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Banking Secrecy : Existence at any cost

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1. Introduction

Banking secrecy is one of the most significant and well recognized principles of the Banking Law which has a long history of more than 100 years. A bank must maintain strict confidentiality towards the information of its customers. This can be identified as banking secrecy. However, there are some exceptions for banking secrecy that are defined by the common law. In this article, it is expected to discuss banking secrecy giving prominence to the existing literature, origin and foundation of banking secrecy, importance of lifting it, exceptions for the concept of banking secrecy and banking secrecy in Sri Lanka.

2. What is Banking Secrecy?

Banking secrecy is a legal principal in some jurisdictions that the banks are not allowed to provide personal and account information of their customers to a third party subject to some conditions. Although, the meaning of banking secrecy is widely understood, there is no explicit definition at international level[1]. Savona[2] states that banking secrecy is a professional obligation, meaning that financial institutions shall not expose a customer's financial information and they even have the right to resist any third party's inquiries in order to protect the customer's wellbeing.

One of the conditions of the relationship between a bank and its customers is that the customers' dealings and financial affairs will be treated as confidential. This rule, however, does not apply to the customers' credit information which is shared rather freely among lending institutions. Also, due to certain laws (such as anti-terrorist and anti-drug-trade legislation) and tax treaties between nations, banks must release specific information to help fight against terrorism and illegal drug trade, and prevent tax-evasion and money laundering[3].

The inception of the banker customer relationship commences with the opening of an account by a customer with the respective banker. This relationship creates some reciprocal rights conferred and reciprocal obligations imposed to the banker as well as the customer. Accordingly, one of the most important and well established rules of the banking law is that a bank must observe strict confidentiality about its customers' accounts[4]. In the beginning, the relationship between banks and customers was based on trust and confidence. At that time, the customer had trust and confidence that the banks would not divulge information about his financial transactions. Thereafter, this trust developed into a legal duty of the banker's secrecy/confidentiality under the common banking law.

When dealing with the financial transactions of a customer, the bank receives, handles and processes the valuable information relating to the customer's financial status. Such information and knowledge reflect the private and public life of the customer and therefore, there may be a tendency to misuse this information by a third party. Hence, the concept of banker's duty of secrecy/confidentiality was developed under the common law. Under this concept, the banks are not permitted to unlawfully disclose the information and financial condition of a customer and therefore, such information is protected from other parties such as individuals and states subject to some exceptions. The duty of confidentiality arises upon the opening of an account by a customer with a bank and it continues even after the closure of the account.

However, in respect of a bank, banking secrecy is a professional obligation and a right while it is a privilege in respect of a customer. Hence, a bank has a right to resist an unauthorized party's intervention on customers' information in order to protect customers' interest.

In 1930s, the first effective banking secrecy statute was introduced in Switzerland, due to the conflict that arose between Jews and German Gestapo. As a result, the Swiss government codified its practice of maintaining the secrecy of its customers' accounts. Thus, the first banking secrecy law came into being[5].

During the last few decades bankers have significantly expanded their activities which have greatly challenged the concept of banking secrecy. However, there are many reasons which emphasize the importance of banking secrecy at present. 'Secrecy laws have served to shield persons from financial loss in countries plagued by instability, weal currency and run-away inflation rate. Secrecy laws have served to protect wealthy individuals or those who promote unpopular political causes by allowing them to hide their assets to avoid the threat of kidnapping or persecution'[6]. Further, banking secrecy prevents commercial competitors from trying to discover financial information about their opponents.

It is clear that an individual's banking information directly reflects that individual's economic situation, personal interests as well as political beliefs. Hence, the banking secrecy can be identified as a part of an individual's privacy rights[7]. On the other hand, banking secrecy can be identified as a contractual obligation as the banks are supposed to be loyal to customers in terms of the principal of good faith. Further, some scholars have attempted to justify banking secrecy as professional secrecy, similar to that of lawyer-client or doctor-patient. Due to the aforesaid different justifications of banking secrecy, its legal protection varies from country to country.

3. Banking secrecy: International Perspective

It is clear that the banking system or transactions no longer depend on national boundaries. Hence, the concepts relating to banking system also vary from country to country in order to promote the global financial system. This situation is common to the concept of banking secrecy. Some countries such as Netherlands, Spain, Sweden and Japan do not have specific statutory provisions on banking secrecy.

Many other countries follow the implied contractual obligation as introduced by the common law. In some countries breach of banking secrecy is an offence. For example, in Switzerland, both the intentional and negligent disclosure of secret banking information is punishable by criminal penalties[8]. As a result, Switzerland is able to attract foreign capital and it is the world's third largest financial centre. On the other hand, even though Switzerland is considered as a 'secrecy haven', both the Swiss Federal Code of Criminal Procedure and Civil Procedure imposed a public duty to testify and to produce documents. When considering the situation in USA, it could be observed that the scope of the banking secrecy varies from state to state and it is based on the right to personal privacy.

Some scholars are of the view that the classification of jurisdiction based on banking secrecy is not easy as data collection and accurate evaluation of the data is a difficult task. However, considering the secrecy level, Philip R.Wood tentatively classifies the jurisdictions as follows[9].

Low Secrecy	United States
Medium Secrecy	Australia, Britain, Canada, Ireland, Italy, Japan, Jersey, numerous other Commonwealth countries including India, Malaysia and Singapore, and Scandinavian countries
Quite High Secrecy	Denmark, France and Germany
High Secrecy	Austria, Greece, Liechtenstein, Luxembourg, Portugal and Switzerland (some cantons only)

Given the circumstances, some scholars argued that cross border banking could not be properly aligned with the concept of banking secrecy. Since the prominence is given to banking, secrecy is different from jurisdiction to jurisdiction, it is not easy to strictly conserve banking secrecy in cross border transactions. However, some countries have been attempting to resolve this issue by entering into international treaties. Further, there were some cases where mutual assistances were obtained even in the absence of treaties. This was discussed in the case of Spencer vs. The Queen[10]. Given the circumstances, it could be seen that most of the jurisdictions have realized that 'the modern state could not properly function if its members could keep banking information secret'[11] and therefore, it may not be prudent to maintain banking secrecy as a barrier for cross border transactions in this modern globalized economy.

Although the traditional boundaries of banking secrecy are being faded, banking secrecy is an essential element of individual privacy as well as the fight against money laundering. Hence, it is generally accepted that banking secrecy is not supreme and it should be lifted in certain cases.

Accordingly, various international documents such as 1988 Vienna Convention, 1990 Strasbourg Convention, 2000 Palmero Convention, the FATF 40 Recommendations and EC Directives have emphasized the importance of lifting the banking secrecy. In terms of the provisions of the above documents, a party cannot refuse to act on the ground of banking secrecy. Further, when dealing with mutual legal assistance between parties, any party cannot raise banking secrecy as a ground for refusing cooperation. As per the FATF Recommendations, banking secrecy should be lifted by the way of obtaining information about their customers and reporting large and suspicious transactions[12]. Further, EC Directives also require the identification of customers by banks when entering into business[13]. These provisions are intended to prevent banking secrecy laws act as hindrances of the investigation and prosecution of money laundering crimes.

Furthermore, due to the pressure given by aforesaid international documents, law enforcement authorities in most of the jurisdictions have taken provisional measures to uplift banking secrecy through procedural laws while adopting legislations for supporting the fight against money laundering.

4. Exceptions for Banking Secrecy

It has been observed that there is a conflict between the need for secrecy and the need for disclosure of confidential information under the common law and legislative exceptions. In the same time Banks have to comply with the duty of secrecy as well as its exemptions while simultaneously performing their banking business which is not an easy task. However, banks need to be vigilant and prudent when striking a balance between these two essentials as any errors made by banks will have costly repercussions. In older cases such as Tassel vs. Cooper[14], Hardy vs. Veasey[15], the court emphasized the duty of a banker to not disclose the information pertaining to his customers. Accordingly, banks were not permitted to disclose the information and if they did so, banks were liable for damages.

Tournier vs. National Provincial and Union Bank of England[16] can be identified as the most remarkable case in this regard. In this case, the English judiciary discussed the above concept and broadened it in a more extensive and practical manner in order to facilitate the new developments in the banking sector. As per the

Banker LJ, 'the credit of the customer depends very largely upon the strict observance of that confidence' seems to be consistent with the rationale of the aforesaid concept. Further, it can be observed that Tournier case established that there is an implied agreement between the banker and the customer which the banker should maintain in strict confidentiality towards its customers subject to some exemptions. Accordingly, banker's duty of confidentiality is not an absolute duty and therefore, disclosure of customer information was held to be permitted only;

- where the bank is compelled by law to disclose the information
- when a banker owes a duty of disclosure to the public.
- if disclosure is required in the interest of the bank
- in the event that the customer has agreed to his/her information being disclosed.

However, the above exemptions laid down in Tournier case was confirmed in the case of Christofi vs. Barclays Bank Plc[17].

As discussed, this decision clearly explained the extent of the banker's duty of confidentiality. All information and transactions including securities and guarantees, debit or credit balances information obtained from outside sources in order to precede the banking business with the customer would be covered by this duty. In the case of Royal Bank of Canada vs. IRC[18], Megarry J stated that 'a banker's duty of secrecy to its customers is not confined to ordinary banking transactions but would extend to any banking transaction which is effected for a customer, ordinary or extraordinary'.

5. Banking Secrecy in Sri Lankan Legal Context

In many other countries including England, bankers' duty of confidentiality/ secrecy about information in-hand is an established principle of English common law. However, in Sri Lanka, these secrecy provisions have been recognized in section 77 of our Banking Act No.30 of 1988 in line with the Tournier decision. In terms of this decision, every director, manager, officer or other person employed in a bank should observe strict confidentiality with regard to the information that come into their knowledge in the discharge of his duties subject to four exceptions[19]. These exceptions are almost similar to exceptions introduced in Tournier decision except in one situation. Section 77 does not recognize the common law exception that a banker may disclose information when it has a public duty to disclose. On the other hand, it may be still possible to argue that the exception given in section 77 in relation to 'performance of duties' is wide enough to cover the public duty exception identified in the common law[20].

The liability for the breach of banking secrecy varies from jurisdiction to jurisdiction. Some countries like Singapore, Hong Kong, Switzerland and Sri Lanka consider breach of banker's secrecy as a criminal liability while many countries follow the implied contractual duty approach in-line with the Tournier decision. Accordingly, any person who breaches the secrecy law mentioned in the Section 77 of Banking Act, shall be liable for conviction before a magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees or to both such imprisonment and such a fine[21].

When considering the legal regime of Sri Lanka, the exceptions for the banker's duty of secrecy identified in the common law have been legitimized by various laws for the following purposes

5.1 Prevention of Money Laundering and Suppression of Terrorism

There were global responses to curb money laundering and international terrorism which was activated by the 9/11 terrorist attacks in New York. Subsequently, most of the countries including Sri Lanka have taken appropriate measures to prevent money laundering activities by enforcing anti-money laundering regulations. In response, Sri Lanka also enacted the following laws to provide necessary measures to combat and prevent money laundering:

(i) Prevention of Money Laundering Act No. 05 of 2006

(ii) Convention on the Suppression of Terrorist Financing Act No. 25 of 2005

(iii) Financial Transaction Reporting Act No.06 of 2006

Financial Transactions Reporting Act, No. 06 of 2006 (FTRA provides for the setting up of a Financial Intelligence Unit (FIU) in the Central Bank of Sri Lanka as a national central agency to receive, analyze and disseminate information in relation to Money Laundering and the Financing of Terrorism.

The FTRA obliges institutions to report to the FIU cash transactions above a prescribed value of Rupees One Million, all electronic fund transfers above such sum are all suspicious transactions. Further, persons making reports under the Act are protected from civil or criminal liability[22]. The same provision could be seen in the Prevention of Money Laundering Act as well[23]. Further, under this Act, it is the bank's duty to report if any suspicious transactions have gone through its customers' accounts[24]. This can be considered as an exemption for bankers' duty of confidentiality/ secrecy to comply with any of the provisions of Banking Act, No.30 of 1988 or any other written law[25].

5.2 Tax requirements

In terms of the Inland Revenue Act No.10 of 2006, every bank is required to maintain proper records of its customers and divulge such information when requested by Commissioner of Inland Revenue. In the event of such a request, no bank can refuse to disclose the information by using the secrecy provisions.

5.3 Supporting the court proceedings

When a court of law requires the disclosure of information from a bank under the Evidence Ordinance in order to support the court proceedings, the bank should comply with such an order[26]. This has been confirmed in the case of Agostinu vs. Kumaraswamy[27].

Further, at the trial of a person for an offense under the Bribery Act, the court or the prosecutor may, notwithstanding anything to the contrary in any other written law, call any such witness, or use or produce any such documents[28].

5.4 Maintaining financial system stability

By using the powers vested in the Monetary Board of the Central Bank of Sri Lanka, the Director, Bank Supervision Department of the Central Bank is permitted to examine or request to submit information from licensed commercial banks operating in the country. If such a bank fails to produce the information, the bank shall be liable for criminal prosecution[29]. It can be argued that this provision of the Banking Act can be considered as an exception of the banker's duty of secrecy.

5.5 Credit Information Bureau

The Bureau permits the request of credit and financial information available with lending institutions including licensed commercial banks, Central Bank, any governmental agency or institution declared by the Minister in-charge of the subject of finance and various institutions[30] at any time.

5.6 Right to Information

In terms of the Article 14A of the constitution of the Democratic Socialist Republic of Sri Lanka, which was inserted into the constitution by the nineteenth amendment in 2015, Right to Information is considered as a fundamental right in Sri Lanka. After enacting Right to Information Act, No. 12 of 2016 (RTIA), subject to the provisions of the section 5 of the RTIA, every citizen shall have a right to information which is in the possession, custody or control of a public authority[31]. Accordingly, banks established by or under any written law are also coming under the definition of the public authority[32]. Further, the RTIA highlighted that the provisions of RTIA prevail over other written law[33]. Thus, it is clear that the provisions of RTIA have overridden the banker's duty of confidentiality/secrecy recognized in section 77 of the Banking Act.

6. Conclusion

Even though there is no internationally accepted definition for banking secrecy, it is commonly understood that banking secrecy is an essential element of banking business. As discussed, due to the different justifications for the banking secrecy, its legal protection varies from jurisdiction to jurisdiction. Hence, some scholars argue that it is a hindrance for cross border banking while some argue that the concept of banking secrecy is being blurred in this globalized economic world. However, it is clear where banking secrecy should be lifted in the fight against money laundering in order to ensure a safe and secure society■

End Notes

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24. Section 5(1), ibid.
25. Section 77 (1) c, Banking Act No 30 of 1988.
26. See section 90(A) to 90(E), Evidence Ordinance.
27. 59 NLR 132.
28. Section 11, Bribery Act No.11 of 1954.
29. Section 41, Banking Act No.30 of 1988.
30. Section 7B (1), Credit Information Bureau Act No.18 of 1990.
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Corporate Governance: An Overview of Sri Lanka

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1. Introduction

Corporate governance received global attention due to the proliferation of financial crisis over the past few decades(Claessens & Yurtoglu, 2012) and the failure of well-established high-profile institutions such as Enron, WorldCom, Lehman Brothers, Nothern Rock Banks, etc. It was found that poor corporate governance causes the failure of such well-established institutions(Kirkpatrick, 2010; Rosen, 2010). Even in Sri Lanka, corporate governance becomes really imperative and essential with the collapses and eminent failures of financial institutions such as Pramuka Bank, Golden Key Credit Card Company, Seylan Bank, etc. Therefore, many measures have been taken to improve the corporate governance culture of Sri Lanka. In-line with that, this article will explore the corporate governance framework of Sri Lanka. A brief overview of corporate governance is provided in the first section. It is followed by the sections on the evolution of corporate governance, legal framework of corporate governance, regulatory and institutional framework of corporate governance and the prevailing codes/ principles of corporate governance of Sri Lanka.

2. What is Corporate Governance?

Corporate governance is a system of rules, regulations, mechanisms, practices and procedures by which a corporate body is controlled and directed. The purpose of corporate governance is to facilitate the building of an environment of trust, transparency and accountability which is required to foster long-term investment, financial stability and business integrity. Corporate governance practices will help policy makers to evaluate and improve the legal, regulatory, and institutional framework, with a view to support economic efficiency, sustainable growth and financial stability(OECD, 2015). The Director of Financial Stability Institute, Roberts (2004) defines corporate governance as a process and structure which is used to direct and manage a business, enhance shareholder value and ensure financial stability. He further states that the purpose of corporate governance should be to build and strengthen the accountability, transparency, credibility and trust. However, defining corporate governance is not an easy task. Exploring a range of contemporary definitions of corporate governance, Van den Berghe (2012) states that it is hard to define corporate governance without any ambiguity. Roche (2005) states that it is difficult to define corporate governance since boundaries of this concept are perpetually expanding. Corporate governance is a uniquely complex and multi-faceted subject(Cadbury, 2000). It is further stated that paradigm, diagnosis and solutions of corporate governance lie on multidisciplinary fields such as economics, finance, accountancy and others. The researchers in different fields such as law, economics, accountancy and management define this concept in a manner favorable to their field. Therefore, defining corporate governance and framing boundaries for corporate governance has become a complex issue.

3. Evolution of Corporate Governance in Sri Lanka

The history of corporate governance dates back to the reign of kings in Sri Lanka. It is explicit that even though the term corporate governance was not utilized, governance was exercised during that period. As Heenetigala (2011) elaborates, the governance structure was based on the caste system where hierarchy was clearly defined. The labourers belonged to the lowest levels while the land owners belonged to the highest ranks. They had their own rules and regulations to govern them. Pieris (1956) as quoted in (Heenetigala, 2011) states that the upper castes used to monitor the performance of economic activities.

The colonial period is also important in relation to the development of corporate governance practices of Sri Lanka. Senaratne and Gunaratne (2008) state that the development of governance could be observed during the period from 1796 to 1948 due to the establishment of corporate bodies and introduction of share trading in the country. This was evident by few statutes introduced in the said period. Civil Law Ordinance No. 05 of 1852 was enacted to apply the Law of England on all commercial and maritime matters. Later on, The Joint Stock Companies Ordinance No. 4 of 1861 was introduced in relation to share trading. Further to above, in 1896, Share Brokers Association was established which was renamed Colombo Brokers' Association in 1904 (CSE, 2016). Moving further, Companies Ordinance No. 51 of 1938 was introduced. In terms of the provisions of this Ordinance, the Department of Registrar of Companies was established. The main task of the department was licensing and regulating the corporate bodies. These statutes and institutions played a vital role in relation to the proper governance of corporate bodies even though they did not use the term corporate governance during the said period.

Another landmark of the development of the governance framework of Sri Lanka is the adoption of open economic policies in 1977. With that, local and foreign investments improved. Companies were established for different business purposes and new laws and regulations were introduced. Companies Act No. 17 of 1982 was enacted to govern the corporate bodies. As mentioned earlier, even though the term corporate governance was not used, many governance practices were incorporated in the said laws. Some of them are, disclosure requirements (e.g. disclosure of directors' age, directors' interest in contracts, payments made in connection with transfer of shares); board responsibilities; procedures of conducting shareholders' meetings and audit procedures.

In 1985, Colombo Securities Exchange (GTE) Ltd was established by amalgamating the Colombo Brokers' Association and the Stock Brokers' Association. It was a company limited by a guarantee established in terms of the Companies Act No. 17 of 1982 and licensed by Securities and Exchange Commission of Sri Lanka. Later, this was developed as Colombo Stock Exchange and it plays a prominent role in developing rules applicable to listed companies and which improve the governance structure of such companies (e.g. Introduction of new rules in 1988 replacing by-laws of Colombo Brokers' Association).

Securities and Exchange Commission (SEC) was established in pursuance to the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987. The main objectives of this Act are to create and maintain a good market to trade securities in an orderly and fair manner, to protect the interest of investors, to regulate the securities market and to ensure the professional standards in such a market. When these objectives are analyzed, it is explicit that the rationale of the above is to improve proper governance in the securities market and their participants. Later on, Securities and Exchange Commission Act was amended by Act No. 26 of 1991, Act No. 18 of 2003 and Act No. 47 of 2009. All these Acts support the improvement of the governance practices in the equity market. As an example, Act No. 26 of 1996 empowers the SEC to regulate unit trusts and stock brokers and to grant license to stock exchanges while Act No. 18 of 2006 empowers the SEC to regulate under writers, credit rating agencies, clearing houses and margin providers. Act No. 47 of 2009 empowers the SEC to issue directives to listed companies (SEC, 2016).

In 1995, Sri Lanka Accounting and Auditing Standard Act No. 15 of 1995 was enacted. This Act is also prominent in creating the governance culture in Sri Lanka. In terms of this Act, many steps were taken to improve the governance such as 1) Empowering the Institute of Chartered Accountants of Sri Lanka (ICASL) to develop Sri Lanka Accounting and Auditing Standards and 2) Establishing Sri Lanka Accounting Standard Monitoring Board.

In December, 1997, the first formal corporate governance code, 'The Code of Best Practices: Matters relating to Financial Aspects of Corporate Governance' was issued by ICASL as a result of their huge efforts in codifying corporate governance practices since early 1990s. It is a land mark of the corporate governance history of Sri Lanka. This code was based on the Cadbury Report of Corporate Governance-1992 in UK. In line with that report, major corporate governance principles such as the structure and responsibilities of the board of directors, the role of auditors and the rights and responsibilities of shareholders were covered in the local code. This is a voluntary code of corporate governance.

Thereafter, in 2001, Institute of Chartered Secretaries and Administrators in Sri Lanka issued 'Hand Book on Corporate Governance: Principles and Guidelines to Best Practice in Sri Lanka'.

In May 2002, ICASL issued 'Best Practice on Audit Committees' which is a voluntary code of corporate governance. The duties and responsibilities of the Audit committees are clearly defined in this Code. In the same year, Central Bank also issued 'Code of Corporate Governance for Banks and Other Financial Institutions'. This was drafted based on the local and international initiatives of corporate governance such as 1997 Code of Best Practices issued by ICASL, Enhancing Corporate Governance for Banking Organizations and Framework for the Evaluation of Internal Control Systems issued by Basle Committee on Banking Supervision, Corporate Governance in Financial Sector 2000 and Checklist 2001 of Commonwealth Working Group, Exposure Draft of Board Room Governance of ICASL and OECD Principles of Corporate Governance. This code consists of 12 basic principles of corporate governance related to board; namely, the qualification of directors, chairman and CEO, the role of CEO and senior management, company secretary, directors' training/ familiarization, committee structure for board, transparency, risk management systems and prudential regulation and supervision (CBSL, 2002). It is a voluntary Code of corporate governance and all the banks were requested to abide by the same in order to maintain the integrity and stability of the financial system (CBSL, 2002). However, it is questionable as to whether banks comply with the same as requested.

In January, 2003, the Department of Public Enterprises of the Ministry of Finance issued 'Code of Best Practices in Corporate Governance for Public Enterprises in Sri Lanka'. This was developed to improve the corporate governance of public enterprises as well as the statutory bodies. In March 2003, ICASL issued the 'Code of Best Practice on Corporate Governance' by replacing their previous code issued in 1997. It appears that this code followed the Hampel Code-1998 of UK since it follows the same principles such as the role of directors, remuneration of directors, and the role of shareholders, audit and accountability which are similar to the Hampel Report.

In May 2004, SEC issued Guidelines for Listed Companies on Audit and Audit Committees. This was issued since ICASL Guide issued in 2002 was not a comprehensive one covering all the aspects of audit in terms of both depth and breadth. However, these guidelines are also not mandatory to listed companies.

In March 2007, corporate governance was incorporated into the Listing Rules by Colombo Stock Exchange (CSE) with the support of ICASL and SEC. It was a mandatory set of rules and it was implemented in two stages. At the initial stage, listed companies were required to publish a confirmation in the annual report for the financial year commencing on April 1, 2007 that they comply with the corporate governance requirements set out in the listing rules. If not, they were required to give an explanation for non-compliance based on 'comply or explain' principle. At the second stage, it was mandated to comply with listing rules and required to publish an affirmative statement on compliance in the annual report relevant to the financial year commencing from April 1, 2008. This initiative could be observed as a tough initiative that was taken to improve the corporate governance culture in Sri Lanka.

In December 2007, the Central Bank of Sri Lanka issued Direction Nos. 11 and 12 of 2007 which consist of mandatory requirements of corporate governance towards the banking sector(CBSL, 2013a, 2013b). Compliance with those directions has commenced from January 01, 2008. It is mentioned that full compliance with these directions is mandatory with effect from January 01, 2009, except where the compliance dates mentioned in the Directions were extended. In some cases, exceptions were given till January 01, 2010 to comply with the same.

Furthermore, the enactment of the Companies Act, No. 07 of 2007 was observed as a major initiative in relation to the development of corporate governance. Many areas which promote and develop the corporate governance culture of Sri Lanka are incorporated in to the said Act.

In June 2008, ICASL and SEC jointly issued the 'Code of Best Practices of Corporate Governance'. This is also a voluntary code of corporate governance. The key aspects covered in the code are, collective responsibility of single board for the success of the company, objectivity of directors towards the interest of the company, check and balances, transparency on appointment and remuneration and effective rights of the shareholders. In July 2008, SEC issued separate guidelines for the appointment of auditors of listed companies with the objective of strengthening the effectiveness of audit functions of listed companies while enhancing the transparency, accuracy, reliability and consistency of financial reporting. Further it was expected to enhance the risk management process of listed companies through these guidelines.

In the same year, the Central Bank issued Finance Companies (Corporate Governance) Direction No. 3 of 2008 which is effective from January 1, 2009 with the intention to improve the corporate governance standard of registered finance companies in Sri Lanka.

In 2009, Finance Leasing (Corporate Governance) Direction No. 4 of 2009 was issued by the Central Bank in terms of the Finance Leasing Act No. 56 of 2000 to improve the corporate governance of finance leasing companies. This Direction came into operation with effect from January 01, 2010.

Code of Best Practice on Corporate Governance was issued in 2013 jointly by ICASL and SEC (ICASL&SEC, 2013). When comparing this code with the previous code issued in 2008, the key amendments introduced to this edition include, reporting of internal controls, risk management and responsibilities of board of directors and audit committees, requirements related to remuneration committee, the role of company secretary in relation to the corporate governance of the company, communication with shareholders and sustainability reporting.

In December 2017, the fifth edition of the Code of Best Practices of Corporate Governance was issued by ICASL (ICASL, 2017). This code was built on the previous code to strengthen corporate governance in Sri Lanka in line with global developments, emerging contemporary matters of governance and challenges in capital market in Sri Lanka (ICASL, 2017). Accordingly, key changes were introduced to board composition, board meetings, role of the board and audit committee charter. Furthermore, related party transaction committee, requirement for reporting on cyber security and requirement for environment, society and governance (ESG) reporting were also introduced as new initiatives under this code.

Given above are the major developments of the evolution of corporate governance in Sri Lanka. However, there may be initiatives taken to improve corporate governance sector-wise or individually. Such initiatives are not addressed in this article as only the highlighted events were taken into consideration.

4. Legal Framework of Corporate Governance

Some of the major statutes which relate to the corporate governance of Sri Lanka are discussed in this section. Corporate governance principles are directly incorporated in some statutes while other statutes provide the basement for developing corporate governance principles by way of rules, regulations, guidelines and directions. A summary of such statutes is mentioned below.

Banking Act, No. 30 of 1988

Corporate governance directions for the banks are issued under the Banking Act. In terms of the section 46(1) of the Banking Act, the Monetary Board of the Central Bank of Sri Lanka is empowered to issue directions to licensed commercial banks in order to ensure the soundness of the banking system. Similarly, section 76J(1) empowers the Monetary Board to issue directions to licensed specialized banks. By exercising the powers vested with these provisions, Corporate Governance Direction Nos. 11 and 12 of 2007 were issued to licensed commercial banks and specialized banks respectively.

Monetary Law Act, No. 58 of 1949

Section 10(c) of the Monetary Law Act empowers the Monetary Board to make rules and regulations which are necessary in relation to any matters affecting the powers, functions and duties of the Central Bank. One of the main objectives of the Central Bank is to maintain the stability of the financial system of the country as stipulated in section 5 of the Act. The Monetary board exercises the powers vested with it in terms of section 10(c) read with section 5 in developing the corporate governance directions for banks as the corporate governance helps to improve the banking stability and thereby the financial system stability of the country.

Companies Act, No. 7 of 2007

There are many provisions incorporated in the Companies Act for the improvement and facilitation of the corporate governance of companies. It clearly defines basic duties of the directors towards the company (sections 187, 188, 189, 219 and 220). Therefore, it appears that specific written laws are developed to manage the proper and prudent functions of the directors. Directors are required to disclose their interest on shares to the board (section 200). Furthermore, it could be observed that there are many provisions in relation to the civil [e.g. sections 17(3), 41(4), 46(2), 61(2) and 216(5)] and criminal [e.g. sections 56(5), 70(5), 115(4), 116(5), 117(3), 119(2), 166, 192(4) and 212(3)] liabilities of directors and the officers of the company. When these provisions are analyzed, it is explicit that the ultimate outcome of these provisions is to enhance the proper functioning of the company through the governance. Therefore, it could be argued that the provisions of the Companies Act provide the basement for the corporate governance of companies.

Sri Lanka Accounting and Auditing Standard Act, No. 15 of 1995

There are few salient features of this Act. Firstly, ICASL is empowered to adopt Sri Lanka accounting and auditing standards (sections 2 and 3). Secondly, the Sri Lanka Accounting Standard Monitoring Board was established under this Act (Section 11). The purpose of this Board is to monitor and enforce the compliance with Sri Lanka accounting and auditing standards.

Moreover, there are many legislations which facilitate the development of corporate governance framework of Sri Lanka. Few of them are *Finance Companies Act, No. 78 of 1988 and Finance Leasing Act No. 56 of 2000*. These Acts provide the basement for developing corporate governance in specific sectors such as finance companies and leasing companies.

5. Regulatory and Institutional Framework of Corporate Governance

Some institutions engage in implementing and developing the corporate governance culture of Sri Lanka by being the regulators while others engage in the same by considering their social and professional responsibilities towards a better corporate governance culture in Sri Lanka. Therefore, this section is dedicated to examine the regulators and other institutions that engage in implementing, developing and promoting the corporate governance in Sri Lanka.

The Central Bank of Sri Lanka

The Central Bank came to the picture being the regulator of the banks and due to its responsibility towards the stability of the financial system of the country. Banks play a prominent place in the financial system and their failure may lead to a financial crisis of the country. Therefore, corporate governance was introduced to the banking sector by the Central Bank as a voluntary code of corporate governance in 2002. However, it was not successful as evident by the collapse of Pramuka bank and the imminent failure of the Seylan Bank. Accordingly, strict compliance on corporate governance was identified and mandatory corporate governance requirements were imposed on banks by way of Directions issued in 2007 which were effective from January 01, 2008. These Directions were issued by the Central Bank as empowered by the Banking Act and the Monetary Law Act. Further to above, the Central Bank imposed corporate governance requirements on licensed finance companies and specialized leasing companies by way of Directions issued in 2008 and 2009 respectively in terms of the Finance Companies Act No. 78 of 1988 and Finance Leasing Act No. 56 of 2000.

The Institute of Chartered Accountants of Sri Lanka

ICASL was established in 1959 by Act of Parliament No. 23 of 1959. It is the pioneer institution which introduced codified corporate governance principles to Sri Lanka. They introduced the first code of corporate governance in 1997 in the name of 'Code of Best Practices on Matters related to Financial Aspects of Corporate Governance'. In 2002, they issued 'Code of Best Practice on Audit Committee'. In 2003, 'Code of Best Practice on Corporate Governance' was issued. After that, 'Code of Best Practice of Corporate Governance' was issued in 2008 jointly with SEC as the third edition. The fourth edition was issued in 2013 and it was in effect up to December 2017. Fifth edition of the same was issued by ICASL at the end of year 2017. All these codes are voluntary codes of corporate governance. Even though these codes are voluntary codes, they provide proper guidance to develop the corporate governance culture in Sri Lanka.

The Securities and Exchange Commission of Sri Lanka

SEC was established by Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987 to regulate the securities market of Sri Lanka. SEC also plays a prominent role in developing the corporate governance culture. As mentioned above, SEC joined hands with ICASL to develop the 'Code of Best Practice of Corporate Governance' in 2008 and 2013. Furthermore, they issue rules and guidelines in relation to accounting, auditing and listing requirements of listed companies which enhance the transparency, reliability, constancy and accuracy of financial reporting of such companies and ultimately facilitate the corporate governance framework of the company.

The Colombo Stock Exchange

CSE is a self-regulatory institution which governs listed firms. They develop rules and regulations which are applicable to listed firms and their member firms such as listing rules, rules of clearing, trading conditions, member regulations, etc. Any applicant who applies for listing is required to abide by the listing rules. Therefore, corporate governance requirements are incorporated into listing rules with the intention to improve the corporate governance of listed companies. It was incorporated under section 6 of the listing rules in 2007, which was mandatory to comply with effect from April 01, 2008. After the amendments were introduced to listing rules in 2009, corporate governance requirements were included under section 7.10 of the said rules and they prevail unchanged up to date.

Further to above, there are many organizations which support the development of the corporate governance framework of Sri Lanka. Registrar of Companies play a vital role with pertinence to governance of registered companies. Further, Ceylon Chamber of Commerce also actively participates in improving the corporate governance culture of Sri Lanka. Corporate governance booklet 2001/2002 which includes corporate governance principles was issued by them.

6. Prevailing Principles/Codes of Corporate Governance of Sri Lanka

This section covers the highlighted directions, rules and codes of corporate governance which are currently in effect in Sri Lanka.

Directions issued by the Central Bank on Licensed Banks

There are two sets of Directions issued by the Central Bank on licensed banks. (i.e. one is on licensed commercial banks (LCBs) and the other one is on licensed specialized banks (LSBs). Direction No. 11 of 2007 was issued on LCBs and subsequently this was amended by Direction Nos. 05 of 2008, 07 of 2008 and 03 of 2013. Furthermore, guidelines have been issued from time to time in relation to the clarification on corporate governance principles mentioned in such Directions. Direction No. 12 of 2007 was issued with regard to the corporate governance of LSBs and it was also subsequently amended by Direction Nos. 06 of 2008, 08 of 2008 and 04 of 2013. All these Directions issued to LCBs and LSBs generally cover the principles related to 1). Responsibilities of the board, 2). Composition of the board, 3). Criteria to assess the fitness and propriety of directors, 4). Management functions delegated by the board, 5). The chairman and CEO, 6). Board appointed committees, 7). Related party transactions, and 8). Disclosure requirements.

Listing Rules on Corporate Governance

As per the existing listing rules of the CSE (last amended on April 24, 2013), corporate governance become a mandatory requirement. It is clearly mentioned in the listing rules that every applicant for listing securities must comply with listing rules (Section 1.1). These listing rules create an additional and a complementary obligation to the statutory obligations of the companies. Section 7.10 of the listing rules is specifically allocated for corporate governance. It describes the corporate governance requirements related to compliance, non-executive directors, independent directors, disclosure related to directors, criteria for defining independence, the remuneration committee and the audit committee(CSE, 2013).

Code of Best Practice on Corporate Governance – 2017

This is the latest version of corporate governance which was issued by ICASL. Even though this is a voluntary code of corporate governance, most of the corporate bodies comply with the same. Corporate governance is discussed under two perspectives in this code. i.e. Company perspective and the shareholder perspective. Corporate governance principles related to directors, remuneration of directors, relations with shareholders, accountability and auditing are discussed under the company perspective. On the other hand, corporate governance related to institutional investors, other investors, internet of things and cyber security, and environment, society and governance (ESG) reporting are discussed under the shareholders' perspective. It appears that the Code of Best Practice on Corporate Governance is a comprehensive code which considers all the general aspects of the corporate governance. When this code and the corporate governance directions issued by the Central Bank are compared, it is observed that only the financial stability perspective is considered by the Central Bank when drafting corporate governance principles for banks as it is silent on the shareholders' rights.

Conclusion

Sri Lanka has a long history of corporate governance which dates back to the reign of kings in Sri Lanka. Thereafter, it has gradually developed up to a comprehensive set of rules and principles of corporate governance. These rules and principles are legally backed by the statutes namely Banking Act, Monetary Law Act, Companies Act, and Sri Lanka Accounting and Auditing Standards Act. Further to above, there is a good regulatory and institutional framework which works towards a better corporate governance culture of Sri Lanka. It mainly includes the Central Bank of Sri Lanka, the Institute of Chartered Accountants of Sri Lanka, the Securities and Exchange Commission of Sri

Lanka and the Colombo Stock Exchange. In the present context, few corporate governance codes/principles are highlighted. Among them, Directions issued by the Central Bank and the Listing Rules of Colombo Stock Exchange are prominent as they are mandatory sets of principles of Corporate Governance. The Code of Best Practices of Corporate Governance issued by the Chartered Institute of Sri Lanka is a voluntary code of corporate governance. However, it is very much popular among the corporate bodies as a code which contains a comprehensive set of corporate governance rules■

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What welcomed a brand new legal framework for active liability management?

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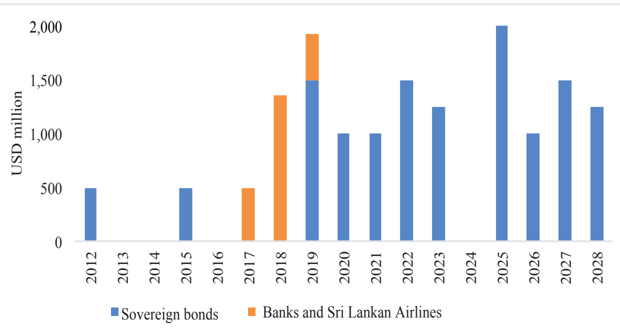
1. Introduction

Sri Lanka is faced with significantly large bullet repayments in International Sovereign bonds (ISBs), starting from 2019. Between 2019 to 2028, the country is expected to repay/refinance USD 12.15 billion in already issued ISBs, each worth above USD 500 million. Installment payments on project loans and recent term-financing facilities along with repayment of Sri Lanka Development Bonds are expected to elevate the debt service pressure in foreign currency. Outside the central government, maturing bonds of licensed banks and Sri Lankan Airlines will also demand foreign exchange for repayment as depicted in Figure 1 below.

Figure 1: Sovereign liabilities in brief



Source: Central Bank of Sri Lanka, respective annual report of banks and Sri Lankan Airlines

Large bullet repayments of over USD 500 million are new to Sri Lanka. In 2012 and 2015, the country repaid USD 500 million worth of ISBs from its reserves leading to a deterioration of reserve adequacy metrics on both occasions. Going forward, bullet repayments falling due in almost every year could lead to significant strain on reserves and pressure on exchange rate. Such payments could expose the country to refinancing risk and the investors could become wary of the country's external liquidity leading to higher spreads. These factors could adversely influence macroeconomic stability.

In addition to refinancing of ISBs, there are other important risks of the debt portfolio, which need to be addressed. As a result of increasing income level, the concessional financing windows have been gradually drying up for Sri Lanka. The non-concessional and commercial component of the total external debt, which was negligible in early 2000's, rose to around 55 per centum by 2017, a transition expedited after the debut sovereign bond issuance in 2007. Along with this transition, the country experienced shortened maturities (Average Time to Maturity declined from 9.2 to 6.9 years between 2010 and 2016) and higher interest rates. A relatively high level of central government debt, large explicit contingent liabilities such as treasury guaranteed debt and implicit contingent liabilities in non-guaranteed State Owned Enterprises (SOE) debt contribute to an adverse picture on the debt portfolio.

In response to these challenges, the authorities have initiated measures to improve the debt management function. Among them, the law passed to facilitate liability management activities is a key milestone, which is primarily aimed at managing the refinancing risk of ISBs while expecting improvements of domestic debt portfolio in the medium to long-term.

2. An overview of liability management

Liability Management or Active Liability Management (ALM) is the process of restructuring outstanding borrowing(s) in order to improve the composition of the public debt portfolio.

ALM encompasses could use various instruments with a view to improve the structure of the debt by adapting it to guidelines set by the Medium-Term Debt Strategy (MTDS). The instruments of ALM could entail, such as buying back old debt (buy-backs) or exchanging old debt against new debt (switching); transforming fixed-rate coupons into floating-rate coupons or vice versa (conversion); changing the currency denomination of old debt (conversion) or hedging the foreign exchange risk on external debt, *inter alia*. Whilst operation of these instruments could have varying characteristics and consequences, all ALM operations have one feature in common, i.e., "they restructure an outstanding debt". Their objective is not to provide any additional funding, but to improve the composition of the outstanding debt.

Many countries use ALM either on a regular or occasional basis. An informal survey back in 2008 (Table 1) revealed that, almost all developed countries use some form of ALM regularly, while many developing countries use ALM either occasionally or on a regular basis.

Table 1: Manner ALM is practiced

	Country	Don't use	Occasional	Regular
Developed	US			x
	UK			x
	Germany			x
	France			x
	Italy			x
	Sweden			x
	Ireland			x
Developing	Brazil			x
	Mexico		x	
	Indonesia			x
	Turkey		x	
	Philippines		x	
	South Africa		x	
	Colombia		x	
	Thailand	x		

Source: Tenth Bond Market Forum of OECD/World Bank/IMF (2008)[1]

Literature suggest that, initially, ALM conceived primarily as a risk management tool. However, increasingly, ALM has been playing a broader role in the function of debt management. The objectives of modern ALM operations can encompass one or more of the following.

- Increase liquidity in government securities markets
- Decrease the cost of new funding
- Manage risks of the portfolio
- Correct or take advantage of market distortions
- Stabilize market during periods of stress

Whilst it can have far reaching consequences on the way both domestic and external debt is managed in Sri Lanka, more specifically, ALM could be used to deal with refinancing risks of ISBs, immediately. For example, the government could decide to buy-back one of the 2019 sovereign bonds (there are two bonds maturing in 2019: USD 500 and USD 1,000) now and issue a bond, maturing in 2024 – a year in which there is no sovereign bond maturing; or simply, build buffers now for redemption of those ISBs when they fall due. Whilst there are advantages and disadvantages of each approach taken for liability management, it is expected to help manage the refinancing risk as already highlighted by rating agencies[2], the IMF[3] and the World Bank[4].

The benefits of such ALM operations in Sri Lanka will be many. These include offering strong support to manage the refinancing risk; perhaps the most important risk in Sri Lanka in relation to debt management as it stands; improving the maturity profile of the debt portfolio in line with the MTDS; and gradually lowering the cost of debt. Finally, successfully conducted ALM operations could contribute to help improve the country's sovereign credit rating in the medium-term.

However, it is noted that ALM could create some fiscal costs related to buy-backs and higher interest rates due to extension of maturities as also acknowledged by Templement (2007), where *"in addition to the burden of principal repayment that falls on future generations, there is an economic cost of borrowing. Just as a lender*

1. https://www.imf.org/external/np/seminars/eng/2008/bondmkt/pdf/makoff.pdf.

2. https://www.fitchratings.com/site/pr/10028479
3. file:///C:/Users/Kishan/Downloads/cr18175.pdf
4. https://openknowledge.worldbank.org/bitstream handle/10986/29927/127611.pdf

receives interest in return for postponing consumption from the present to the future, so a borrower must pay interest for the ability to increase consumption in the present without paying for it until sometime in the future".

3. Is not the existing legal framework sufficient?

The CBSL acts as the agent of the government in managing public debt in terms of the Monetary Law Act, No. 58 of 1949. Debt raising and management have been executed under the Registered Stock and Securities Ordinance, No. 7 of 1937 and Local Treasury Bills Ordinance, No. 8 of 1923, domestically. Whilst the procedures for public debt issuance and management, appointment of primary dealers, regulatory supervision of primary dealers and the procedures for market operations are mainly specified in these laws, the ISBs and other foreign loans/foreign currency denominated loans are raised under the Foreign Loans Act, No. 29 of 1957. In addition, the payment and settlement for government securities is governed under the provisions of the Monetary Law Act, the Payment and Settlement Systems Act, No. 28 of 2005 and the System Rules (Version 2.1) issued thereunder. Apart from that, there are multiple legislations pertaining to matters relating to public debt including the Tax Reserve Certificates Ordinance, No. 22 of 1957, Treasury Certificates of Deposit Act, No. 9 of 1989, Fiscal Management (Responsibility) Act, No. 3 of 2003 and the annual Appropriation Acts.

The main borrowing assignment to the government can be found in the annual Appropriation Act. The provisions of section 2 of an annual Appropriation Act states, "*the expenditure of the Government which is estimated … for the service of the period beginning from January 01, .. and ending on December 31, ..,… shall be met… from the proceeds of loans which are hereby authorized in terms of the relevant laws to be raised whether in or outside Sri Lanka, for and on behalf of the Government, so however that the balance outstanding of such borrowing at any given time during the financial year … or at the end of the financial year … shall not exceed rupees …*". There is also a separate limit on outstanding Treasury bills given by Parliament, and a separate limit for the guarantees as proportion of the Gross Domestic Product (GDP) under the Fiscal Management (Responsibility) Act.

Hence, the ceiling imposed in the annual Appropriation Acts, i.e., the Gross Borrowing Limits (GBL) would curtail the ability of the government to borrow in the current financial year, to service debt liabilities which would arise in a financial year beyond the current financial year. By its very nature, an annual Appropriation Act only covers a period of 12 months and will not authorise the repayment of debts falling outside a financial year. This is why an Appropriation Act must be passed annually which will be effective for the next financial year. The Appropriation Act, therefore, does not make provisions for early settlement of debt liabilities or for the building of cash reserves for the settlement of debts which would become payable on a date beyond the current financial year.

4. The role of Liability Management Act, No. 8 of 2018 in facilitating ALM

4.1 Departure from GBL

For liability management purposes, it is imperative that there is authority for the debt manger to raise cash in addition the gross financing requirement determined by the government budgetary operations. In the context, the present GBL of the annual Appropriation Act, which is one of the most important legal provisions aimed at maintaining fiscal discipline, acts as a constraint to the flexibility needed for ALM operations. Due to its reliance on 'gross flows', it restricts the ability of the government to borrow in gross terms over and above the annual borrowing limit. As such, new borrowings carried out for ALM purposes with the intention of pre-financing or refinancing of debt will likely to breach the GBL or affect the space available for financing the budget deficit. For example, if the government raises USD 2 billion for buying-back a Eurobond as part of an ALM operation, it will not be used for deficit financing. However, it will consume close to LKR 360 billion of the annual GBL (assuming an exchange rate of 1 USD = LKR 160) or contribute to breaching the GBL if the annual borrowings have been already close to the GBL. Supposing this money is used to buy-back an existing ISB, the stock of ISBs outstanding will come down when the net effect is considered.

It was, therefore, necessitated for Parliament to provide for a special law to authorise a separate borrowing limit to carry out ALM and also to provide for the manner and mode in which such ALM should be carried out to meet the objectives of reducing public debt at the lowest possible cost with a prudent degree of risk.

Box 1: ALM Act in brief:

- Parliament by resolution is required to approve the limit to which moneys can be borrowed by the government for the purposes of pre-financing or refinancing public debt.
- Parliament can only approve as a loan in any particular financial year, a sum of money not exceeding ten per centum of the total outstanding debt of the preceding financial year.
- All moneys raised, whether in or outside Sri Lanka should be obtained in accordance with the provisions of currently applicable laws and procedures.
- The Minister of Finance is required to decide on matters pertaining to the refinancing or pre-financing of public debt such as the sum of money to be raised by a loan, the mode of raising such loan and the manner in which the debt shall be settled, on the advice of the Monetary Board and with the approval of the Cabinet of Ministers.
- The Minister is required to communicate his decision in writing to the Registrar (the Superintendent of Public Debt), who in turn is required to make all such arrangements to give effect to such decision and settle obligations of the government on the most favourable terms that may be obtained in the interest of the government.
- Loans obtained under this Act are to be maintained in designated bank accounts and all moneys including interest lying in such bank accounts are to be treated as part of the Consolidated Fund but are to be maintained as ring- fenced accounts.
- Details of all loans obtained and money retained in the accounts are to be tabled in Parliament under the Fiscal Management (Responsibility) Act, No. 03 of 2003.
- The Minister is authorised to make regulations on the advice of the Monetary Board. However, the said regulations must be placed for approval before Parliament within 3 months of the date of the Gazette.

4.2 Parliament's prerogative over public finance

Article 148 of the Constitution specifies that Parliament has the "full control" over public financing including debt.

The provisions of section 3 of ALM Act provide for Parliament, by resolution, to authorise the government to raise a sum of money as a loan, during a particular financial year, whether in or outsider Sri Lanka, for the purposes of refinancing and pre-financing public debt of the government. However, the maximum sum of money that Parliament can approve as a loan in a particular financial year shall not exceed ten per centum of the total outstanding debt at the end of the preceding financial year. These debts should be raised in accordance with applicable laws including the Monetary Law Act, the Local Treasury Bills Ordinance, the Registered Stocks and Securities Ordinance and the Foreign Loans Act through which Parliament has already laid down the principles, procedures and controls.

The Supreme Court in Case No. S.C.S.D 19/2013, which challenged the constitutionality of the Appropriation Bill for 2014, having considered the provisions of all relevant laws relating to public finance including the Monetary Law Act determined that:

"Thus, one would find that the legislature has enacted several means and agencies to perform the task of monitoring the raising of loans and this only goes to prove that the Appropriation Act is not the only means to control public finance and the pervasive provisions that have been recited above demonstrate the zealous concern that the legislature has displayed towards giving true meaning to the constitutional imperative stipulated in Article 148 of the Constitution that Parliament shall have full control over public finance.

Parliament exercises this control through several of its agencies because it cannot engage in the continuous micro management of public finance. If the whole members of Parliament were to gather every time a loan is about to be raised simply for the purpose of approving the terms and conditions of a particular loan, it would frustrate the democratic governance of the country for which principal task the people of the nation bestowed them with all the important palladium of legislative power, privileges and immunities."

(emphasis added)

Considering the above, the Supreme Court went on to determine that the ALM Bill, in fact would further strengthen Parliament's "full control" over public finance when the constitutionality of ALM Bill was challenged in the Supreme Court Case Nos. S.C.S.D. 01/2018 to S.C.S.D. 06/2018.

5. Are the legal provisions only sufficient?

Having enacted the ALM Act, one cannot expect to overcome the "bunching" problem of public debt in the forthcoming years. Similar to external debt, domestic debt in Treasury bonds and bills can be managed actively to improve the debt profile and market liquidity. Building cash buffers, buy-backs and switches could help debt management by lowering the cost and risks of the debt portfolio and by focusing on a limited number of benchmark maturities, which would; (a) provide liquidity for primary and secondary market trading; (b) establish a stable and credible yield curve; and (c) help with the development of private debt markets. Further, buy-backs could be used to capitalize on market interest rate movements.

In addition, timing is important in ALM. Financial market considerations suggest that such a buy-back should be expedited as; (a) Sri Lanka's bonds' spreads have come down in the past few months due mainly to the confidence in the IMF program; (b) tighter than anticipated global financial markets could increase the interest rate for new bonds issued; and (c) active debt management would signal the investors that Sri Lanka is addressing refinancing risks prior to large redemptions that could potentially have implications on macroeconomic stability.

6. Conclusion

Sri Lanka is faced with significantly large bullet repayments in ISBs leading to significant impact on macroeconomic stability. However, the present legal framework on budgetary operations, i.e., the annual Appropriation Act only gives the space to service the debt maturing in the budget, and does not allow explicitly for the building up of cash buffers and early retirement of debt maturing beyond the budget year. This welcomed a brand new legal framework broadly setting out the procedure in raising debt for the purposes of ALM, without being curtailed from budgetary ceilings but helping fiscal consolidation. However, in carrying out ALM activities, it is noteworthy to consider not to shut into Buchanan's (1958) connotation that "by *financing current public outlay by debt, we are, in effect, chopping up the apple trees for firewood, thereby reducing the yield of the orchard forever*"■

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