discretionary powers to act in cooperation with foreign regulatory, supervisory or monetary authorities or public international financial institutions ;
o. Clause 86 which imposes prohibitions on monetary financing;
p. Clauses 98 and 99 which directly and impliedly grants legal section to Annual financial statements, depriving the Parliament of powers to decide with regard to the policies and principles embodies therein;
q. Clause 104 (read with clause 6) which limits the accountability of the Central Bank to the Parliament with discretion to decide in offering its support the economic policy of the Government;

Are inconsistent with Articles 3, 4, 12(1), 27, 28, 43, 44, 75,148, 149, 150, 151, and 154 of the Constitution. However rights are hereby reserved to make submissions contesting the constitutionality of any other clause of the Bill with any other Articles of the Constitution.

15. In the aforesaid circumstances, the entire Bill and/or any one or more of the Clauses and/or Sections thereof cannot become law unless passed by two-thirds of the whole number of the Members of Parliament and approved by the People at a referendum.

16. The Petitioner states that he has not invoked the jurisdiction of Your Lordships' Court previously in respect of matters stated herein.

17. The Petitioner states that a copy of this Petition and documents has been delivered to the Honourable Speaker and the Attorney General in terms of the Constitution and proof of such service are attached marked as **X4 and X5** respectively and pleaded as part and parcel of the Petition.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to;

(a) Hear the Petitioner;

(b) Declare and Determine that Clauses 5, 6, 7, 11, 12, 13, 17(3) 24(2), 26, 26(5), 29(3)(b),39,43,61,80,81,8586,98,99,104 of the said Bill titled **CENTRAL BANK OF SRI LANKA ACT** are in violation of and inconsistent with Articles 3, 4, 12(1), 27, 28, 43, 44, 75,148, 149, 150, 151, and 154 of the Constitution;

(c) Declare and Determine that the Bill titled **CENTRAL BANK OF SRI LANKA ACT** require to be passed by not less than two-thirds of the whole number of members of Parliament and approved by the people at a Referendum by virtue of provisions of Article 83 in order to become law;

(d) Grant costs, and

(e) Such other and further reliefs as Your Lordships' Court shall seem to meet.

Attorney at Law for the Petitioner