

Dilan Ratnayake

PRESIDENT'S COUNSEL

Your Ref: BC/2622/21012, BC/12/2015, BC-11/2015 F

12th of November 2025

Justice W.M.N.P. Iddawala,

Chairman,

Commission to Investigate Allegations of Bribery or Corruption,

36, Malalasekara Mawatha,

Colombo 7.

Honorable Commissioner,

**COLOMBO HIGH COURT CASE NO: HCB 303/2024. REPRESENTATION
MADE IN TERMS OF SECTION 67(2) OF THE ANTI-CORRUPTION ACT NO 9
OF 2023**

I represent **Mr. Nivard Ajith Leslie Cabraal**, who is named as the **First Accused** in the above case.

My client served as the **Governor of the Central Bank of Sri Lanka (CBSL)** from **July 1, 2006, to January 8, 2015**. He, along with four other senior officials of the CBSL, has been indicted in the above High Court case for **conspiracy to commit the offence of corruption** under **Section 70 of the Bribery Act No. 11 of 1954**, and my client individually for committing the said offence between **16.03.2011 and 29.11.2012** in relation to an investment in **Greek Government Bonds**.

Although the indictment has been served on my client, I wish to make this legal representation on his behalf without prejudice to his defence in the said case.

1. Absence of the *mens rea* required to constitute the offence

My first representation for the consideration of the Commission is that the offence of corruption cannot be made out in respect of the transaction stated in the indictment.

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While the participation of the accused in the *actus reus* of the offence, i.e., the decision to invest in Greek Bonds, cannot be denied, **the presence of the requisite *mens rea* (“with intent” or “with knowledge” to cause wrongful or unlawful loss to the Government) is not borne out by the evidence.**

A literal interpretation of the definition of *mens rea* requires that such intent or knowledge **must exist from the outset**, and that the existence of this mental element must be **proved beyond a reasonable doubt**.

In this instance, the investment decision was made collectively by several government officers empowered to do so under **Sections 66 and 67 of the Monetary Law Act No. 58 of 1949**, and it cannot reasonably be presumed that such officers acted with the deliberate intention of causing a loss to the Government. On the contrary, a Court may presume that **“official acts have been regularly performed” (Section 114(d) of the Evidence Ordinance)**.

2. Collective Nature of Decision-Making

The statement made to the Commission to Investigate Allegations of Bribery or Corruption by the present Governor of the CBSL, **Dr. Nandalal Weerasinghe** (then Deputy Governor), on **27.07.2015**, annexed to the indictment, sets out the procedure governing foreign investments made by the Monetary Board under the **Foreign Exchange Reserves Management Guidelines (FRMG)** and underscores the **collective nature** of decision-making.

Throughout this process, my client acted based on the **recommendations** of his Deputy Governors and senior officers. There is **no evidence whatsoever** that he acted **arbitrarily or unilaterally**.

The present Governor also does not indicate any irregularity in the investment decision, though it resulted in a financial loss to the Government.

In addition, **Dr. Indrajit Coomaraswamy**, who served as Governor of the CBSL from **July 2016 to December 2019**, confirmed to the **Attorney General** by letter dated **14th May 2018** that, in relation to the Greek Bonds investment in 2011, **“investment guidelines**

and procedures applicable to the international reserve management of the Bank, as stipulated at that time, have been properly adhered to by the officers involved in the investment process.”

3. Bona fides Evidenced by Overall Profitability

The *mens rea* of the accused cannot be established merely based on one loss-making transaction.

CBSL records show that the **returns generated by reserve management activities in 2010 and 2011** were well above the benchmark U.S. Federal Fund Rate, yielding substantial profits of **US\$341 million in 2010** and **US\$430 million in 2011**.

The profit in 2011 was computed after making provision for all losses, including the Greek Bonds investment. The same CBSL personnel who made the loss-making investment were responsible for these significant profits.

If causing a loss was indeed their objective, such substantial profits could not have been realized. The *bona fides* of my client and the Monetary Board are thus evident from the overall success of CBSL’s investment portfolio during the period relevant to the indictment.

4. Statutory Protection for Acts Done in Good Faith

Section 47(1) of the **Monetary Law Act No. 58 of 1949** affords **protection for acts done in good faith** by members of the Monetary Board, officers, and servants of the CBSL. This protection is denied only in cases of misconduct or willful default.

There is no evidence whatsoever to show that my client, or any of the other accused, acted in a manner that would deprive them of this protection. My client is being indicted for **making an investment decision** which, though resulting in a loss, **does not constitute a criminal offence**. Subjecting him to a criminal trial on that basis, absent evidence of culpable conduct, would amount to a violation of his fundamental rights.

The **Central Bank of Sri Lanka Act No. 16 of 2023** further recognizes the necessity of protecting CBSL officials. **Section 120** of that Act now provides broader protection for

bona fide acts of CBSL officials, comparable to the protection afforded to the staff of this Commission under **Section 30(1)** of the **Anti-Corruption Act No. 9 of 2023**.

Taken at the worst, the allegation may be that my client made an **error of judgment** in an investment decision he was lawfully empowered to take. Merely because the anticipated return did not materialize, it is my respectful submission that he **cannot be punished as a criminal**.

5. Prior Supreme Court Finding on the Same Matter

The first witness in the indictment, **Hon. Sujeeva Senasinghe, MP**, had previously filed a **Fundamental Rights application (SC FR 457/2012)** against my client, alleging that by investing in Greek Bonds, he had caused a loss to the Government and violated the fundamental rights of the citizens of Sri Lanka.

That case was defended by the **Attorney General**, and the **Supreme Court**, after considering the matter in detail, held as follows:

“Considering the totality of the circumstances, it is neither possible nor desirable to hold that the members of the Monetary Board, in taking a decision to invest in Greek Bonds, have acted arbitrarily, unreasonably or in a fraudulent manner.”

- *Justice K. Sripavan, SC FR 457/2012, decided on 18.09.2014.*

The Supreme Court, therefore, found that even a **prima facie violation** of fundamental rights was **not established** on a balance of probability, and **refused leave to proceed**.

It follows that the *mens rea* required to establish a corruption charge was not made out even on a civil standard of proof, and therefore cannot be established on the higher criminal standard of proof beyond a reasonable doubt.

6. Request for Withdrawal of the Indictment

In light of the above, I respectfully urge the Commission to **reconsider proceeding with this indictment** and to **direct the Director-General to withdraw** the same under the

powers vested in the Commission by **Section 67(1) of the Anti-Corruption Act No. 9 of 2023**, as the indictment is **futile in law** and **unsustainable on evidence**.

If allowed to proceed, the case would result only in a **protracted and unwarranted trial**, wasting valuable judicial and prosecutorial time that could otherwise be devoted to cases with genuine evidentiary merit.

My client, who enjoys the **presumption of innocence** under **Article 13(5)** of the Constitution, should not be subjected to such a process in the absence of any evidence of criminal wrongdoing.

I therefore respectfully pray that the **Honorable Commissioners** will be pleased to sanction the **withdrawal of this indictment** and afford my client the justice he is entitled to in law.

I trust that this legal representation will receive your fair and serious consideration.

Thanking you,
Yours sincerely,

Dilan Ratnayake
President's Counsel

Copies:

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Commissioner II
2. **Chethiya Goonesekare Esq.**
President's Counsel
Commissioner III