



# The Consumer Affairs Authority and the Public Interest

Several recent developments in Sri Lanka including the scare regarding melamine content in food, the controversy surrounding failed finance companies and the rising prices of food have all cast light on the need to improve the protections available to the public. Given this backdrop, it is pertinent to review the work carried out by the Consumer Affairs Authority, which is the premier government institution charged with protecting the public.

The Consumer Affairs Authority was created by the passage of the Consumer Affairs Authority Act No 9 of 2003. This Act repealed several pieces of prior

legislation, including the Fair Trading Commission Act and the Consumer Protection Act.

The primary purpose of the Authority is to provide for the protection of consumers through several means, including

- The regulation of trade
- Pricing of goods and services
- The protection of manufacturers and traders against unfair and restrictive trade practices

The Authority is composed of a Director General, who reports to a Board of Directors. Reporting to the Director General are a number of Directors, responsible

for consumer affairs and information, pricing and management, compliance and enforcement, and competition promotion, among others. These positions are staffed by persons qualified in Economics, Commerce and related fields. There is also a separate Consumer Affairs Council, which comprises of the Chairman and two Directors of the board.

The Authority is empowered to inquire into a wide range of complaints, including those regarding the production, manufacture, supply, storage, transportation or sale of any goods and the supply of any services which do not conform to the standards and specifications determined by the Authority. Its scope further extends to complaints regarding the manufacture or sale of any goods which do not conform to a warranty or guarantee given by implication by the seller.

The starting point for such an inquiry may be a complaint made by a member of the public, or it may be an initiative of the



*By Purajitha Taldena*

*The writer is a Chartered Accountant, a member of the SCMA and holds an MBA from the University of Leicester. He is currently the Chief Financial Officer of Hayleys AIG Insurance Company.*

Authority itself. Complaints by the public must be in writing, and may be directed to the office of the Director General. The Authority appoints officers to investigate such complaints. A large number of questions under dispute are usually settled through discussion and negotiation with the relevant parties. If this fails, the matter may be referred to courts. A separate consumer court was set up at Hulftsdorp in March 2008 to hear such cases. In areas outside Colombo, cases are usually heard in the magistrate courts. The Authority earned Rs. 17.7 million in fines in 2008, compared to Rs. 20.4 million in the previous year. Anti-competitive actions are usually referred to the Consumer Affairs Council for a direction.

Much of the current work of the Authority centres on consumable products. The recent scare concerning the melamine content in food is a case in point. Raids are regularly carried out on trade establishments to ensure compliance by traders to the relevant provisions of legislation. Regular market surveys are also conducted on prices of essential commodities, which form the basis for policy decisions by the Authority on pricing matters.

Interestingly, the ambit of the Authority extends to services, including financial services. Thus it is legally empowered to look into financial and insurance companies as well. In practice, any such complaints are usually referred to the Financial or the Insurance Ombudsmen since those organizations have the specialist expertise required. However, the fact that such institutions fall within the scope of the Authority does provide the public with an additional avenue to make their concerns known.

A second major area of concern centers on essential items. Any item of goods or services may be specified as an essential commodity by the Hon. Minister

**The Authority is empowered to inquire into a wide range of complaints, including those regarding the production, manufacture, supply, storage, transportation or sale of any goods and the supply of any services which do not conform to the standards and specifications determined by the Authority.**

---

of Trade, Commerce & Consumer Affairs in consultation with the Authority under section 18 of the Act. Once such an item is specified, no seller may increase the price of such product without the prior written approval of the Authority. In the event a price revision is required, an application must be made, to which the Authority must respond within a period of 30 days.

The objective in examining a price is to ensure that prices are not increased indiscriminately. It should be noted that the prices approved by the Authority may vary from brand to brand. While this is intended to permit stronger branding and marketing initiatives, it may also leave room for dispute between competing sellers of similar products.

A third focus area is on anti-competitive practices. These are described as a situation where a person or group of people in the course of business, pursue a conduct which has the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods or services. Selling items below the cost of production and disseminating misleading or false information about products are also considered anti-competitive practices.

A further aspect of anti-competitive practices is the existence of monopolies and the creation of monopolies through mergers and acquisitions, since economic theory holds that monopolies have a restrictive impact on competition. Currently, the Authority intervenes in cases where monopoly power is used

abusively against the public interest. Legislative amendments to increase the powers of the Authority in this area are being contemplated.

According to the present Director-General, Mr. Romy Marzook, building public awareness is an important function of the Authority, since informed consumers are less likely to be victimized. He cited the current project undertaken to build awareness of the harmful effects of junk food among school children as an example. Along these lines, the Authority conducts several programs in schools, including art, essay and drama competitions.

The Authority also attempts to improve the position of consumers by forming Consumer Societies, which are intended to educate consumers as well as to provide a forum to air grievances of consumers.

In spite of these efforts, it is debatable whether the Authority has the wherewithal to respond to all the demands made on it. For instance, it does not currently have the power to order a reduction in the price of any item. Thus, even though global commodity prices have declined, consumers in Sri Lanka continue to pay high rates. The Authority also suffers from a lack of trained staff – a bugbear of most government departments – and inadequate training and investment in IT and related areas. Clearly, further investment and legislative teeth are required for it to be more successful in its mission to protect and safeguard the public interest.

# A Robust Regulator

- A Fundamental Ingredient in a Sustainable Market Economy -



## Flashback!

The sub prime crisis has engaged our minds for well over a year and a half now and throughout this period I often reflected on the East Asian Financial Crisis of 1998 – a crisis, which is now 10 years old. The devastation it caused to a large region of the world, several economies and people, continues to be etched in the minds of many. I still remember visiting many ASEAN cities in 1998 and 1999 while on work and pausing to devote time to gain first hand insight into the causes and consequences of this sad event. I was particularly pleased to see the region bounce back before long.

## Have we learned any Lessons?

There were many similarities between asset quality of the Banks in East Asia in 1998 and those in some of the Bank Crises in the USA last year and it is now established that risk identification, management and mitigation at corporate governance level was weak while the oversight and effectiveness at the national or sectoral, regulatory level was inadequate. This was an enabler of the sub prime crisis.



By Ranel T. Wijesinha FCA, MBA

While much has been written on the East Asian Financial Crisis and many diagnostic studies and debates undertaken; many conferences held; many technical assistance programmes rolled out by the IMF, the World Bank, the Asian Development Bank, and many other bi-lateral Development Partners, the question yet remains whether the banking and financial services sector, the housing sector, or the regulators of particularly the western world - whether in Europe or North America - have actually learned from these lessons adequately?

### APB Annual Sessions - 2000 and the Korean Chaebols

At a presentation I made to the Association of Professional Bankers in Sri Lanka in the year 2000, at its Annual Session under the theme "Towards a Safer Banking System", I introduced a special segment on "Learning from the Lessons of the East Asian Financial Crisis", I quoted, Arthur Levitt, Chairman of the US Securities and Exchange Commission as follows: -

"The significance of transparent, timely and reliable financial statements and its importance to investor protection has never been more apparent. The current financial situations in Asia and Russia (1998) are stark examples of this new reality. These markets are learning a painful lesson taught many times before: investors panic as a result of unexpected or unquantifiable bad news".

Quoting from my research of an UNCTAD study, which had surveyed a few companies affected by the crisis, I conveyed that:

"The Chaebols dominated the economy of the Republic of Korea. These Conglomerates often engage in related party lending and borrowing. None of the sample companies disclosed the amount of related party lending and

borrowing; Less than one-half of the sample companies made reference to the existence of related party lending and borrowing but without disclosure of the amount; None disclosed the amount of foreign debt in the currency of repayment, and not a single corporation or bank followed IAS's in accounting and reporting for foreign currency translation gains and losses."

This was only of a sample taken and prior to 1998! But yet recent enough. I also referred to the President of the World Bank, when he referred to South Korea as follows:

"The culture of the region has not been one of disclosure. If you go back further it was a culture of a smallish number of wealthy people. It was an agrarian society with a lot of people in the country and significant factors of power. It is reflected in the Chaebols. It is reflected in the groups that come together. There were centres of power. There was little disclosure."

I wonder what Arthur Levitt & Australian born, Jim Wolfensohn, who was Chairman of the International Advisory Board of Citigroup after his ten year stint at the World Bank, had to say for themselves in 2001/2002 after Enron and WorldCom collapsed, and more recently after the US inflicted on itself, the 2008 sub prime crisis which then "exported" itself from the "Land of the Brave and the Home of the Free" to all of us in the rest of the world.

Interestingly, in a message to the CAPA chronicle, the monthly newsletter of the Confederation of Asian & Pacific Accountants in 2002, I said

"In the aftermath of the East Asian Financial Crisis, Western nations in particular and corporate leaders, regulators, scholars and authors of the West, were critical of the East and South East Asian nations, their statutory and regulatory systems, the auditing profession in these countries, accounting and auditing stan-

dards and compliance therewith. Their criticism was liberal and in many respects justified. But what is more important I think is whether regulators, professions and Corporate Boards of even the developed nations in the West, are yet as vigilant as the global society inherently expects them to be." Source: February 2002 Chronicle (The CAPA Newsletter)-

### Sri Lankan Chaebols?

In Sri Lanka, over the last few months, I have been witnessing with considerable sadness the plight of many, after the collapse of Finance Companies here, particularly, Golden Key. While there may be a number of large depositors, I more recently came to learn that this was also the investment vehicle of several simple, hardworking, wholesome people, some of whom had deposited their only "cash assets" and lived ordinary lives in their homeland in order to educate their children overseas. My mind went back to the following sentiment I expressed in 2002 to the Confederation of Asian & Pacific Accountants, which may provide any reader with a "heart and mind" driven rationale for strengthening professionalism and governance:

"The collapse of the economies of nations - such as what happened 4 years ago in East and South East Asia, or the collapse of corporates - such as what happened in none other than North America, a few months ago, can be disruptive. It can devastate what otherwise could have been only a continuation of a simple and less than extravagant life style for many who are less privileged than those at the higher levels of governance who are typically better cushioned to absorb the shock and disruptions these events bring. It is this segment of society that I particularly wish to identify and empathize with, since it is only through them that we realize the gravity of the implications of sub

par professionalism or poor governance.”  
Source: February 2002 Chronicle (The CAPA Newsletter)

## Post Event Regulatory Swiftmess

While commending the regulatory swiftmess with which the Central Bank placed Seylan Bank under the oversight of the Bank of Ceylon, thus acting for example, very similar to the Central Bank of Sweden almost 15 years ago, and preventing a run on deposits on Seylan and the resultant numerous implications, (which would have resulted if it chose to await the outcome of a due diligence, as some thought it should), there is now a far greater challenge ahead. At the time of writing (March 2009) Seylan's parent's conglomerate is beginning to crumble. The collapse of the “pack of cards” that many hoped would not occur for years, has begun. Let us hope that in the larger interest of all concerned the effects of all this can be substantially minimised and my best wishes are with all stakeholders and regulators in this regard.

## Surveillance of Financial Conglomerates

It is in this context that I wish to quote from the Central Bank's current (March 2009) website in its webpage on Financial System Stability and under the subsection “Surveillance of Financial Conglomerates.” The site refers to an initial report of a Working Group of Regulators for Financial Conglomerates “to be completed in early 2007”. The full extract of the relevant section is as follows:

“The existence of large financial conglomerates, especially those that have banks as part of the conglomerate, is another area that has attracted increased supervisory concern in recent times. The regulation and supervision of such financial conglomerates is becoming increasingly more important and complex,

due to the potential systemic risk that could arise from the interrelated nature of their activities. Large numbers of cross shareholdings, common directors and inter company transactions are areas that are of key interest in this regard, as it could result in conflicts of interests and abuse of power, which would not augur well for the stability of the financial system. Since there are multiple regulators in the financial system, the supervision of conglomerates often falls under the purview of several regulators, requiring close co-operation and supervision.

Therefore, a Working Group of Regulators for Financial Conglomerates comprising of the Central Bank, the Insurance Board of Sri Lanka, the Securities and Exchange Commission of Sri Lanka, the Accounting and Auditing Standards Monitoring Board and the Department of Registrar of Companies has been established to monitor the systemic risk of conglomerates. The mandate of this working group includes identifying and defining financial conglomerates; identifying the functions of the separate regulators; assessing the systemic risk of such conglomerates by sharing necessary information among regulators, recommending a course of action for regulation and supervision of the respective institutions in a consolidated manner and proposing necessary legal reforms to address the existing limitations relating to regulation and supervision of financial conglomerates. The initial report of the Working Group will be completed in early 2007.” (Extract of current Central Bank website)

It is now a national imperative that the outcomes of this Working Group (if it had been completed) are critically reviewed to determine where it is incomplete in relation to the Central Bank's regulatory oversight and effectiveness. Perhaps we could have saved the monies of depositors and the public monies that would now go towards bailouts and

stimulus packages if greater attention was paid to surveillance of Financial Conglomerates.

## Now is the Time!

Now is the time! To get back to the drawing board regarding this matter. I raised this issue at a Transparency International Round Table Discussion in February/March 2009. My recommendation was that the “Regulatory Oversight (Scope) & Effectiveness” of all regulators, in the Financial Sector, in particular, must be subjected to a rigorous review. Not only the Central Bank but also institutions such as the Securities and Exchange Commission of Sri Lanka, the Accounting and Auditing Standards Monitoring Board and the Insurance Board of Sri Lanka, should subject themselves to this review. I am pleased that this recommendation was accepted and is embodied in a letter the Executive Director of TISL, J C Weliamuna, has written to the President of the country.

## Statutory/Regulatory/Institutional Review

Enabling statutes will also have to be studied to determine whether the desirable scope and regulatory coverage or oversight of these institutions is not constrained by inadequate statutory provisions. Risk Mitigating or Minimising measures such as Deposit Insurance, which has been tossed around for over a decade and half or more in this country, must now be identified and implemented. Once the above is done, a key consideration will be to then determine “institutional capacity inadequacies” (human/technical) and to design and implement capacity building initiatives. The jurisdiction or remedy the Consumer Protection provisions of the Consumer Affairs Authority Act have over Banking, Leasing, Finance and related firms, their products and services

should also be reviewed. The role of the Financial Ombudsman in this regard may also require to be studied.

### The Market Economy has not Failed!

Then, the less than aware “mantra” that the Market Economy has failed will also subside. A Market Economy is not one where there is freedom of the wild entrepreneur or philanthropy without conscience or responsibility to the source of money that enables it, but one driven by an economic strategy, with desirable and effective regulation.

While recognising that I may be swimming against a global tide, whether catalysed by Sarkosy in France, Chavez in Venezuela or even by pockets in America, let alone in Sri Lanka, may I boldly submit that the concept of a Market Economy with Regulation, has been tried and tested, is sustainable and is indeed, here to stay.

Sustainability of political parties on the other hand, can well be made the outcome of all this, since, awareness of fair, objective and timely regulation, will endear people – the depositor, the investor, the consumer, the voter, to the politi-

cal party that facilitates it rather than one which stifles it, thus enabling the voter to enjoy a more affordable and comfortable lifestyle. This is about a lifestyle where the Government focuses its scarce resources on necessities like health, education, water and electricity, roads and communication etc and ensures the robust regulation of all of it rather than a contrary strategy – one where Government focuses on intervention and ownership of banks and businesses, which in an yet emerging economy such as ours, can well be, at the expense of a better lifestyle for the less than privileged.

*Ranel Wijesinha, an International Management Consultant, is a Fellow of the Institute of Chartered Accountants of Sri Lanka with over 25 years of post qualification work experience, both locally and overseas, in industry and public practice. His more recent assignments for multilateral development banks has been in Afghanistan, India and last year, in the post Soviet, East European nation – the Republic of Armenia. He possesses a Masters Degree in Business Administration from the Graduate School of Business of the University of Pittsburgh, in Pennsylvania, USA. Ranel has extensive practical experience in corporate restructuring and redirection, privatizations, valuations, mergers and acquisitions, divestments and economic policy and strategy related areas and has consulted to overseas countries in connection with financial management assessments for large-scale infrastructure projects; public financial management and review of regulatory effectiveness national and sectoral institutions. A Past President of the Institute of Chartered Accountants of Sri Lanka and Past President of the Confederation of Asian and Pacific Accountants (CAPA) he has served the Public Sector as Member, Securities and Exchange Commission of Sri-Lanka; Member of the first Consumer Affairs Council under the Consumer Affairs Authority Act; Member of the Accounting and Auditing Standards Monitoring Board; Chairman of the Monitoring and Advisory Committee of the Ministry of Power & Energy; Member, Governing Council, National Institute of Business Management and Member, Board of Management, Post Graduate Institute of Management.*

## Paying your ICASL Membership renewal fees online

ICASL introduced its own Online Payment Facility in the beginning of 2008 to its members, through the ICASL website, <http://www.icasrilanka.com>.

The Online Payment Facility is programmed to accept member renewal fees in Rupees and US\$, payable using Visa or Master Cards from resident and non-resident members respectively. To use this facility, the member has to have a Login Account to the members' section of the ICASL website. If you have problems logging in, you can refer to Online Help or request for a new password from the Webmaster via the “Feedback” form in the “Contacts” page. Once logged in to the Members Section, click on the “Renew Your Institute Membership Online” link at the very top to proceed to the Online Payment Facility.

The screen which accepts your credit card information is a Secure Console; therefore your credit card information will not be accessible even to the Website Host. Once your credit card payment is successful, you will get a receipt, which you can either save in the computer or print on paper.

For further clarifications contact: Mr. Gayan Wickramasinghe  
Chief Information Officer  
ICASL on 2586256 – Ext. 218