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Press Release

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Supreme Court refuses to grant leave to proceed in Greece Bonds Case against the Central Bank

On 18th September 2014, the Supreme Court dismissed the Fundamental Rights application filed by Mr Sujeewa Arjune Senasinghe of Colombo 3 against the Monetary Board complaining that the Central Bank, in purchasing Greece Government Bonds, had acted in an unlawful, irresponsible and an arbitrary manner.

In its judgment, the Supreme Court stated that the investment in Greece Bonds and its trade formed a part of the risk management strategy of the Central Bank and that if all investments were to be maintained as risk free investments, the return would be negligible. The Central Bank therefore had to select a mix of low risk and risk bearing investments, expecting a reasonably high return. The Court further stated: "We must not forget that in complex economic policy matters, every decision is necessarily empiric and therefore its validity cannot be tested on any rigid formula or strict consideration. The Court while adjudicating the constitutional validity of the decision of the Governor or

Members of the Monetary Board must grant a certain measure of freedom considering the complexity of the economic activities. The Court cannot strike down a decision merely because it feels another policy decision would have been fairer or wiser or more scientific or logical. The Court is not expected to express its opinion as to whether at a particular point of time or in a particular situation any such decision should have been adopted or not. It is best left to the discretion of the authority concerned."

The Court also acknowledged that the Central Bank's decision to invest in such Bonds was based on the trade-off between different risks faced and the Central Bank's tolerance for higher risk on a very small part of its portfolio. (Only 0.6% of its portfolio was invested in Greece Bonds). In that regard, the Court stated: "Investing in high yielding sovereign paper is an integral part of fund management of many funds in the world and the Central Bank too had followed a similar practice in investing a tolerable proportion of its resources (0.6%) in Greece Government Bonds. When the Euro Zone took a turn for the worse several weeks after the investments were made, in mid July 2011, the Central Bank sold a part of Greece Bonds at a loss of US$ 6.6 million. This measure was taken to mitigate the risk of the Greece investment losing further value due to subsequent development in the Euro Zone. Such loss has been taken into consideration in computing the profit/gains for the year 2011 amounting to US$ 430.2 million."

The Supreme Court Bench presided by Justice K Sripavan, and comprising Justice R Marasinghe, and Justice Sarath de Abrew, unanimously concluded that: "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 Greece Bonds, have acted arbitrarily, unreasonably and in a fraudulent manner."

Mr Upul Jayasuriya and Mr S H A Mohamed, Attorneys-at-Law, instructed by Paul Ratnayake Associates appeared for the Petitioner, while Mr Sanjay Rajaratnam, Deputy Solicitor General and Mrs S Barrie, Senior State Counsel appeared for the Respondents.