

Expressway Transport Company (Private) Limited - 2023

The operating affairs of Expressway Transport Company (Private) Limited for the year ended 31 December 2023 were audited under my direction in accordance with the provisions of the National Audit Act, No. 19 of 2018, read in conjunction with Article 154(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka. The financial statements for the years 2016 to 2023, which were required to be submitted in accordance with Section 150(1) of the Companies Act, No. 07 of 2007, had not been submitted as at 31 October 2024. My comments and observations which I consider should be report to Parliament appear in this report in accordance with Article 154(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1.2 The responsibility of management and those charged with governance for the financial statements.

According to Section 16(1) of the National Audit Act No. 19 of 2018, every audited entity shall maintain proper books and records of its income, expenditure, assets and liabilities to enable it to prepare annual and periodic financial statements in relation to that entity. . In terms of section 16(2) of the said Act, the annual financial statements in respect of each audited establishment shall be submitted by the Chief Accounting Officer to the Auditor-General together with the annual performance reports of the said establishments within such period as may be prescribed by rules. In terms of section 38(1) (d) of the said Act, the Chief Accounting Officer shall ensure that the annual reports and other financial statements are prepared within the required time, and in addition, the Chief Accounting Officer shall ensure that the annual reports relating to the audited entity are submitted to Parliament.

2. Audit Observations

2.1 Establishment of the Company.

The approval of the Cabinet of Ministers had been received for the proposal submitted by the Hon'ble Minister of Highways, Ports and Shipping in the Cabinet Memorandum No. 2014/11 dated 25 April 2014 for "Obtaining the approval of the Cabinet of Ministers for the establishment of "Expressway Transport Company (Private) Limited" under the Road Development Authority" by the Cabinet decision No. 14/0530/505/015 dated 08 May 2014. The approval of the Cabinet was given subject to incorporate "Expressway Transport Company (Private) Limited" under the Companies Act No. 07 of 2007 as a fully owned Government (General Treasury) company operating under the Ministry of Highways, Ports and Shipping and the new company to be prevailed under the direct supervision of the General Treasury, Including the necessary arrangements for ownership of the company and appointment of the board of directors etc and obtaining the prior approval of the General Treasury for the Articles of Association which is being prepared.

To the above Cabinet Memorandum submitted on 25 April 2014, it was stated as observations of the Minister of Finance and Planning that as per the Road Development Authority Act No. 73 of 1981 there is no provision to establish a company under the Road Development Authority, it is appropriate to establish under the Companies Act No. 07 of 2007 fully controlled by the Government (General Treasury) as a company under the purview of Ministry of Highways, Ports and Shipping.

Under Section 05 of the Companies Act No. 07 of 2007, "Expressway Transport Company (Pvt) Limited" had been registered as a private company on 6 May 2014 and as per Section 1.6 of Public Enterprises Circular No.3/2015 dated 17 June 2015 and this company had been identified as a Government-Owned Enterprise belonging to the "E category".

Following facts were observed in this regard.

- (a) The Board of Directors had approved the Board Paper No. 1551/2014 submitted by the Director General of the Road Development Authority on 07 April 2014 for the establishment of this company as a wholly owned subsidiary of the Road Development Authority. But a draft of the articles of association of the proposed company had not been submitted along with the said board paper. The Board of directors had given the approval based on the decision taken to establish the company without confirming the policy clearance of the Cabinet that had been received for the establishment of the relevant company.
- (b) Although it was decided in the Cabinet meeting held on 8 May 2014 that this company should be established under the Companies Act No. 07 of 2007 as a company fully owned by the Government (General Treasury), operating under the Ministry of Highways, Ports and Shipping, the Company had been incorporated under the Companies Act No. 07 of 2007 as a fully owned Company of the Road Development Authority under No - PV 98435 dated 06 May 2014.
- (c) According to the decision of the Cabinet of Ministers, it was decided that "the new company should be prevailed under the direct supervision of the Treasury and the articles of association including the necessary provisions for the ownership of the company and the appointment of the Board of Directors" should be obtained with the prior approval of the Treasury and the Board of Directors of the Road Development Authority. However the company had not acted that way.
- (d) The following matters had not been included in the articles of association which had been submitted to the Company Registrar on 25 April 2014 by a private company acting as the company secretary.
- The new company should be under the direct supervision of the Treasury.
 - The prior approval of the General Treasury should be obtained for the articles of association which includes the necessary provisions for the company's ownership and the appointment of the board of directors.
 - Number of directors and composition of the board of directors.

2.2 Administration and management of the company

Two officials holding permanent positions in the Road Development Authority, a representative of the Treasury and two representatives of the private sector had been appointed to the board of directors to administer and operate the company and one of them had been chosen as the Chairman. The board of directors had appointed staff consisting of the Chairman, General Manager, Accountant and three managers under the Supervision of General Manager for the management of the company. Only the information about the current board members had been submitted to the audit and information about the previous board members had not been submitted to the audit.

2.3 Assets, Liabilities, Income and Expenditure.

The board of directors of the company had not prepared and approved the financial statements since 2016 and the Director (Internal Audit) of the Road Development Authority had only prepared a statement of financial position on 31 October 2023 and submitted it to the Secretary of the Ministry of Transport and Highways. According to that report the assets and liabilities for the year ended 31 October 2023 and the assets and liabilities as per the audited financial statements of 31 December 2015 were as follows.

Description	As per report prepared by Internal Auditor as on 31 October 2023 (Rs.)	As per audited financial statements as on 31 December 2015 (Rs.)	Difference (Rs.)
Total Assets	3,398,677	168,027,897	(164,629,220)
Total equity	(132,506,549)	8,911,197	(141,417,746)
Receipt of money - Sri Lanka Transport Board	56,284,248	-	56,284,248
Total Liabilities	79,620,978	159,116,699	(79,495,721)

According to the audited financial statements as at 31 December 2015, income and expenses are as follows.

Description	As per audited financial statements as on 31 December 2015 (Rs.)
Income	78,760,637
Sale cost	(70,455,661)
Gross profit	8,304,976
Other income	1,080,402
Expenses	(24,511,695)
Profit/ (Loss)	(15,126,316)

Also, the opinion of the Auditor General's report regarding the financial statements presented for the year ended 31 December 2015 had been disclaimed.

2.4 Lack of evidence to Audit

- (a) As compared to 31 December 2015 relevant written evidence to prove the changes in value of assets/liabilities/claims as on 31 October 2023.
- (b) Income and expenses had earned during the period of 2016 - 2023 and related evidence to verify them.

- (c) Evidence required to validate whether Rs.6 million payable to an external party on behalf of a project has been settled as per the statement of financial position prepared by the Internal Audit Division as on 31 October 2023.
- (d) Although the company had received Rs.2 million and Rs. 13 million from external parties respectively for the Smart Bus Halt –3000 project on 04 and 10 December 2022, the evidence required to confirm that such a project was implemented.

2.5 Going concern of the company

The approval had been granted at the Cabinet meeting held on 26 June 2023 to the Cabinet Memorandum No. 28/2023 dated 26 May 2023, submitted by the Minister of Transport and Highways in relation to Expressway Transport Company (Pvt.) Limited.

But the going concern of the company was questionable due to the following observations had made by the Minister of Finance, Economic Stabilization and National Policy regarding 3.1, 3.3, and 3.4 proposals of the Cabinet Memorandum.

- (3.1) The Minister of Finance had recommended to attach all the employees of the company to the Sri Lanka Transport Board and hand over all the assets including buses to the Sri Lanka Transport Board without following a voluntary retirement scheme instead of handing over all the buses owned by the company to the Sri Lanka Transport Board and return all other assets to the Road Development Authority and to provide compensation to all employees under the voluntary retirement scheme.
- (3.3) The Minister of Finance had recommended that the funds of the Sri Lanka Transport Board to be used to settle all the debts and liabilities of the external parties.
- (3.4) The company was also ordered to be liquidated by a liquidator appointed by the Road Development Authority

2.6 Non-compliance for laws,rules and regulations

Reference to laws, rules and regulations	Non-compliance	Comments of the Management	Recommendation
(a) Companies Act No.07 of 2007 i. Section 133 sub section (1) (2) and section 144	Although the Board of Directors of the Company was supposed to convene the Annual Meeting of Shareholders once in each Calander year, no Annual General Meetings had been held after the year 2014.	Management had not commented.	Actions should be taken to proceed as per Section 133 and Section 187 (1) of the Companies Act No. 07 of 2007

ii. Section 150 (1)	Although the company should have prepared the financial statements within 06 months after the balance sheet date or within such extended period as may be determined by the Registrar of Companies, the company had not prepared the financial statements since the year 2016.	Management had not commented.	The company's financial statements should be prepared and approved promptly. Officials who have neglected these responsibilities should be identified and disciplinary action should be followed.
iii. Section 166	The board of directors of the company shall prepare an annual report on the affairs of the company during the accounting period ending on that date within 06 months after the balance sheet date of the company. But the company had not prepared annual reports since 2016.	Management had not commented.	Annual reports of the company should be prepared and submitted promptly. Officials who have neglected these responsibilities should be identified and disciplinary action should be followed.
(b) Guidelines on Corporate Governance for State Owned Enterprises circular No. 01/2021 dated 16.11.2021			
i. Section 2.2.2	The chairman shall conduct board meetings once every month. Accordingly, from May 2014 when the company was established to 31 December 2023, at least 116 board meetings should have been held, but only 30 board meetings had been held from the company's inception to July 2023.	Management had not commented.	Actions should be taken to proceed as per circular instructions.
ii. Chapter 5	The company shall prepare a strategic plan for a period of five years which includes the financial forecasting along with the action plan and the annual budget for the relevant year and submit it to the	Management had not commented.	Actions should be taken to proceed as per circular instructions.

Secretary of the Treasury through the Secretary of the concerned line ministry and shall update the plan every year in accordance with the changes in the business environment and it should be submitted to the General Treasury 15 days prior to the commencement of the following year but it had not done so.

iii. Paragraph 6.6	Although every company should submit a draft annual report along with the financial statements to the Auditor General, the company had not submitted the financial statements to the audit from the year 2016 to the year 2023.	Management had not commented.	Officials who have neglected these responsibilities should be identified and disciplinary action should be taken.
iv. Paragraph 6.7	Actions had not been taken to conduct an annual board of survey and submit those reports to the audit.	Management had not commented.	Boards of survey should be carried out immediately and deficiencies and surpluses should be identified.
(d) The Employees' Provident Fund Act No. 15 of 1958 (including amendments up to 31 December 1998) Section 15	The employer shall pay the relevant contribution for each month to the fund from the earnings of an employee before the last day of the following month. However, from March 2020 to June 2023, the outstanding value to employees' provident fund was Rs. 23.34 million and the surcharge was Rs. 7.3 million.	Management had not commented	In accordance with the provisions of the Act, employees' provident fund should be paid and the officers responsible for the surcharge should be identified and the amount should be charged.
(e) Employees' Trust Fund No.46 of 1980 Section 16	The employer shall be liable to pay a contribution of 03 percent of the total earnings had earned by the employees during the month to the fund	Management had not commented.	In accordance with the provisions of the Act, employees' Trust fund should be paid and the officers

on or before the last day of the following month for each month in which the employees are employed. However, Outstanding value of the Employees' Trust Fund from May 2021 to June 2023 was Rs. 1.7 million, including the surcharge payable of Rs. 0.63 million.

responsible for the surcharge should be identified and the amount should be charged.

3. Implementation of Cabinet decisions regarding the liquidization of company.

- (a) As stated in Cabinet Memorandum No.28/2023 dated 26 May 2023 presented by the Minister of Transport and Highways, the approval had been given by the Cabinet meeting held on 26 June 2023 to hand over the all buses owned by the company and 15 percent of passenger services permits to the Sri Lanka Transport Board. Accordingly, instead of an independent assessor valuing, the Road Development Authority had assessed 20 buses at Rs.109.4 million with a value of Rs.216 million registered in the name of the secretary of the line ministry and 15 percent of the total running turns of the expressway had handed over to the Sri Lanka Transport Board.
- (b) According to the decision of the Cabinet of Ministers referred to in "a" above, the Board of Directors appointed for the company was ordered to be dissolved and the company was liquidated through the liquidator by the Minister of Transport and Highways. Although more than a year has passed, the company had not implemented these decisions.
- (c) Also, as per the decision of the Cabinet, Rs. 77.07 million had been identified as liabilities to be paid by the company including voluntary retirement scheme(without leasing loan). Of that value, only Rs. 18.31 million had been settled on 31 January 2024. further It was observed that the value to be settled was Rs. 58.76 million.
- (d) As per proposals 3.1 and 3.2 mentioned in Cabinet Memorandum No. 76/2023 dated 13 December 2023 submitted by the Minister of Transport and Highways, 29 out of the total number of employees of the company, which is 42, have been recruited in accordance with scheme of recruitment of the approved cadre of the Sri Lanka Transport Board. It had been decided at the Cabinet meeting held on 08 January 2024 to retain 13 drivers and conductors who are not eligible to be attached to the Sri Lanka Transport Board as personal until their retirement and pay the compensation of Rs. 10.93 million for 13 employees who have expressed their willingness to retire under the Voluntary Retirement Scheme when attached to the Sri Lanka Transport Board. Accordingly, 29 employees had been attached to the Sri Lanka Transport Board and the remaining compensation of Rs. 5.74 million for employees who have expressed their willingness to retire under the Voluntary Retirement Scheme had not been paid as of 31 October 2024.