

2020 නොවැම්බර් 24
2020 நவம்பர் 24
24 November 2020



වාර්තාවේ අංකය : එස්පීආපී/2020/18
அறிக்கை இல. : எஸ்பீஆர்/2020/18
Report No : SPR/2020/18

මධකලපු පෞද්ගලික විශ්වවිද්‍යාල විද්‍යායතනය ස්ථාපිත කිරීමේ හා පවත්වාගෙන යාමේ ක්‍රියාවලිය පිළිබඳ විශේෂ විගණන වාර්තාව
மட்டக்களப்பு தனியார் பல்கலைக்கழக கல்லூரியை ஸ்தாபித்தல் மற்றும் செயற்படுத்தல் நடைமுறை தொடர்பான விசேட கணக்காய்வு அறிக்கை
Special Audit Report on the Process of Establishment and Maintenance of Private University College of Batticaloa

SPR/2020/18

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தேசிய கணக்காய்வு அலுவலகம்
NATIONAL AUDIT OFFICE

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පවත්වාගෙන යාමේ ක්‍රියාවලිය පිළිබඳ විශේෂ විගණන වාර්තාව

**Special Audit Report on the Process of Establishment and
Maintenance of Private University College of Batticaloa**

මட்டக்கලාපු තනියාර් පලකලෙකකුක කලුරාරියෙ සුතාපිතුතල
මරුරුම සෙයර්පුතුතල නදෙමුරෙ තුදාර්පාන වලසෙද
කණකකායුවු අරලකක

පටුන

අනු අංකය	විස්තරය	පිටු අංකය
01	විධායක සාරාංශය-----	1-2
02	වාර්තාවේ පසුබිම හා ස්වභාවය -----	2-3
03	වාර්තාව පිළියෙල කිරීම සඳහා අනුගමනය කරන ලද ක්‍රමවේදයන් -----	3
04	විගණන විෂය පථය -----	3
05	විෂය පථයේ සීමාවන් -----	4
06	ආයතන අන්‍යතාවය හඳුනාගැනීම -----	4
07	ක්‍රියාවලිය -----	4 - 19
08	විගණන නිරීක්ෂණ -----	20 - 40
09	නිර්දේශ -----	40 - 43
10	දෙමළ පරිවර්ථනය -----	45-94
11	ඉංග්‍රීසි පරිවර්ථනය -----	95-139
13	ඇමුණුම් -----	141-544
14	උපලේඛණ -----	545-559

Special Audit Report on the Process of Establishment and Maintenance of Private University College of Batticaloa

1. Executive Summary

In order to assist the investigations being conducted by the Committee on Public Enterprises on the establishment of University College of Batticaloa (Batticaloa Campus Private Ltd.) that had become a common dialogue prevailed at national level in Sri Lanka, a request had been made to conduct a special audit in respect of this matter. Accordingly, audit examinations were carried out over several institutional aspects. Despite the revelation of the Ministry of Vocational Training and the Vocational Education Commission that this institution had not fulfilled fundamental requirements essential to maintain a higher education institution within the legal frameworks, a Memorandum of Understanding had been reached between the Ministry of Youth Affairs and the Private University College in a manner attributing a pseudo-legality to the University College of Batticaloa. This College had been established within a premises belonging to the Mahaweli Authority and no attention had been drawn on the requirements to be complied with in granting a Government owned land for the personal usage. Further, due to absence of a proper regulation, an evaluation on the environmental impact too had not been carried out. Even though the extent of land that had been legally leased out was 35 acres, it was revealed that the College had taken steps to unlawfully occupy that premises up to 55 acres. The Board of Investments of Sri Lanka had registered the above Private University College as a Board of Investment's project and granted import duty concession of Rs.71 million without being complied with the condition that the Board of Investment of Sri Lanka does not facilitate the projects initiated as an extension of a prevailing project. Without being adhered to the guidelines and laws and rules of the Central Bank of Sri Lanka, the Bank of Ceylon had recklessly taken action to release the foreign remittance receipts of about Rs.3,671 million.

The matters such as methodology and the legality relating to leasing out of Government lands for this project, the manner in which the relevant local government authority had granted approval for carrying out constructions, relevant environmental approvals, procedure and the legality regarding granting approval to maintain business activities within Sri Lanka as a higher education institution, methodology and the legality relating to registering the same as a project approved by the Board of Investments of Sri Lanka with the intention of receiving tax concessions, whether the relevant authorizing institutions had exercised an adequate supervision on the Foreign Inward Remittance and whether negative social impacts had resulted from this private institution, and the other similar matters were examined.

In an instance where a proper approval had not been obtained for the Government lands, the Board of Investments had granted approval for this project and the Central Bank of Sri Lanka and the Bank of Ceylon had not exercised due care on these massive scale Foreign Inward Remittance. Further, it was observed that the Government institutions which had granted approval in the establishment of this Private University College and regulated that process had acted with an exceptional tendency towards this institution that was not extended to the other institutions of similar standards.

The presentation of recommendations on the institutional functions to be discharged in accordance with the disciplinary laws and rules and general laws and rules with respect to the matters such as deviating from the legality by each institutional framework in the involvement of activities connected to the above matter, taking steps without transparency and responsibility has been included in this report.

2. Background and the Nature of the Report

I was requested to conduct an examination and submit a report in order to assist the investigations being conducted by the Committee on Public Enterprises with regard to the establishment of Batticaloa Campus Private Ltd. that had become a dialogue prevailed at national level in Sri Lanka.

Accordingly, it was observed as per the examination conducted thereon that an institution named Hira Foundation had signed a Memorandum of Understanding with the Ministry of Vocational Training with the objective of establishing a higher education institution and there were some problematic positions regarding the legality of relevant Memorandum of Understanding. Further, the institution, the name of which was appeared in the Memorandum of Understanding, had obtained registration from the Tertiary and Vocational Training Commission without preparing fundamental values required for the establishment of a higher education institution and awarded NVQ certificates in the year 2015. Subsequently, having obtained a land from the Mahaweli Authority on long term lease basis, this project had been implemented therein as a project facilitated by the Board of Investments of Sri Lanka whilst obtaining Foreign Inward Remittance with higher value through a bank account opened in the Bank of Ceylon in favour of Batticaloa Campus Private Ltd. Further, it was observed that in providing facilities for the above project, the Mahaweli Authority and the Board of Investments of Sri Lanka had not adopted proper methodologies and the Bank of Ceylon (the relevant banker) had not taken steps to act in accordance with the foreign exchange laws and rules in connection with the Foreign Inward Remittance. Accordingly, this report was compiled incorporating particulars identified in the examination of the operations of the above institutions which made contributions and recommendations in the implementation of the project.

3. Methodologies Adopted for the Preparation of this Report

- 3.1 Perusal of documents.
 - 3.1.1 Reference of relevant Acts, Ordinance and Government Gazettes.
 - 3.1.2 Examination of institutional rules and procedures.
 - 3.1.3 Examination of Memorandum of Understanding entered into between the Project Company and Public institutions.
 - 3.1.4 Examination of files maintained by related Public institutions in respect of the above subject.

- 3.1.5 Examination of approval granted by the relevant institutions in respect of the land in which the project had been implemented and the constructions within the project.
- 3.2 Other methodologies.
 - 3.2.1 Physical inspection of the relevant institution situated in Batticaloa.
 - 3.2.2 Conducting discussions with the officers of the project company and the related institution and recording statements.

4. Audit Scope

The areas such as the process of long term leasing of a Mahaweli land, the method of granting approval for a project by the Board of Investment, evaluation criteria applied for granting approval for the award of degrees to a private company, procedures adopted by the Ministry of Vocational Training and Tertiary and Vocational Training Commission in the registration of institutions for the NVQ courses, clearance to be obtained from the relevant Local Government Institutions in respect of these types of projects and the examination of manner in which a banker should act in connection with the Inward Remittance were recognized as the scope of audit.

5. Limitation of Scope

- 5.1 Since the institutions subject to the examination being a private company, there are limitations for the Auditor General to examine its books and registers and physically accesses to the premises.
- 5.2 There are impediments regarding legal provisions and the accessibility for the conduct of comprehensive examinations under the Money Laundering Act.

6. Identification of Institutional Structure

The relevant University had been introduced in different names in various instances from the year 2013 to 2019. Therefore, the terms University College of Batticaloa, Batticaloa

Campus Private Ltd., Batticaloa Campus Private College or University indicated in this reports represent one and the same institution.

7. Process

7.1 Obtaining Approval for Vocational Education to the Batticaloa University College (Private) Limited from the Ministry of Vocational Training and the Vocational Education Commission

Background

- 7.1.1 In response to the application forwarded to the Vocational Education Commission by the Hira Foundation seeking registration for a vocational training institution named Hira Vocational Education Institute, the Director General of the Vocational Education Commission had addressed a letter No.TVEC/4/5/3 dated 21 March 2013 to the Secretary of the Hera Foundation apprising that the Hira Vocational Education Institute had not satisfied the required qualification to be registered with the Commission (Annexure 01). Nevertheless, the above application was not included in the file bearing No. TVEC/4/5/3 and only an application forwarded to the Commission by then Deputy Minister A.M.L.M. Hezbollah on 20 May 2013 for the registration of a vocational training centre in the name of the University College of Batticaloa (Batticaloa Campus College) had been included in the relevant file. (Annexure 02)
- 7.1.2 By the Letter No.TVEC / 4/5/3 of the Vocational Education Commission, the Hira Foundation had been informed that it had not mentioned the course content and had instructed to submit the details of the courses before the prior-registration. Subsequently, then Deputy Minister of Economic Development,A.M.L.M. Hezbollah had addressed a letter dated 13 April 2013 to then Minister of Youth Affairs and Skills Development requesting that he was the Chairman of the Hira Foundation and he was expecting to establish a vocational education institute to provide vocational education by the Hira Foundation and therefore, approval be granted for that purpose and it was observed that the approval had been granted by the Minister of Youth Affairs and Skills Development on 02 May 2013 by making a brief note in that letter. (Annexure 03)

7.1.3 In response to the request made by then Deputy Minister Economic Development, A.M.L.M. Hezbollah, the Ministry of Youth Affairs had entered into a Memorandum of Understanding to be effective for a period of 03 years from 15 August 2013 to 15 August 2016 while granting approval for the Hira Foundation to establish a vocational education institute. Mr. A.M.L.M. Hezbollah, the Chairman of the Hira Foundation, then Minister of Youth Affairs and Skills Development, Vice Chancellor of the Technology University and the Director of the University College of Batticaloa had placed their signs unto this Memorandum of Understanding on 11 June 2013. (Annexure 04)

7.1.4 Responsibilities and general responsibilities to be fulfilled by each party of the Memorandum of Understanding were as follows.

Responsibilities of the Ministry of Vocational Training and Skills Development as the first party

- Appointment of two representatives for the Governing Body of the University College of Batticaloa.
- Providing necessary resources, standards, circulars, instructions for trainings.
- Accreditation of courses and award of quality assurance certificates through the Vocational Education Commission and Vocational Technology University.
- Designing degree courses for the diploma holders of the Batticaloa Campus through the Vocational Technology University.

Responsibility of the Hira Foundation as the second party

- Establishment of the University College of Batticaloa as a Government and private participatory business.
- Appointment of two representatives for the Council of the University College of Batticaloa.

- Provision of other infrastructure facilities including machinery, equipment and buildings.
- Conduct of vocational training courses approved by the Ministry of Vocational Training and University College of Batticaloa.
- Assisting the supervision mechanism launched by the Vocational Technology University and Vocational Education Commission.

General Responsibilities

- Entering into an agreement between the University College of Batticaloa and the Vocational Technology University relating to the conduct of degree courses.
- All the courses should be opened for the youths living in any part of the island.
- Conduct of examinations, preparation of guidelines for the examinations and evaluation should be carried out with the concurrence of Vocational Technology University and the Batticaloa Campus.

7.1.5 Subsequent to entering into the Memorandum of Understanding, the Secretary to the Ministry of Youth Affairs had appointed a committee of three persons on 18 June 2013 to examine whether there were necessary capacities with the University College of Batticaloa proposed to be established by the Hira Foundation to conduct courses for awarding National Vocational Qualification (NVQ) certificates. (Annexure 05)

7.1.6 The report of the committee of three persons which had been submitted to the Secretary to the Ministry of Youth Affairs on 24 June 2013 had pointed out the problematic conditions prevailed in terms of the land area proposed to be used for the building and the total extent of lands of the proposed vocational training institution, financial stability of the institution and the proposal made to provide vocational trainings only for the male students. (Annexure 06)

- 7.1.7 Mr. A.M.L.M. Hezbollah, the Chairman of the Hira Foundation had, by his letter dated 02 July 2013, informed the Secretary to the Ministry of Youth Affairs that any citizen in Sri Lanka would be enrolled to acquire vocational education in this institute by correcting only the problematic condition prevailed regarding the enrollment of male students. (Annexure 07)
- 7.1.8 In response to the request made by the Chairman of the Hira Foundation on 01 April 2013 (Annexure 08), the approval of the Secretary to the Ministry of Youth Affairs had been granted on 05 August 2013 for the enrollment of students by publishing advertisements on the Daily News newspaper in September 2016 (Annexure 09).
- 7.1.9 Even though Mr. A.M.L.M. Hezbollah, the Chairman of the Hira Foundation had made a request on 01 August 2013 seeking approval to recover Rs.216,000 as course fee for NVQ Courses, the Secretary to the Ministry of Youth Affairs had turned down the above request and informed to adhere to the Memorandum of Understanding and to amend the Memorandum of Understanding if it is necessary to recover the fees. Accordingly, it was observed that Mr. A.M.L.M. Hezbollah had made a request on 29 October 2013 to the Secretary to the Ministry of Youth Affairs to amend the MOU in a manner able to recover the charges. Nevertheless, the Secretary had not responded to that request. (Annexure 10)
- 7.1.10 Section 3 (v) of the Memorandum of Understanding had been amended on 13 May 2014 to be effective from 10 February 2014 enabling the University College of Batticaloa to conduct courses recovering charges and the Ministry of Vocational Training to award full scholarship for 5 per cent of the total student enrolment. (Annexure 11)
- 7.1.11 The Honorable Minister of Youth Affairs, Mr. Dullas Alahapperuma had officially declared opened the University College of Batticaloa on 13 May 2014. (Annexure 12)
- 7.1.12 The Vice Chancellor of the Eastern University had informed the then Minister of Vocational Training on 15 June 2014 that a name board titled University College of Batticaloa had been fixed in a building at Punani town on Habarana-Batticaloa main road and the Eastern University was functioning under the above name from the year 1981 to 1988 and accordingly, it may make a legal impression on the relationship with the

Eastern University by functioning another institution under the name which was previously used to call the Eastern University and therefore, necessary action be taken on that matter. (Annexure 13)

7.2 Release of lands to the Batticaloa Campus Private Ltd. (Hira Foundation) by the Sri Lanka Mahaweli Authority

Background

- 7.2.1 Mr. A.M.L.M. Hezbollah had forwarded a letter to the Sri Lanka Mahaweli Authority on 02 May 2013 using official frank of his Portfolio of Deputy Minister of Economic Development requesting 35 acres of Mahaweli lands for the establishment of a vocational training institution to conduct Engineering Courses. (Annexure-14)
- 7.2.2 The land containing 35 acres in extent belonging to the Mahaweli Authority situated at Jayanthiyaya, Walachchena in Batticaloa and depicted as Lot Nos. 800, 804,808 and 812 in the Cadastral Map No.270016 of the Sir Lanka Survey Department had been leased to the Hira Foundation on 19 August 2013 by the Manager of Aselapura Division in Mahaweli Zone B through the annual permits. (Annexure 15)
- 7.2.3 In response to the request made by the Deputy Residential Manager (Land) , Welikanda in Mahaweli B Zone by the letter dated 03 October 2016 (Annexure 16) to replace the term “paddy land” referred to in the column relating to the land usage in the supplementary document applicable to the above 04 plots of land granted on annual lease basis with the term “others” and prepare an amended supplementary document while amending it as “Grant of long term lease to the Hira Foundation ”, the Senior Superintendent of Survey- Batticaloa had amended the supplementary document on 25 November 2016. (Annexure 17)
- 7.2.4 In response to the request made by the Chairman of the Hira Foundation on 17 October 2016 to change the grant of above blocks of lands to the “Hira Foundation” on annual lease basis by the Mahaweli Authority in the name of “Batticaloa Campus Private Ltd.” incorporated by the Hira Foundation (Annexure 18), the Director of the Mahaweli

Authority had informed through the letter dated 09 November 2016 (Annexure 19) that the Director Board of the Mahaweli Authority had granted the relevant approval.

- 7.2.5 The request made on 29 September 2017 under the signature of the Director General (Land) of Mahaweli Authority and upon the recommendations of the Director General of Mahaweli Authority to grant the aforementioned 04 plots of land containing 35 acres in extent to the Batticaloa Campus Private Ltd. on long term basis, had been recommended by the Secretary to the Ministry of Mahaweli Development and Environment on 08 December 2017 and the approval of the President had been granted therefor as the Minister in charge of the subject. (Annexure 20)
- 7.2.6 The aforesaid 4 plots of land that had been granted to the Hira Foundation on annual permits basis from the year 2013 to December 2017 had been leased to the Batticaloa Campus Private Ltd. on 01 February 2018 on long term deed of lease so as to be effective for a period of 30 years from 12 July 2013.(Annexure 21)
- 7.2.7 Through a letter dated 15 March 2017 (Annexure 22), the Chairman of the Hira Foundation had made an application to the Mahaweli Authority to obtain another extent of land containing 45 acres adjoining the 35 acres of land obtained on long term lease basis in order to construct buildings to provide the hostel facilities for the students of the proposed university.
- 7.2.8 Having forwarded the above application to the Board of Directors' meeting of the Mahaweli Authority held on 25 April 2017, approval had been obtained (Annexure 23) and with the above approval, the Director General of Mahaweli Authority had referred a letter dated 18 April 2017 to the Minister in Charge of the subject of Mahaweli (Annexure 24) and obtained his approval therefor.

7.3 The University College of Batticaloa entering into an agreement as a project of the BOISL

Background

7.3.1 Mr. A.M.L.M. Hezbollah , the Chairman of the Hira Foundation had forwarded an application on 12 June 2015 to open a higher education institution in Batticaloa area as a new Board of Investments project. (Annexure 25)

According to the covering letter and the financial plan (Annexure 26) forwarded together with the above application, it had been stated that a land in extent of 50 acres had been obtained on lease basis for that purpose and foreign investments of US\$ 40.2 million and local investments of Rs.5.55 million were expected to be made for the relevant project.

7.3.2 The Assistant Director(Investments Evaluation) of the Board of Investments had submitted an internal Memo including the following recommendations on the above application to its Executive Director (Investments Evaluation and Promotion) on 23 June 2015. (Annexure-27)

- (i) The proposed land for the project should be obtained on lease at least for a period of 30 years.
- (ii) If there are means foreign investments, those should be disclosed with financial plans.
- (iii) The project should be a new project and it should be completed within 03 years.
- (iv) Details relating to the courses of Tourism and Health Education from among the proposed courses should be submitted.
- (v) Investment Plans and detailed construction plans should be presented with the phases.
- (vi) In you agree with the above amendments, an amended application can be obtained from the investor.

- 7.3.3 Mr. A.M.L.M. Hezbollah, as the Chairman of the Batticaloa Campus College (Private) Ltd. had forwarded another application to the Board of Investments on 17 July 2015 to establish a higher education institute in Batticaloa area as a BOI project (Annexure 28). According to the above application it had been stated that 95 per cent of the share capital of the company was owned by the Hira Foundation while remaining 05 per cent was owned by the individual named HirazHezbollah. Further, it had been indicated that the total capital of the project was US\$ 4.75 million and that US\$ 3.2 million was due to be invested as foreign investments while remaining US\$ 1.55million from local funds.
- 7.3.4 On 17 June 2015, the same date of the receipt of above application, the Executive Director of the Board of Investments had referred a letter to Mr. Hezbollah (Annexure 29) and informed that the application would be forwarded to the Ministry of Higher Education for observations and recommendation, it would be referred to the evaluation of the Board of Investments after the receipt of the observations and thereafter, action would be taken to grant approval through a formal letter and therefore, activities relating to the incorporation could be carried out until then and that the approval for the relevant Articles of Association should be obtained from the Director (Legal) of the Board of Investments before the incorporation.
- 7.3.5 The Assistant Director(Investments Evaluation) had evaluated the 2nd application referred to in Annexure 28 and submitted recommendations to the Executive Director (Investments Evaluation) through an internal Memo (Annexure 30).
- (i) Five years tax relief period should be granted for the project.
 - (ii) Two years freetax period should be granted to import goods relevant to the project.
 - (iii) Company shall be subject to the Exchange Control Act.
 - (iv) The commercial operations of the company should be initiated within one year from signing agreements with the Board of Investments.

- 7.3.6 The Executive Director of the Board of Investment had, by his letter dated 03 August 2015 (Annexure 31), forwarded the relevant application, Articles of Association of the proposed company and other details relevant to the registration to the Secretary to the Ministry of Higher Education for recommendation and clearance.
- 7.3.7 Since the Sections relating to the award of degrees had not been included in the Articles of Association of the Batticaloa Campus College (Private) Ltd. and it had been stated as a project for a training institution in the application forwarded to the Board of Investments, the Ministry of Higher Education had informed the Director General of the Board of Investments on 18 November 2015 that the above request was not applicable to the scope of the Ministry of Higher Education. (Annexure 32)
- 7.3.8 Through a letter forwarded to the Director General of the Board of Investments by Mr. A.M.L.M. Hezbollah, the Chairman of the Batticaloa Campus College on 14 December 2015 (Annexure 33), request had been made to grant approval for the project as a Board of Investments Project stating that the Hira Foundation was maintaining a higher education institution issuing higher diploma certificates in the name of “Batticaloa Campus College” on a Memorandum of Understanding entered into with the Ministry of Youth Affairs and it had sought approval of the Ministry of Higher Education to conduct degree courses and approximately US\$ 50 million was expected to be spent on the above project and that constructions of the project were already commenced.
- 7.3.9 By the letter dated 12 January 2016 (Annexure-34), the Executive Director of the Board of Investments had informed the Chairman of the Hira Foundation, Mr. A.M.L.M. Hezbollah that the approval of the Board of Investments had been granted for the application forwarded on 17 July 2015 for the establishment of a higher education institution with an investment of US\$ 4.75 million.
- 7.3.10 Mr. A.M.L.M. Hezbollah, the Chairman of the Hira Foundation had forwarded a letter to the Executive Director of the Board of Investments on 17 May 2016 seeking approval to change the objectives of the Batticaloa Campus (Private) Ltd. by including the objectives of establishment of a higher education institution with the facilities to award degrees and affiliation with the local and foreign universities for awarding degrees. (Annexure 35)

- 7.3.11 While granting approval for the above project, the Board of Investments of Sri Lanka had signed an agreement with the Batticaloa Campus (Private) Ltd. on 19 May 2016. (Annexure 36)
- 7.3.12 The Executive Director of the Board of Investment had addressed a letter to the Additional Secretary (Non State Higher Education) on 02 June 2016 enquiring whether there was any objection on the part of the Ministry of Higher Education regarding the request made by the Chairman of the Batticaloa Campus (Private Ltd.) to change the objectives of the Company. (Annexure 37)
- 7.3.13 By the letter dated 30 September 2016 of the Additional Secretary (Non State Higher Education) (Annexure 38), approval had been granted to the other amendments except for the position of awarding degrees.
- 7.3.14 The Executive Director (Engineering Approvals) of the Board of Investment had referred a letter dated 18 October 2016 to the Managing Director of the Hira Foundation indicating the conditions to be adopted and approvals to be obtained in the implementation of the project (Annexure 39)

7.4 Receipt of Financial Remittance to the Batticaloa Campus (Private) Ltd. and the Affiliated Institutions through the savings accounts of the Bank of Ceylon

Background

- 7.4.1 Fourteen bank accounts had been maintained in favour of the Batticaloa Campus (Private) Ltd. and the affiliated institutions in various branches of the Bank of Ceylon. Details appear in the Schedule No.01.
- 7.4.2 Foreign remittance totaling Rs. 4,123,859,831 had been received to 04 of the above bank accounts during the years 2016-2017. The Details are as follows.

Table-01 Remittance received to accounts maintained in favour of the Batticaloa Campus (Private) Ltd. and the affiliated institutions during the years 2016-2017.

<u>Account Number</u>	<u>Account Holder</u>	<u>Value of the Foreign Remittance</u>
		Rs.
1631952	Sri Lanka Hira Foundation	313,128,281
78495137	Batticaloa Campus Private Ltd.	3,640,939,488
80961953	A.M.A. Lanka Private Limited.	144,978,158
74791337	Mlik Abdulla Bin Abdul Azees University College of Batticaloa	24,849,903
		----- 4,123,895,831 =====

Details on the remittance received by each bank account appear in the Schedule 02.

7.4.3 The details included in the customer identification sheet prepared by the bank on the requirements of the Financial Transactions Reporting Act No.06 of 2006 subsequent to the receipt of the application for opening the bank accounts which received the above foreign remittance are as follows.

Table No.02 Details included in the customer identification sheet.

Account No.	Name of the Account	Objective of the Account	Means of funds outflow	of	Expected monthly average deposit value	Source of income	of Nature of the risk	Whether there is any political connection (Annexure 40 and 41)
					Rs.			
80940330	A.M.A.Lanka Private Ltd.	Business transactions	Sales and business income	and	100,000-500,000	Investments and Investment Income	Minimum	One of the four Directors Mr. M.A.L.M.

Hezbollah,
the Chairman
of Hira
Foundation is
a person with
political
connections.

78495137	Batticaloa Campus College (Private) Ltd.	Business transactions	Other (Foreign remittance)	Exceeding 10 million	Foreign remittance and income from businesses	Maximum	Mr.M.A.L.M. Hezbollah, the Chairman of the Company is a member of Parliament
74791337	Mlik Abdulla Bin Abdul Azees University College of Batticaloa	Social and charitable deeds	Foreign aids or charitable aids	500,000- 01 million	Profession or employment	Not indicated	Mr.M.A.L.M. Hezbollah, the Chairman of the Company is a member of Parliament and a Deputy Minister.

7.5 Agreements with the Ministry of Higher Education to Obtain Degree Awarding Status to the Batticaloa Campus

Background

- 7.5.1 With the use of a Letter Head of Parliament, Mr. A.M.L.M Hezbollah, the Chairman of the University College of Batticaloa had forwarded a request to the Ministry of Higher Education and Research on 03 July 2015 seeking permission for awarding degrees from his institute. (Annexure- 42)

- 7.5.2 The Deputy Director of the Non-Governmental Higher Education Division of the Ministry of Higher Education had informed the Chairman of the University College of Batticaloa to pay Rs.01 million to the Ministry of Higher Education to consider the above request and submit 06 copies of completed files including the qualifications for awarding degrees and the details on the courses to the Ministry. (Annexure 43)
- 7.5.3 The University College of Batticaloa had paid the above charges to the Ministry of Higher Education on 07 July 2015. (Annexure 44)
- 7.5.4 The committee of 05 persons appointed by the Additional Secretary of the Ministry of Higher Education on 22 September 2015 to carry out institutional review on the said University College (Annexure-45) had physically inspected the University College and the relevant files on 06,07 and 08 January 2016 (Annexure 46) and subsequently forwarded its reviewing report to the Ministry on 19 February 2016. (Annexure 46 and 47)
- 7.5.5 The Deputy General of the Non-Governmental Higher Education Division of the Ministry of Higher Education had informed the Chairman of the University College by a letter dated 15 March 2016 to further improve the recommendations included in the above review report and refer the same to the second institutional reviewing committee. (Annexure 48)
- 7.5.6 Having reviewed the file of the Batticaloa Campus while conducting a physical inspection during the period from 02 February to 01 March 2017 by the above institutional reviewing committee, the second institutional review report had been presented to the Ministry on 01 July 2017. (Annexure 49)
- 7.5.7 Subsequent to the receipt of the above second report to the Ministry, it had been referred to the Standing Committee on Accreditation and Quality Assurance and that Committee had referred that report to a Technical Advisory Committee to examine the matters included therein. The said Advisory Committee had submitted its report to the Ministry on 13 December 2018. (Annexure 50)

- I Weaknesses in financial viability, stability and management
- II Having a board of management with insufficient experience to run an educational institution of the proposed nature and scale
- III Lack of adequate focus on risk management
- IV Making proposal to incorporate nature of such an institution as a public limited company.

7.6 Observations on the Request Made by the Hira Foundation to Register with the National Secretariat for Non-governmental Organizations

Background

- 7.6.1 The Hira Foundation had forwarded an application to the National Secretariat for Non-governmental Organizations on 06 July 2011 in order to obtain its registration as a Non-governmental Organizations (Annexure 51).
- 7.6.2 By the letter dated 19 August 2011, the Director of the National Secretariat for Non-governmental Organizations had sought clearance from the Ministry of Foreign Affairs and the heads of the State Intelligence Service on the above institution (Annexure 52 and 53).
- 7.6.3 The Director General (Multilateral Cooperation) of the Ministry of Foreign Affairs had informed by a letter dated 02 September 2011 (Annexure 54) that since there was no information to establish that the above institution had maintained relationship with the foreign institutions and agents, there was no observation of the Ministry in respect of the Hira Foundation.
- 7.6.4 By a letter dated 18 October 2011 (Annexure 55), the National Intelligence Unit had informed that it could not recommend the above institution as there were unfavourable indications regarding the other members of the Hira Foundation other than the Chairman according to the information received.
- 7.6.5 The National Secretariat for Non-governmental Organizations had informed Mr.Hezbollah on 18 April 2012 that since the State Intelligence Bureau did not

recommend the Hira Foundation, it could not be registered as a Non-governmental Organization. (Annexure 56)

- 7.7 Obtaining a Building on Lease from the Urban Council, Kaththankudiyafor the Maintenance of University College of Batticaloa.

Background

- 7.7.1 The Chairman of the Kaththankudi Urban Council had leased out the library building and a part of the administration building of the Batticaloa Urban Council to the University College of Batticaloa on 10 May 2014 under a deed of lease for a period of 08 years at a monthly lease rent of Rs.5,000. (Annexure 57)
- 7.7.2 By the letter dated 18 November 2014 , the Administrative Officer of the University College of Batticaloa had made a request to the Chairman of the Urban Council, Kaththankudi informing that University College of Batticaloa was already being maintained at the Urban Council building and therefore to make necessary arrangements to obtained those buildings on lease for a period of 08 years. (Annexure 58 and 95)
- 7.7.3 One of the buildings given on lease had been constructed at a cost of Rs.40 million under the *Deyatakirula Project* with the objective of maintaining the library of the Urban Council and the other building given on lease had been constructed at a cost of Rs.60 million under the *Northern and Eastern Local Government Authorities DevelopmentProgramme*and it was proposed to be used for the administrative affairs of the Urban Council.
- 7.7.4 In response to the request made by the Secretary of the Urban Council, Kaththankudi on 18 April 2017 to submit the Government tax value assessed on the above leased buildings, the Chief Assessor of the Eastern Province had issued a valuation report regarding the lease rent on 06 June 2017. (Annexure 59)
- 7.7.5 According to the above valuation report, it had been informed that the assessed Government lease rent for the used buildings was Rs.197,500 per month and the lease rent paid to the Urban Council was Rs.5,000 and accordingly, the lease rent in arrears up

to 30 June 2017 amounted to Rs.8,475,000 from the date of agreement and therefore, the relevant arrears be paid without delay. (Annexure 60)

7.7.6 By a letter dated 18 March 2018, the University College, Batticaloa had informed the Secretary of the Urban Council that it would hand over the Urban Council building obtained on lease, with effect from that day. (Annexure 61)

7.8 The Functions of the Divisional Secretariat, Wakare in respect of Granting Approval for the Construction of Buildings on the Leased Land.

Background

7.8.1 The Batticaloa Campus Private Limited had made following payments to the Divisional Secretariat, Wakare for obtaining approval relating to the construction of buildings on the above leased land. (Annexure 62)

Table No.03 - Making payments for obtaining approval for constructions of the leased building.

Serial No.	Receipt No.	Date	Amount Paid Rs.	Reason for the payment
1	2547	26/08/2014	500,00	Application Fee
2	2548	26/08/2014	500.00	Application Fee
3	2962	10/12/2014	8,262.50	Inspection Fee
4	3630	07/11/2016	15,000.00	Building plans correcting charges
5	3677	21/11/2016	5,000.00	Building plans correcting charges
Total			29,262.50	

=====

7.8.2 The Financial Crimes Investigation Department of the Sri Lanka Police and the National Audit Office had made requests to the Secretary of the Divisional Secretary, Wakareon

28 August 2019 and 22 May 2019 respectively to furnish relevant files on the grant approval of the Sabha in respect of the constructions being carried out by the Batticaloa Campus Private Limited within the above leased land. (Annexure 63 and 64)

- 7.8.3 The Secretary of the Pradeshiya Sabha, Wakare had informed the Commissioner of Local Government and the District Secretary respectively on 10 May 2019 and 14 May 2019 that the Sabha had not maintained a file to furnish information relating to the above requests and in handing over the files to the officers who were assigned the above subject, such file had not been handed over and further, the officers who had been assigned the above subject at the time of carrying out constructions had left on transfers and therefore, future steps be taken after enquiring that matter from the above officers. (Annexure 65 and 66)

8. Audit Observations

8.1 Obtaining Approval for Vocational Education to the Batticaloa University College (Private) company from the Ministry of Vocational Training and the Vocational Education Commission

- 8.1.1 In response to the request made by the Hira Foundation for obtaining registration as a higher education institution, the Vocational Education Commission had informed the Hira Foundation on 20 March 2013 that the it had not fulfilled the necessary qualifications for the above registration. Nevertheless, such unfulfilled qualifications had not been indicated.

- 1.8.2 In accordance with paragraph 7.1.2 above, the Deputy Minister of the M.L.A.M.A. Hezbollah, whilst using his capacity as a Member of Parliament and Deputy Minister, had acted on behalf of the interests of the private institution called Hira Foundation.

- 8.1.3 Despite being rejected the registration by the Vocational Education Commission due to non-fulfillment of the necessary basic requirements to meet the request made by the Hira Foundation to establish a vocational education institute, the Ministry Youth Affairs and Skills Development had grant approval to the above Foundation to establish a higher education institute named University College of Batticaloa and accordingly, a

Memorandum of Understanding had been entered into with the Hira Foundation for a period of 03 years to be effective from 15 August 2013.

- 8.1.4 Although it is required to examine whether the necessary capacities have been fulfilled to maintain a higher education institution before entering into such Memorandum of Understanding, no such examination had been carried out. However, after 05 days from the date of signing Memorandum of Understanding, the Secretary to the Ministry had appointed a committee of three persons to examine the above matter.
- 8.1.5 According to the report of the committee of three persons submitted to the Secretary to the Ministry on 24 June 2013, issues had been pointed out with regard to the basic qualifications such as financial stability, existing buildings and their adequacy required for the establishment of a higher education institution within the proposed University College of Batticaloa, whereas qualitative factors such as reputed lecturers, course contents and other physical requirements needed for the conduct of courses had been stated. Nevertheless, according to the above report, it was not substantiated in audit that the University College of Batticaloa had fulfilled the necessary qualifications to function as a vocational education institution.
- 8.1.6 The Ministry of Vocational Training and Skills Development, the first party of the agreement had not fulfilled any responsibility stated in Paragraph 6.1.4 above other than the appointment of two representatives to the Council of the University College of Batticaloa. Since the Ministry of Vocational Training and Skills Development lacked any information on the decisions taken at the Council's meetings, there was no evidence as to whether those two representatives had attended the Councils meetings and they had been called for such Council meetings.
- 8.1.7 Although the responsibility of the Vocational and Technology University as the third party of the agreement had been stated among the responsibility of the first party and the general responsibility, it could not be established that the Vocational and Technology University had made its contribution for the activities of the University College of Batticaloa in any occasion or fulfilled the above responsibilities.

- 8.1.8 It was observed in audit that the approval granted through a letter, dated 05 August 2013 by the Secretary to the Ministry for the request made by the Chairman of the University College in order to publish newspaper advertisements for enrolling students for the courses despite the refusal of registration with the Tertiary and Vocational Education Commission – a requirement to conduct courses for NVQ, was inappropriate.
- 8.1.9 The Chairman of the tripartite committee who verified that the University College of Batticaloa had not completed the qualifications required to maintain a higher educational institute, presented a paper himself to the 205th Council of the Commission seeking approval for registration without reexamining, and the approval was obtained. (Annexure – 67)
- 8.1.10 Approval had been given for the said Paper of the Commission on 09 July 2015 (Annexure – 68), but the date of registration with the Commission entered in the information system was 02 March 2015, a date prior to the one given above. Thus, the University College had been allowed to conduct courses approved by the Commission, with effect from that date.
- 8.1.11 The Tertiary and Vocational Education Commission had issued certificates in the year 2016 to 49 students (Annexure 69) who had completed courses conducted by the University College. However, no evidence whatsoever on the coverage of syllabus relating to those courses, evaluation of courses, and recommendations & approvals required for awarding certificates, had been filed.
- 8.1.12 Newspaper advertisements had been published requesting applications for courses by introducing the University College as being established by the Ministry of Youth Affairs and Skills Development with the assistance of Hira Foundation, and the state emblem had also been used in advertising. As such, the University College Batticaloa had tried to build up a fake image as being owned by the Government. (Annexure 70)
- 8.1.13 The Eastern University, a Government institution, had functioned as University College of Batticaloa from the year 1981 up to 1988. Provided that a different institution functioning under the name of University College of Batticaloa, the Vice Chancellor of the Eastern University had apprised the Minister of Vocational Training through a letter

dated 05 June 2014 that a so-called legal affiliation with the Eastern University would be implied. However, no attention had been drawn in that connection, and the Ministry of Vocational Training had allowed the said University College to proceed with the same name thereby awarding the NVQ certificates.

8.1.14 Prior to entering into a memorandum of understanding with the Batticaloa Campus Private Limited, the Ministry of Vocational Training had not entered into such a memorandum of understanding with any other private institution. Nevertheless, a memorandum of understanding had been signed on 09 May 2013 with the Sri Jayawardhanapura Hospital – a semi Government institution. The latter had been signed by the Secretary to the Ministry on behalf of the Ministry of Youth Affairs though, the Minister had signed the memorandum of understanding with the Batticaloa Campus Private Limited on behalf of the Ministry of Youth Affairs.

8.2 Release of Lands to the Batticaloa Campus Private Limited by the Mahaweli Authority of Sri Lanka

8.2.1 According to Circular, No. DL/1/1 of the Mahaweli Authority, dated 18 May 2013 (Annexure 71), recommendations should be obtained from the regional Physical Planning Committee and the Director (Land Use) before releasing a land owned by the Mahaweli Authority. However, prior to the release of land in extent of 35 acres to the University College of Batticaloa, the said recommendations had not been obtained during the evaluation process. In response to the request (Annexure 72) made by the Director (Business Development) on 02 November 2017 seeking recommendations on further action relating to the issue of the deed of the said land to the lessee, recommendation had been given by the Director (Land Use). (Annexure 73)

8.2.2 It is emphasized in Section 199 (3) of the State Lands Ordinance, No. 08 of 1947 (Annexure 74) that under no circumstance should a government-owned land be released on annual lease in view of a long term lease provided later. It is also stated in the L.C. 75 annual license application that, without prior consent of the lessor, permanent or temporary buildings should not be constructed at a land obtained on lease under an annual license. (Annexure 15) However, the Mahaweli Authority had taken measures to

grant approval to construct buildings for a long term large scale project by indicating the phrase “ It is authorized to construct buildings” on the annual licenses, and later transformed the annual lease into a long term lease, thus deliberately violating the said section of the State Lands Ordinance.

- 8.2.3 In terms of the Regulation, No. 21(2) made to enforce the State Lands Ordinance (Annexure 75) under the instances in which the Minister has not issued instructions specifically in accordance with Section 199 (4) of the said Ordinance (Annexure 74), it should be published in the Gazette “for the public to raise their protest on the proposed lease”. However, the Authority recommended to the Minister that , by virtue of the exceptional powers vested in him through the Ordinance to release the lands without publishing the said statement in the Gazette, it was suitable not to issue the Gazette notification without making available the reasons based on which the Gazette had not been published. (Annexure 20)
- 8.2.4 The 03 land parcels with the Lot Nos. 800, 804, and 808 in the said leased land shown in the Cadastral Map, No. 170016 (Annexure 76) issued on 04 July 2013 by the Survey Department of Sri Lanka, had been identified as paddy lands. Among the parcels of land given on lease was a canal shown as No. 802. Even though the said land had been encroached for paddy cultivation and despite the possibility of obtaining water for the paddy lands through the canal shown in the map, action had been taken by the Mahaweli Regional Manager, Aselapaura and the Residential Business Manager of Welikanda to amend the term shown as “Paddy Land” in the Cadastral Map to be read as “Other” through the Department of Survey in a well-planned manner to release a paddy land to the Hira Foundation for a commercial activity without obtaining recommendations from the Physical Planning Committee and the Director (Land Use and Planning) contrary to the Circular, No. D. L. 1/1 of the Director General of Mahaweli Authority, dated 18 May 2013.
- 8.2.5 As observed under No. 04 above, clearance should be obtained from the Commissioner of Agrarian Services Development prior to leasing out a parcel of land that had been used for cultivation with the possibility of establishing a permanent irrigation system, for

commercial activities. Nevertheless, the Mahaweli Authority, without doing so, had given the said land on lease for the construction of commercial buildings since the year 2013.

8.2.6 The land obtained on lease from the Mahaweli Authority had been filled with soil with a view to constructing buildings, and the following approvals had not been obtained for the filling.

- (i) Soil had been extracted from the nearby forest reserve for the said filling, but a license had not been obtained from the Geological Survey and Mines Bureau in terms of provisions set out in the Act, No. 33 of 1992 as amended by the Act, No. 66 of 2009. (Annexure 77)
- (ii) Approval of the Department of Forest Conservation had not been obtained to carry out excavations in a reserved area.
- (iii) A license had not been obtained from the Divisional Secretariat of Wakare to transport soil.
- (iv) Written approval of the Department of Agrarian Services had not been obtained for the filling of paddy lands and low lands.

8.2.7 The construction of buildings relating to the project had been commenced in the year 2013 though, action had not been properly taken to obtain a formal approval by furnishing the project and the construction plan to the Pradeshiya Sabha of Koralepattu North – Wakare. Nevertheless, a copy of a building plan signed by the Secretary and the Technical Officer of the Pradeshiya Sabha of Koralepattu North – Wakare was presented to the Audit by the Batticaloa Campus Private Limited, but due to the following reasons, the said building plan with signatures was deemed not to have been a formal approval. (Annexure 78)

- (i) The Pradeshiya Sabha had not maintained a file with documents and reports of investigation based on which the said signatures had been placed.
- (ii) Failure to appoint a Committee and a Board of Inquiry comprising subject experts in order to investigate the said matter.
- (iii) An evaluation report on the environmental impact had not been obtained prior to granting approval.

(iv) Failure to obtain the reports of field inspections, certificates of street lines, secondary plans relating to the constructions, as well as clearances from the other relevant authorities.

8.2.8 The plan of main buildings had been prepared including buildings numbered B12 – 19 and B24- B 34 to be constructed at the Government lands for which the lessee had no legal rights, located outside the plan of the land given on lease to the lessee. However, despite the facts that the building plan had been prepared by disregarding the plan of the building, and the plan had been prepared in a manner that buildings could be constructed on lands sans legal rights, the Secretary of the Pradeshiya Sabha, Wakare and the Technical Officer had signed and approved that plan. The regional manager of Mahaweli Authority had signed and certified that building plan which had been approved in an improper manner. Nevertheless, it was observed that the actual constructions under the project did not comply with the plan. (Annexure 79)

8.2.9 The extent of land that can be enjoyed by the lessee should be limited to the area shown in the lease agreement and the plan. In addition to the leased property, however, the lessee was observed to have constructed permanent buildings on lands over 09 acres in extent located beyond the boundaries of the leased property with no legal rights. Furthermore, action had been taken to construct permanent buildings within the areas reserved by the Authority for the canal in between the lands and the high voltage transmission lines with no approval whatsoever from the Mahaweli Authority, but the Mahaweli Authority had not taken any action in that connection.

8.2.10 Prior to leasing out Mahaweli lands in order to construct buildings for commercial purposes and / or for projects on long term basis, action should have been taken to obtain an environmental report from the Environmental Authority in regard to the environmental impact caused by the proposed project plans. However, such a report had not been obtained relating to the leased out lands.

8.2.11 In terms of Condition , No. 8 of the deed for the long term lease of the said Mahaweli land, and the Condition, No. 9 of the annual license, the boundary marks of the land should be maintained without being changed. However, such markers made by the

Department of Survey in the land had not been maintained in an identifiable manner. In case the boundary points cannot be identified, instructions should have been given to survey the land and fix the boundary points through the Department of Survey at the expense of the lessee. Nevertheless, the Residential Business Manager (Mahaweli B zone) had made a request to the office of the Superintendent of Survey, Batticaloa through a letter, dated 10 August 2019 to resurvey the land without the lessee's involvement.

8.2.12 In order to provide the Mahaweli land on a long term lease for the Batticaloa Campus Private Limited, the deed of lease had been signed on 01 February 2018, and the effective date of the agreement had been backdated to 12 July 2013. As the Batticaloa Campus Private Limited had been incorporated as a legal entity under the Companies Act on 14 July 2015, a company under the name mentioned in the agreement had not existed as at the date of agreement coming into effect. Accordingly, it was observed that on the very date the lease agreement had been entered into, the agreement had become legally nullified (empty agreement).

8.3 The University College of Batticaloa Entering into an Agreement as a BOI Project

8.3.1 The financial plan furnished along with the initial application presented to register the said project under the Board of Investment had stated that a foreign investment of US \$ 40.2 million would be made, but that investment had been revised to US \$ 3.2 million in the second application. The project had been approved by the BOI without drawing attention on the non-inclusion of the foreign investment of a higher value in the second application that had initially been mentioned in the first application.

The reply given by the Board of Investment for the Paragraph

Even though the sum of US \$ 40.2 million shown in the first application had been presented as a complete foreign investment, the foreign investor had not been mentioned. Furthermore, nothing had been mentioned on foreign investments under the No. 5 in our investment application. Furthermore, due to lack of a proper explanation on the investor providing an investment as big as US \$ 40.2 million, it had been decided to grant

approval by disregarding that. The investor had accepted that decision by signing the agreement. (Annexure 99)

- 8.3.2 The Assistant Director of BOI for the evaluation of investments had presented recommendations to the Executive Director for the promotion of investment evaluation that the land proposed for the said project should be obtained on a long term lease under the name of the project (at least for a period of 30 years). However, by disregarding those recommendations, approval of the Board of Investment had been granted for the project on 12 January 2016 with no clearance whatsoever about the ownership of the land thereby entering into an agreement on 19 May 2016 between the BOI and the Batticaloa Campus Limited.
- 8.3.3 In spite of the facts that the Board of Investment had been informed that the Project had not belonged to the scope of the Ministry of Higher Education and the said project had not been registered with the Tertiary and Vocational Education Commission, the Board of Investment had granted approval for the project with no explanations as to the objectives and goals of the project, and how those objectives and goals would be achieved. (The Mahaweli land had been obtained on long term lease under the ownership of the project on 01 February 2018)
- 8.3.4 An institution intending to register as a BOI project should, along with the application, furnish the survey plan of the land with legal rights proposed for the project, building plan with approval of the Pradeshiya Sabha, certificate of street lines, and the consent of the landlord. Nevertheless, such documents had not been furnished with the application for the said project. Despite the non-availability of those documents which had essentially been necessary for evaluating the feasibility of the project, the Board of Investment had evaluated and granted approval for the project.
- 8.3.5 In response to the letters sent to the Central Environmental Authority on 03 March 2016 and 30 March 2016 by the Board of Investment of Sri Lanka seeking consent for the proposed project, the latter had been informed by the Central Environmental Authority on 08 July 2016 that evaluation of environmental impact would be futile since the land development activities had already been completed and more than half of the

constructions had already been underway (Annexure 80). However, without obtaining an environmental license and prior to receiving a reply from the Central Environmental Authority, the Board of Investment had granted approval on the said project in total disregard for the environmental impact of the project.

8.3.6 Despite being included in the agreement entered into between the Board of Investment and the Batticaloa Campus Private Limited that the project should be a novel one, nor should be a reestablishment of an existing enterprise, or a transfer of assets with a similar institution, it was revealed due to the following matters that this project had not been a novel one, and with no consideration thereon, approval had been granted for the project by the Board of Investment.

- I. Given the fact that an official seal under the name of “Batticaloa Campus College Private Limited” had been stamped on the application furnished to the Board of Investment as shown in Annexure 28, it is inferred that the company entered into an agreement for the said project had already been a registered institution.
- II. As the constructions of the project had already been commenced even at the time of being inspected by the Central Environmental Authority during the first half of the year 2015 as per the letter of the Central Environmental Authority mentioned in Observation, No. 05, the project is considered not to be a novel one.
- III. Considering the nature of the University College of Batticaloa established in the year 2013 following a memorandum of understanding between the Hira Foundation and the Ministry of Vocational Training besides the application furnished to register as a project of the BOI, and that the said memorandum of understanding had been presented to the Board of Investment, it is inferred that this project had been an extension of the University College of Batticaloa-an enterprise run by a single person.
- IV. As it was mentioned in the letter, dated 04 December 2015 presented by Mr. Hezbollah, the Chairman of Batticaloa Campus College Private Limited, to the Director General of the Board of Investment that it was expected to invest a sum

of US \$ 50 million in the project and the constructions of the project had already been commenced, it is inferred that the project had been commenced prior to the approval of the BOI.

V. On the same date that the second application had been presented by Mr. Hezbollah, the Chairman of Hira Foundation, seeking registration for the proposed project as being a BOI project, approval had been granted by the Board of Investment to incorporate the enterprise relating to the project without evaluating the information given in the application, thus informing that approval be obtained by furnishing a draft copy of the Articles of Association of the company to the Assistant Director (Legal) of the Board. Nevertheless, even before the date of the said letter - 17 July 2015, the Registrar of Companies had incorporated the Batticaloa Campus College Private Limited that had entered into agreement for the project, as a private company on 14 July.

8.3.7 Measures had been taken as mentioned in the observations from 7.3.1 to 7.3.6 above, to register a pre-incorporated project that had been completed halfway, with the BOI in the guise of a new project sans the essential clearances by breaching the laws, rules, regulations and practices of the Board of Investment of Sri Lanka; thus, the BOI provided a tax exemption totaling Rs. 48.51 million (Annexure 82) on the goods imported by the Batticaloa Campus Private Limited on 143 occasions.

8.3.8 The total investment in the project shown in the second application considered for registration had amounted to US \$ 4.75 million, but the company had invested a sum of US \$ 24.64 million in the project as at 15 August 2018. According to the standard practice of the BOI, the project should have been implemented under the complete supervision of the Board. Nonetheless, no query whatsoever had been made by the Board as to how the invested funds had been received by the project.

The reply given by the Board of Investment for the Paragraph

In case of the readiness of the investor to invest a sum over the value approved for a certain project, it is considered optimistic by the Board. Once the commercial affairs are commenced, the Board examines on the overall sum invested. (Annexure 80)

8.3.9 With the approval given for the project, the Managing Director had informed the Hira Foundation that, prior to 14 days of signing the agreement, the Board should be provided with 02 schedules relating to the quantities and types of items proposed to be imported duty free and purchased locally under tax waivers in terms of Section 10 of the Conditions issued by the BOI on 12 January 2016. However, no formal documents relating to such purchases / imports along with the quantities had been furnished to the Board.

8.4 The Batticaloa Campus Private Limited and the Institutions Affiliated thereto Receiving Funds through the Savings Accounts of the Bank of Ceylon.

8.4.1 In terms of Section 08 of the Guideline, No. 01/2017 issued by the Central Bank of Sri Lanka by virtue of the powers vested through the Exchange Control Act, No. 17 of 2017 and No. 02 of 1986 to formulate and amend the laws and rules to control the foreign exchange (Annexure 82), all the information relating to the purchase and sale of foreign exchange should be reported to the Central Bank through the Formats I and II provided as annexure along with the Guideline. Nevertheless, the Central Bank had not been informed on the 21 instances in which foreign exchange totaling Rs. 3,669,977,451.55 had been received through 04 bank accounts by the Batticaloa Campus Private Limited and the institutions affiliated thereto. (Schedule, No. 03)

The reply given by the Bank of Ceylon for the Paragraph

When funds are deposited to a commercial bank, it is the responsibility of the bank accepting such deposits to collect information relating to the sources of funds and the relevant persons, and that is the internationally accepted norm. Accordingly, the funds withdrawn through the remittances received from the said international banks can be deemed as being received through legal sources. As such, a necessity does not arise for the Bank of Ceylon to look into the sources of funds. As mentioned in the remittances, the funds had been credited by the Bank of Ceylon to the relevant accounts of the beneficiaries. Likewise, the Bank of Ceylon had remained concerned with the objectives for which those funds had been utilized. As the managers of the relevant branches of the

Bank wherein the savings accounts to which the remitted funds were credited, had correctly identified the objectives of opening those accounts, the funds had been received for the construction of a university. Since the constructions of a University was underway, it was observed that the said funds had been utilized on the intended purpose. (Annexure 100)

- 8.4.2 According to Section 59 (b) of the Rules (Annexure 85) published by the Central Bank of Sri Lanka in the Gazette No.1951/13 dated 27 January 2016 in terms of the Financial Transaction Reporting Act No.06 of 2006, the financial institution should obtain the approval of the Board of Governance thereof in case of a person applying for a business relationship is having a political background. However, when the institutions with persons such as A. L. M. Hezbollah and Hiras Hezbollah, both having a political background, had entered into business relationships through bank accounts (with respect to the 14 bank accounts mentioned in the said background information-01), the Bank of Ceylon had not obtained approval of the Board of Governance contrary to the said Section.

As per the observation, the Bank of Ceylon accepts that the approval of the Board of Governance had not been obtained for the said 14 bank accounts, and the approval of the top level management had been obtained only on 04 bank accounts whilst being verified by the Bank of Ceylon that an approval for the other 10 accounts had not been obtained at least from the top level management. (Annexure 100)

- 8.4.3 According to Section 59 (c) of the said Rules, the relevant financial institution should verify the source of funds and the ownership of the beneficiaries through suitable methodologies with respect to the funds being received by the accounts maintained by persons with political backgrounds. However, as for the foreign remittances totalling Rs. 4,123,895,832 received in 30 instances by 04 bank accounts belonging to institutions managed by the Hezbollah family, no information had been obtained through suitable methodologies in regard to the source of fund, and the objectives and legality thereof. The Bank of Ceylon did not provide the Audit with a sensible explanation on this observation.

- 8.4.4 In order to be compliant with the clause - the business liaisons of persons with a political background should be continuously regulated, mentioned in Section 59(c) of the Rules of Central Bank of Sri Lanka enforcing the Financial Transaction Reporting Act, it had been necessitated to review the material information of a person with a political background and noted down by obtaining the consent of the client once in every 06 months in accordance with Section 12.1 of the Office Instructions Circular, No. 2018/25 of the Bank of Ceylon (Annexure 84). However, this practice had not been followed with respect to the said 14 bank accounts belonging to the Hezbollah family with a political background. The Bank of Ceylon had not furnished a reply consistent with the said observations.
- 8.4.5 As per Section 07 of the above Rules of the Central Bank of Sri Lanka, the business liaisons of a client should continuously be regulated in order to verify that the financial transactions performed by him are consistent with his sources of earning. The background and objective of all the complex and unusual transactions seemingly lacks legality, should be examined and reported to the competent authority where necessary in accordance with Section 38 of the Rules whilst the financial transactions not consistent with the Rules should be reported to the Compliance Officer for taking necessary measures in terms of Section 39 of the Rules. However, despite the unusual receipt of over US \$ 2.8 million (Rs. 4.1 billion) at a time to the Account No. 78495137 of the Bank of Ceylon belonging to the Batticaloa Campus Private Limited in 07 instances, action had not been taken on those unusual and complex transactions in accordance with the said Rules. The Bank of Ceylon did not furnish a proper explanation in that connection to the Audit.
- 8.4.6 According to Section 47(c) of the Central Bank of Sri Lanka enforcing the Financial Transaction Reporting Act, information such as, name, address, identification number, and objective of the deposit relating to the depositor should be furnished to the bank when a deposit of over Rs. 200,000 is made to an account by a third party at a time, and the bank should enter such information to the information system. Nevertheless, particulars of the depositor with respect to the deposits totalling Rs. 59,975,000 made in 11 instances to the Account, No. 7895137 belonging to the Batticaloa Campus Private

Limited, had not been recorded. The fact that the Bank of Ceylon had not taken action to collect information in 10 instances of making deposits as mentioned in the observation, was accepted by the Bank of Ceylon.

- 8.4.7 When the same client opens two or more accounts with the same financial institution, the reason to do so should be reported by the financial institution in terms of Section 97 of the Rules of the Central Bank of Sri Lanka. However, without doing so, the Batticaloa Campus Private Limited had been allowed to open accounts at branches of the Bank of Ceylon located in Welikanda and Kollupitiya. The Audit was informed by the Bank of Ceylon that bank accounts had been opened in that manner for miscellaneous purposes of the Batticaloa Campus Private Limited, and those purposes had been identified as being specific.
- 8.4.8 In order to ascertain that the remittances received by the accounts maintained at a financial institution by a social welfare organization have not originated from a banned organization or persons, the financial institution should review and regulate all the links of the welfare organization thus verifying the legality of remittances in terms of Section 54 (1) of the Rules of Central Bank of Sri Lanka. However, the Account, No. 1631952 maintained at the Bank of Ceylon under the name of a social welfare organization called “Hira Foundation” had not been regulated in accordance with the said Section. Local and foreign remittances totalling Rs. 313,128,282 had been credited in 15 instances to the said account that had been maintained without being regulated at all (Schedule, No. 04). A reply consistent with the observation had not been provided by the Bank of Ceylon.
- 8.4.9 It is stated in Section 24(1) of the Rules that no financial institution should open an account anonymously, or under an alias or a bogus person. However, in response to a request made by Mr. A. L. M. Hezbollah through a letterhead of an unregistered institution sans a business registration certificate under the name of Malik Abdullah Asis, University College of Batticaloa (Annexure 85), the Kattankudi branch of the Bank of Ceylon had allowed to open and maintain an account under a fake name. The Bank of Ceylon did not provide acceptable reasons as to allowing to open accounts sans a certificate of registration.

8.4.10 It is stated in Paragraph II of Section 3 of the Rules dated 21 April 2017 issued by the Central Bank of Sri Lanka with respect to the Financial Transaction Reporting Act, No. 06 of 2006 (Annexure 86) that transactions of suspicious nature should be reported to the Central Bank of Sri Lanka through the first schedule relating to banks and financial companies whilst identifying such transactions based on the matters mentioned in Paragraph 37 in the said schedule. However, action had not been taken to report to the Central Bank of Sri Lanka through the said schedule as to the values of remittances received in 25 instances by 04 accounts belonging to the businesses managed by Hezbollah family; as for those 04 accounts, deposits and withdrawals had been made unusually, large amounts of funds had been remitted externally, identity and other information had not been verified, and objectives and legality of the remittances had not been identified. The Audit was informed by the Bank of Ceylon that the relevant information had not been reported based on lack of suspicion as stated in Section 37 of the Rules of Central Bank of Sri Lanka.

8.5 Agreements with the Ministry of Higher Education on Obtaining the Degree Awarding Status for the Batticaloa Campus

The following evaluations had been made on allowing the University College of Batticaloa to award degrees contrary to the recommendations mentioned in the instructions (Annexure 87) prepared by the Ministry of Higher Education to accredit the non-governmental institutions of higher education based on Gazette Extraordinary, No. 1824/21 and 1891/9 of the Government and SA Directive, No. 01/2013.

8.5.1 According to the said instructions, a non-refundable fee of Rs. 200,000 should be paid to the Ministry along with the application and the relevant documents. Once the payment is received, a desk review should be carried out in order to examine as to whether the supporting documents have been presented sufficiently to verify the relevant information. However, such a desk review had not been carried out.

8.5.2 In the wake of the desk review, a non-refundable fee of Rs. 500,000 should be paid for the institutional review along with 06 copies of the detailed project proposal. The criteria of institutional review and norms should be satisfied either for granting recommendations

to carry out a review on the courses, or charging fees in that connection. According to the said fee structure, a fee of Rs. 700,000 would be charged for the institutional review, but the Ministry of Higher Education had charged a fee amounting to Rs. 1,000,000.

- 8.5.3 As mentioned in the background information, the committee of five persons with expertise on subjects stated in their report of inquiry that, in 02 instances, a majority of evaluation criteria for allowing the said institution to award degrees had not been fulfilled whilst the requirements essential for a higher educational institution had not been met. The proposal requesting to qualify for awarding degrees should have been turned down, and the institution should have been informed on the requirements to be fulfilled saying that the degree awarding status could not be granted thus requesting to submit a new application by correcting the deficiencies in order to be reconsidered. However, the Standing Committee on Quality Assurance and Accreditation had taken measures to make evaluations by appointing committees repeatedly and requesting the institution for reports in disregard of the institutional review committee.
- 8.5.4 Despite being stated that the areas considered by the committee of five persons for institutional review such as, physical resources, process of certifying the academic plans and quality, academic researches, and skills of the staff, had remained extremely poor and unacceptable, the application of the said institution had been forwarded for review on 24 November 2017 without reconsidering the said areas and with no evidence whatsoever for the improvement thereof. (Annexure 88)
- 8.5.5 An interim report dated 08 May 2018 (Annexure 89) and the final report dated 04 July 2018 had been furnished by the Tripartite Committee appointed by the Standing Committee on Quality Assurance and Accreditation to coordinate the courses. Although it was stated in the report on institutional review that the areas relating to courses and lectures had been highly unfavorable, the said report on the review of courses recommended that the proposed criteria for the evaluation of courses were satisfactory.
- 8.5.6 In the wake of the recommendation given in the report on institutional review that the proposed institution had not possessed the human resources competent enough to conduct degree courses, a list comprising the names of 45 lecturers (Annexure 90) proposed to be

recruited to the Batticaloa Campus Private Limited was presented to the Ministry. However, the lecturers mentioned therein did not provide letters giving consent to serve the said institution of higher education. As such, it remained questionable as to whether the said list was nothing but a mere list of names; but, with no consideration thereon, the committee to evaluate the syllabus gave their recommendations.

8.5.7 The memorandum of understanding between the Batticaloa Campus Private Limited and the Ministry of Vocational Training had terminated on 15 August 2016 whilst the registration of the Batticaloa Campus Private Limited with the Tertiary and Vocational Education Commission had not been renewed as well. However, information was received that the Batticaloa Campus Private Limited had continuously proceeded with academic activities until April 2019. While the academic studies had been continuing, the Batticaloa Campus Private Limited had been visited by a committee appointed by the Ministry of Higher Education several times in order to examine the possibility of awarding degrees. However, no examination whatsoever had been conducted to ascertain as to whether the courses conducted by the Company during the period 2016 – 2019 had been on par with the status of a degree in terms of nature of the courses conducted, number of students enrolled for the courses, course contents, and the quality of the courses. The Audit received information that students had been enrolled for degree courses during the period 2016 – 2019 without being formally authorized either by the University Grants Commission or the Ministry of Higher Education.

8.5.8 In order to pretend that the Batticaloa Campus Private Limited could obtain lands belonging to Mahaweli Authority on long term lease, the management thereof had presented a copy of the draft deed of long term lease agreement to the Ministry. That draft deed of lease had been signed by two clerks in charge of the subject and Mr. Hezbollah, being the lessee. It was observed that a letter kept in the file as being a legally incomplete document (Annexure 93) had been used illegally by the persons in charge of the subject and the lessee, whereupon the Ministry had kept the said illegal letter in the file for evaluation.

8.6 Observations on the Hira Foundation Requesting Registration with the National Secretariat for Non-Governmental Organizations

8.6.1 According to the background information mentioned above, the Hira Foundation had not been registered as a non-Governmental organization. Nevertheless, the Hira Foundation, in several instances, had exchanged letters with various Government institutions on the pretext of being a non-Governmental organization.

8.6.2 Irrespective of the facts that the Intelligence Bureau had not given clearance for the Hira Foundation due to unfavorable information on the members of the Hira Foundation, and the registration with the National Secretariat for Non-Governmental Organizations functioning under purview of the Ministry of Defence had been turned down, the Ministry of Skills Development and Vocational Training had entered into an agreement with the Hira Foundation in order to establish an institution of higher education without taking into consideration the background of the Foundation.

8.7 Obtaining a Building on Lease from the Urban Council, Kattankudi for Maintaining the University College of Batticaloa.

8.7.1 In terms of Section 36 (e) of the Urban Councils Ordinance, approval of the Minister assigned to the subject should be obtained to lease out a property belonging to the Urban Council whilst approval of the Council should be obtained by the Chairman when entering into agreements valued over Rs. 10,000 in terms of Section 39(1) of the Ordinance (Annexure 94). Nevertheless, prior to entering into agreement on 10 May 2014 to lease out buildings of the Urban Council with a floor area of 11,000 square feet to the Batticaloa Campus, the Chairman had not taken action to obtain approval from the Minister assigned to the subject and the Urban Council.

8.7.2 As for the lease of buildings belonging to the Government, the monthly lease rent should be decided based on an valuation report requested from the Government Valuer. However, without doing so and under no justifiable basis, action had been taken by the Chairman to reach an agreement for a monthly lease rent of Rs. 5000 with respect to buildings having a floor area of 11,000 square feet.

- 8.7.3 The request for obtaining the buildings on lease had been made by the University College of Batticaloa on 18 November 2014 though, (Annexure 95)the agreement in that connection had been entered into on a prior date being 10 May 2014. Nonetheless, it was observed that the said buildings were used by the University College of Batticaloa sans any legal authority even by the date of signing the lease agreement.
- 8.7.4 As for a legal and formal lease of lands, the lease agreement, after being prepared by a legal officer, should be signed in his presence. However, a legal officer had not been involved in the preparation of the agreements.
- 8.7.5 The building obtained on lease had been enjoyed by the lessee for a period of 47 months until March 2018 with a lease rent of Rs. 155,000 paid. According to the valuation report of the Department of Valuation, a monthly lease rent of 197,500 should have been charged for the said buildings, thus observing that the outstanding lease rent recoverable from the lessee totaled Rs. 8,475,000. Although the lessee had been informed on 24 August 2017 that the lease rent in arrears be settled, it was observed that arrears had not been settled thus far. (Annexure 94)
- 8.7.6 Provided that the monthly lease rent had been decided sans a valuation report and failing to follow a proper methodology, and action had been taken to lease out the properties of the Council without a formal approval, it was observed that the Chairman of the Council had acted beyond the powers vested in him thus paving way for the Council to sustain a loss of Rs. 8,475,000.

8.8 Role Played by the Pradeshiya Sabha, Vakare in Granting Approval to Construct Buildings at the Leased Land.

- 8.8.1 The application for obtaining approval on the plans of buildings to be constructed at the leased land mentioned in 6.8.1 above, had been collected from the Pradeshiya Sabha on 26 August 2014. However, prior to that in the year 2013, constructions of the said project had been commenced without obtaining approval or informing the Pradeshiya Sabha.
- 8.8.2 According to the Urban Development Authority Law, No. 41 of 1978 along with the Amendment, No. 04 of 1982 relating thereto, and the PradeshiyaSabhas Act, No. 15 of

1987, the following non-compliances were observed in regard to the construction of buildings within the division of the Sabha. (Annexure 95 & 96)

- (i.) Sixteen buildings were identified in the building complex of the project. However, approval had been sought only for 02 buildings from the Pradeshiya Sabha. As such, the Pradeshiya Sabha had not been concerned with their responsibility for the regulation and prevention of unauthorized constructions.
- (ii.) A Committee had not been appointed comprising subject experts to provide recommendations for the approval of application after being reviewed that had been received seeking approval for the constructions of the project.
- (iii.) As the application had been received, a report should have been obtained from a Technical Officer following a field inspection. However, it had not been so done.
- (iv.) An environmental report had not been requested together with the application.
- (v.) Fees should have been charged based on the area of the buildings proposed for the project. However, without any such basis whatsoever, a fee amounting to Rs. 8,262.50 had been charged.
- (vi.) Revised building plans had been submitted from time to time in over 50 instances though, revised plan inspection fees amounting to the sums of Rs. 15,000 and Rs. 5,000 had been charged only in 02 instances.
- (vii.) A file relating to the said subject had not been maintained for the approval of building plans, and the norms & methodologies had not been followed; instead, signatures had been placed sans dates on the overall plan of the proposed project by the then Technical Officer in charge of the subject and the Secretary of the Sabha thereby granting approval improperly in a personal manner.

8.8.3 It was observed that a disciplinary inquiry had been launched by the Assistant Commissioner of Local Government, Batticaloa against the said Technical Officer and the Secretary of the Sabha who had personally granted approval by placing signatures on

the overall building plan of the project in an improper manner without following the institutional norms as mentioned in Observation, No. 02 (VII).(Annexure 99 and 100) Nevertheless, the Secretary of the Sabha who had been pivotal in granting approval improperly, proceeded abroad under leave not approved formally. (The Commissioner of the Department of Local Government, Eastern Province had not approved no-pay leave for him.)

9. Recommendations

9.1 Ministry of Vocational Training and Vocational Education Commission

- 9.1.1 To take necessary action with regard to failure of the higher education institution in fulfilling the criteria needed for the registration and non-compliance with the laws, rules, regulations and practices. (Reference -8.1)
- 9.1.2 To focus attention on obtaining clearance from the Attorney General's Department on the legality of the memorandum of understanding entered into between the Ministry of Vocational Training and Hira Foundation and initiating necessary legal action. (Reference 8.1.7, 8.1.4)
- 9.1.3 To take necessary action by conducting a formal inquiry on the issue of NVQ certificates to 49 students who had completed courses with no documentary evidence filed relating to the coverage of syllabuses, details pertaining to the evaluation of courses, and recommendations and approvals regarding the issue of certificates. (Reference 8.1.7, 8.1.4)
- 9.1.4 To take necessary action against the management of the Campus for enrolling the students by pretending to be a university affiliated to the Government under the implication that the University College of Batticaloa had been established with the involvement of Hira Foundation through the Ministry of Youth Affairs and having misused the Government emblem without a proper approval. (Reference 8.1.12)

- 9.1.5 To improve the internal systems of control as well as the legal framework by reviewing the laws, rules, regulations and norms established by the Ministry of Vocational Training in respect of registration and regulation of vocational education institutions. (Reference - 8.1.8, 8.1.13)

9.2 Board of Investment of Sri Lanka

- 9.2.1 To take necessary action with regard to non-compliance with the laws, rules, regulations and norms as pointed out by the audit observations referred to in Paragraphs 8.3.1, 8.3.3, 8.3.4, 8.3.5, 8.3.8, and 8.3.9 above .
- 9.2.2 To consider the recovery of duty waiver amounting to Rs. 48.51 million granted in spite of the project's failure to fulfill the criteria for granting import duty waivers after being registered with the Board of Investment by deviating from the criteria generally followed for the registration of a project. (Reference -8.3.7)
- 9.2.3 To consider on obtaining clearance from the Attorney General's Department on the legality of the agreement entered into between the Board of Investment and the Batticaloa Campus Private Limited. (Reference 8.3.6, 8.3.2)

9.3 Bank of Ceylon

- 9.3.1 To take necessary action against the responsible officers who had ignored to take action and report on the inward remittances of higher value and the suspicious transactions to the Central Bank of Sri Lanka in accordance with the Rules enforcing the Financial Transaction Reporting Act. (Reference- 8.4.1, 8.4.2, 8.4.3, 8.4.4, 8.4.5)
- 9.3.2 To strengthen the internal systems of the Bank of Ceylon for the control of inward remittances in accordance with Circulars of the Central Bank of Sri Lanka, and laws, rules and regulations governing the financial and exchange transactions. (Reference- 8.4.6, 8.4.7, 8.4.8, 8.4.9, 8.4.10)

9.4 Mahaweli Authority of Sri Lanka

- 9.4.1 To take necessary action against the officers of the Mahaweli Authority who had acted irresponsibly in a manner not compliant with the State Lands Ordinance, No. 08 of 1947 and the regulations made thereunder to enforce the Ordinance. (8.2.2)
- 9.4.2 To obtain clearance from the Attorney General's Department on the legality of the lease agreements signed to provide the lands of the Mahaweli Authority for the Batticaloa Campus Private Limited on long term lease. (Reference-8.2.12)
- 9.4.3 To review and improve the laws, rules, regulations, standards, and norms relating to the Mahaweli lands given on lease. (Reference-8.2.1,8.2.4 ,8.2.8, 8.2.9)

9.5 Ministry of Higher Education

- 9.5.1 To examine and take necessary action regarding the matters attributed to do course reviews in a manner exclusive to the University College of Batticaloa by deviating from the standard practice despite the University College's failure in the institutional review for the evaluation of higher educational institutions. (Reference-8.5)
- 9.5.2 To review the qualifications required for the registration of higher educational institutions, and the areas of evaluation as well as the criteria, and make necessary improvements. (Reference-8.5.3, 8.5.4)

9.6 Pradeshiya Sabha of Koralepattu – North, Wakare

- 9.6.1 To take appropriate measures with regard to personally approving the building plan of the Batticaloa Campus Private Limited as the Batticaloa Campus in an improper manner sans the necessary inspections and documents maintained in the file for the approval of building plans without following the general practice and methodologies. (Reference - 8.8.2(VII))

9.6.2 To take legal action in terms of the Pradeshiya Sabhas Act for the recovery of fees receivable to the Pradeshiya Sabha by reexamining the construction of buildings and the plans. (Reference-8.8.2 (V), 8.8.2(VI))

9.7 Urban Council, Kattankudi

9.7.1 To examine and appropriate measures with regard to leasing out a property belonging to the Urban Council, Kattankudi without being complied with the Urban Councils Ordinance. (Reference -8.7.1 and 8.7.2)

9.7.2 To recover all sums including Rs. 8,475,000 deprived of the Urban Council during the relevant period of lease and a fine, if any due to the properties of the Urban Council being leased out improperly sans a valuation report. (Reference -8.7.5)

Sgd./W.P.C. Wickramaratne
Auditor General

W. P. C. Wickramaratne
Auditor General

24 November 2020.

