

## Head 205 – Report of the Auditor General of Department of Public Trustee – Year 2016

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The audit of the Appropriation Account and the Reconciliation Statements including the financial records, books, registers and other records of the Head – 205 Department of Public Trustee for the year ended 31 December 2016 was carried out in pursuance of provisions in Article 154(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka. The Management Audit Report for the year under review was issued to the Public Trustee on 28 November 2017. The audit observations, comments and findings on the accounts and the reconciliation statements were based on a review of the accounts and reconciliation statements presented to audit and tests of samples of transactions. The scope and extent of such review and tests were such as to enable as wide an audit coverage as possible within the limitations of staff, other resources and time available to me.

### 1.2 Responsibility of the Chief Accounting Officer and the Accounting Officer for the Accounts and Reconciliation Statements

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The Chief Accounting Officer and the Accounting Officer are responsible for the maintenance, preparation and fair presentation of the Accounts and the Reconciliation Statements in accordance with the provisions in Articles 148, 149, 150 and 152 of the Constitution of the Democratic Socialist Republic of Sri Lanka, other statutory provisions and Public Finance and Administrative Regulations. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of Accounts and Reconciliation Statements that are free from material misstatements whether due to fraud or error.

## 2. Accounts

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### 2.1 Appropriation Account

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#### Total Provisions and Expenditure

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The total net provisions made for the Department amounted to Rs.47.36 million and out of that, Rs.46.78 million had been utilized by the end of the year under review. Accordingly, the savings out of the net provisions made for the Department, amounted to Rs. 0.58 million representing 1.22 per cent. Details appear below.

Expenditure	As at 31 December 2016			Savings as a Percentage of the Net Provision
	Net Provision	Utilization	Savings	
	Rs. Millions	Rs. Millions	Rs. Millions	
Recurrent	45.02	44.47	0.55	1.22
Capital	2.34	2.31	0.03	1.28
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<b>Total</b>	<b>47.36</b>	<b>46.78</b>	<b>0.58</b>	<b>1.22</b>
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## 2.2 Advances to Public Officers Account

### Limits Authorized by Parliament

The limits authorized by Parliament for the Advances to Public Officers Account under the Item No. 20501 and the actual amounts are given below.

Expenditure		Receipts		Debit Balance	
Maximum Limit	Actual	Minimum Limit	Actual	Maximum Limit	Actual
Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions	Rs. Millions
2.50	2.49	1.30	2.31	10.00	6.50

## 2.3 Audit Observation

The Appropriation Account and the Reconciliation Statements of Department of Public Trustee for the year ended 31 December 2016 had been satisfactorily prepared subject to the audit observations included in the Management Audit Report referred to in paragraph 1.1 above. The material and important audit observations included in that Management Audit Report appear in paragraph 3.

## 3. Material and Important Audit Observations

### 3.1 Presentation of Accounts

Information about the financial position and income expenditure status of the Estates of Trust for the year 2016 could not be taken due to non-preparation of accounts of the Estate of Trust for the year 2016, even as at 30 November 2017.

### 3.2 Failure to Maintain Books and Registers

Audit test checks observed that the Department had not maintained the following registers while some of the registers had not been maintained properly and in an up-dated manner.

Type of Register	Relevant Regulation	Observations
(a) Security Register	Financial Regulation 891(1)	Not maintained

(b)	Bid Register	Calling	Guideline 5.2.1 of Government Procurement Guideline Manual	Not maintained
(c)	Register of Fixed Assets	of	Treasury Circular, No. 842, dated 19 December 1987	Not updated
(d)	Register of Investments	of	Paragraph 4.2 (f) of Public Financial Circular No. PF/423, dated on 22 December 2006	Not updated

### 3.3 Replies to the Audit Queries

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Replies to 3 audit queries issued in the year under review to the Department, had not been furnished even by 30 November 2017. The value of the computable transactions in respect of those queries amounted to Rs. 265.84 million.

### 3.4 Good Governance and Accountability

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#### 3.4.1 Annual Action Plan

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Action plan for the year under review had not been prepared by the Department in terms of Public Finance Circular No. 01/2014 dated on 17 February 2014.

#### 3.4.2 Internal Audit

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Internal audit plans had been prepared for 67 activities carried out under 14 sectors, and 9 internal audit queries had been issued during the year under review. However attention of the internal audit had not been paid to verify the important audit areas such as confirmation of balances shown in the Trust accounts, examine of investment registers and share certificates, obtaining bank confirmation, ensuring the correct interest and dividends receipt and accounted correctly.

### 3.5 Non-compliances

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#### Non-compliances with Laws, Rules, and Regulations

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Instances of non-compliance with the provision in laws, rules and regulations observed at audit test checks are analyzed below.

Reference to Laws, Rules, and Regulations	Value	Non-compliance
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	Rs.	
(a) Financial Regulations of the Democratic Socialist Republic of Sri Lanka		
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(i) Financial Regulation 371 (1)	188,000	Even though, imprest could be given only to staff grade officers, ad hoc sub imprest had been issued to private institutes in 02 instances.
(ii) Financial Regulation 371 (2)	430,580	Even though ad hoc sub imprest should be settled immediately after the completion of the activity, settlement of sub imprest had been made after delaying over 04 months of completion of the activity in 17 instances.
(iii) Financial Regulation 371(2) amended by Public Finance Circular No.03/2015 dated in 14 July 2015	1,180,000	Though the maximum ad hoc sub imprest was Rs. 100,000 could be issued at a time, ad hoc sub imprest more than that limit had been issued in 5 instances.

### 3.6 Performance

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The observations on the performance of the Department in accordance with the Annual Budget Estimates and the Action Plan for the year 2016 are given below.

#### 3.6.1 Activities Against the Main Activity ( Deviation from Objectives etc.)

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It was observed instances where the Department had performed activities other than its objectives, and some instances revealed in audit test checks were shown below.

##### (a) D. V. P. Wijesinghe Daham Sevana Trust

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A Trust was established by Mr. D.G.W. Wijesinghe lived in Mount Lavinia with the name of “D.V.P. Wijesinghe Daham Sevana Trust” on 31 January 2013, by entrusting an initial amount of Rs. 25,000 and 37.5 perches land located in Panadura area as well as by nominating Public Trustee as the Guardian. The objective of this had been mentioned as establishment and maintain of Dhamma Institute for the stableness of Bhikkhuni

Buddhist Order. Following observations are made in the audit test check carried out in that regard.

- (i) Though this land had legally been vested to Public Trustee Department on 11 December 2014, before that, the Court consent had been obtained on 18 June 2014 to construct a hermitage for woman hermits by mentioning that this land was belonged to D.V.P. Wijesinghe Trust. It was observed that the land was not belonging to Trust at the time of obtaining Court consent by mentioning as the land belonging to Trust was a controversial matter.
- (ii) It was mentioned in Deed of Trust that the capital of the Trust should not be utilized to implement the objectives and only the interest amount of it should be utilized. Attention had not been made by the Department with regarding the sufficiency of interest receiving from the capital of Rs. 25,000 to implement these objectives at the Trust initiation.
- (iii) As per the Paragraph 5 of Deed of Trust, Board of Consultant with 8 people including Trust Initiator as President had been appointed to provide guidelines with regarding Trust activities. However no written evidence had been presented to audit that activities such as construction made from Trust had been done together with that Board of Consultant.
- (iv) It was a controversial matter that whether the inclusion of the paragraph 21 (b) of Deed of Trust as “The founder has no aspiration and expectation to be audited under the scope of Government Audit Division as this was a private Trust” is comply with the directions stated in Constitution 154 of Constitution of Sri Lanka.
- (v) The Court consent had been taken to construct the hermitage for woman hermits from the Funds of U.D.B. De Silva Estate without planning the exact amount to be provided from U.D.B. De Silva Estate for the construction activity of hermitage for woman hermits.

**(b) Management of Properties of Miss. Chandani Hemantha Perera**

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The Public Trustee had been nominated as Curator unsound mind and Private Security for her Estate under the directions in Chapter 39 of Civil Procedure Code until the recovery of Miss. Chandani Hemantha Perera from her illness, on the Judgment of Case No. 06/2005/ LG in Colombo District Court on 04 October 2006, and the authority had been given to spend the amount adjudicated by the Court for her maintenance. Following observations made in this regard.

- (i) According to the Public Trustee Ordinance No.01 of 1922 and its related amendments, the Public Trustee should act as Property Manager of unsound mind person at the time of appointing through Court. However no provisions had

been made in the above ordinance for the Public Trustee to act as Private Security of such person.

- (ii) The house which is included in this property had been given to an outside party on rent by a relative of Miss. Chandani Hemantha without the permission of Public Trustee.
- (iii) The account with relating to this Trust had not been included in Trust Final Accounts prepared and presented to audit for the year 2014. Accordingly, it had not been disclosed a correct view of Estate Trust in Trust Final Accounts in the year 2014.

### **3.6.2 Main Activities not Performed Adequately**

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Department had not performed its main activities sufficiently and some of such instances observed were shown below.

#### **(a) Estate of U. D. B. De Siva**

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Public Trustee had been nominated as the Guardian of his Estate by the Last Will No. 10821 of 29 June 2001 and Codicil No.99 of 01 April 2007 of Mr. U.D.B. De Silva who passed away on 01 April 2010. Trusteeship and controlling of the Estate had been entrusted to Public Trustee by Probate of Bandarawela District Court dated on 08 September 2010. Following observations are made in this regard.

- (i) Though it was mentioned in the Last Will to pay Rs. 100,000 to construct a house for two women nominated as beneficiaries of the Estate, it had been decided with the consent of the beneficiaries on 28 September 2013 by Board of the Trustee Estate to purchase a house by spending Rs. 4,500,000 from the capital of the Estate due to the insufficiency of that amount. Accordingly Court permission had been obtained from Bandarawela Magistrate Court on 18 June 2014 to purchase a house at Milagasthanna in Badulla. Though almost 2 ½ years period had been lapsed as at 31 December 2016 for the taking of Court permission, the house had not been purchased.
- (ii) Though expenditure aggregating Rs. 247,274 had been made from the capital of the Estate in 7 instances by the Department as travelling charges and legal fees for purchasing activities of the house, that expenditure had been fruitless due to non-implementing of that activity even as at the date of audit.
- (iii) According to the Paragraph 05 C of the Last Will of Mr. U.D.B. De Silva, some furniture and sewing machine remained in Haldummulla house, at the time of death of the Owner of the Estate, should have been given to the resident woman who was a one of beneficiaries. It was not confirmed from the files, that the action had been taken to obtain a report by the Department as the Guardian of the

Estate, with relating to the furniture and equipment remained in Haldummulla house. Further, evidences were not presented to audit to prove, that the furniture and sewing machine remained in the house had been given to the resident woman.

- (iv) Security arrangements had not been made by the Department for the house of this Estate located in Haldummulla.
- (v) Though the value of gold jewelries and other precious materials included in the property list prepared by the Department had been mentioned as Rs. 700,000, reliable valuation report of those items had not been taken.
- (vi) According to the property list, the value of cash remained at banks in United Kingdom and other Institutions was mentioned as Rs. 41,079,003, it was observed in the examination of files that the deposit remained was Rs. 50,179,827. Therefore it was observed that the property list is not correct.
- (vii) According to the Investment Register, though the amount remained in fixed deposit was Rs. 110,513,662, that value had been Rs. 58,000,000 as per the Department books. Therefore it was observed an un-reconciled difference of Rs. 52,513,662.
- (viii) A sum of Rs. 2,038,430 had been paid from the Estate as legal fees and out of them a sum of Rs. 1,809,955 had been paid to the Legal officer who is working in the Department. Further legal proceeding of the Estate had not been completed even as at the date of audit and actions had not been taken to get valuation of the property.
- (ix) Though a sum of Rs. 484,946 had been spent from the Estate for different parties as charity donations, payment of charity donations had not been shown as the objectives of the Owner of the Estate.
- (x) Though 6 years had been lapsed by receiving the controlling power of the Estate to the Department, a sum of Rs. 95,986 had to be paid as arrears safe chargers for the years 2013 and 2015 due to non-releasing of safe maintained in the banks by Owner of the Estate and non-taking the items and documents to the own custody.

**(b) Planning**

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As per the Paragraph 9 of action plan 2016 of the Department of Public Trustee, the objectives of the initiator had been expected to implement from the revenue generated on the proper management of 12 agrarian lands vested to Department under Trust/ Estate Property Management. A profit of Rs. 9,784,680 had been expected from those plantations in the year 2016. However it had not been mentioned the achievement of that expected profit, and revenue generated from agrarian lands had not been included in the performance report of the year 2016.

### 3.7 Transactions of Contentious Nature

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Some of the transactions performed by the Department had been of contentious nature. Particulars of some of such transactions revealed in sample tests are as follows.

(a) **Funds Received from China Government for Gampola City Development and Waste Disposal Activities**

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An agreement had been signed between Mayor of Lingsang Urban Council in Ynang Province of China and Former Mayor of Gampola Urban Council for Gampola City Development and Waste Disposal Activities on 07 July 2011. It was agreed to give a grant of Yuan one million to achieve 14 objectives mentioned in that agreement. Accordingly a sum of American Dollar 159,604.18 or Rs. 20,426,675 had been sent to the official bank account of the Public Trustee in Bank of Ceylon Torrington Branch on 19 October 2012. Out of that amount a sum of Rs. 20,814,322 had been spent by the Public Trustee for various activities. Following observations are made in that regards.

- (i) Duties and responsibilities of Public Trustee mentioned in Public Trustee ordinance No. 9 of 1917 amended by acts No. 1 of 1918 and No. 4 of 1918; and No. 1 of 1922 amended by act No. 11 of 1931, No. 59 of 1938 and No. 41 of 1983 had not left any provision to engage this type of City Development projects.
- (ii) As per the Financial Regulation 610 and Treasure Circular No. MOFP/ERD/2011/01 of 21 April 2011, the direction of Director General of External Resources Department should have been followed in receiving financial aid from foreign status. However actions had been taken to represent as a Mediator in an international agreement between two Mayors in two Countries, without taking the approval or consent of the Director General.
- (iii) A transaction in the contentious nature had been made by receiving the amount from the name of Former Mayor of that Urban Council which was payable for development activities of Gampola Urban Council.
- (iv) Though a sum of Rs. 8 million had been paid to Gampola City Development Trust for the payment of compensation of lands acquired for development activities, it had not been confirmed that granting of such compensation were made.
- (v) A sum of Rs. one million had been taken from Gampola City Development Trust for decoration expenses of Vesak zone in the year 2014. It was observed this as expenditure that made contrary to the objective of which the Fund was given by Chinese Government.



- (vi) A sum of Rs. 10,000,000 had been paid to Kandy Urban Development Authority for construction of shopping complex in Pussallawa area which was in outside the area of the authority of Gampola Urban Council. It had also not been made it confirmed that the shopping complex was constructed.
- (vii) A sum of Rs. 1,200,000 had been paid to Gampola City Development Trust for development of the surrounding of bus stand in Pussallawa area which was in outside the area of the authority of Gampola Urban Council. It had also not been made it confirmed that the development of bus stand was made.
- (viii) It was confirmed that the amount aggregating Rs. 10.20 million belonging to Gampola City Development Trust and which was shown in above observation Paragraphs (iv), (v) and (vi) had been credited to current account of private partnership which was maintaining by the names of three persons in Bank of Ceylon Piliyandala Branch. Accordingly no legal direction had been provided to credit Government Fund into a private account.
- (ix) The Trust No. IO/28/2012 with the name Gangasiripura Development Trust had been established naming a private party as Initiator and Public Trustee as Security Trustee on 20 July 2012 to utilize the amount received from Chinese Government for Development of Gampola Urban Council. Further Trust Management Committee consisting with 07 persons had been appointed. No Member of Council or officer of Gampola Urban Council had been included into this Committee. Accordingly it was not observed that Gangasiripura Development Trust was established for development of Gampola City and it was observed that the expenditure of Rs. 20,200,000 made under such a Trust was in controversial.
- (x) It was observed that a sum of Rs. 80 Lakhs had been deposited in a fixed deposit account by the name of Gampola City Development Trust in Bank of Ceylon Piliyandala Branch by Gampola City Development Trust. Therefor sufficient evidences had not been presented to audit to confirm that the Funds received from Chinese Government were not being misused.

**(b) Audit of the Estate of Mr. Sisil Ernest Wanigasuriya**

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Public Trustee had been appointed as the Guardian for the own properties by the Last Will No. 1503 and Codicil No. 1799, and the Estate of Mr. Sisil Ernest Wanigasuriya who lived in Colombo 6 and died on 28 November 1999 had been entrusted to the Public Trustee by mentioning as to establish and maintain a Trust by the name of “Sisil Wanigasuriya Trust” to implement the objectives of the Last Will. All cash receiving from the selling of assets should have to be deposited by opening Trust with the name of “Sisil Wanigasuriya”. Further, the implementation of objectives such as payment of education aid, charity donation, medical aid which was mentioned in the Last Will had

been entrusted to the Public Trustee by that Trust. Following observations are made with regarding the above immovable property.

- (i) According to the Codicil No. 1799 dated on 23 November 1999, after the laps of 6 years of vesting the lands and properties in Wellawatte Railway Avenue to Department of Public Trustee, those properties had been sold out at Rs. 79 million. Though, 4 years had been lapsed for the selling of the property, those cash had been deposited in an official bank account of the Department without making investment. Therefore though 10 years had been lapsed as at the date of audit for the vesting of properties to the Department, cash received from selling of these properties had not been utilized to implement the objectives of the Last Will of owner of the Estate.
- (ii) It had been proven by the file that the land in Sedawatta with the extent of 3 acres 2 rood 10.81 perches located within the limits of Kolonnawa Urban Council which was included in the estate of Mr. Sisil Ernest Wanigasuriya, had been sold by late Mr. C.E. Wanigasuriya from the Deed No. 1711 on 26 September 1997. The information with relating to the selling of property including in the Last Will and activities made from the cash received from such selling had not been presented to audit.
- (iii) The cash received from selling of bare land in Sedawatta for Rs. 9,043,935 which was belonged to late Mr. C.E. Wanigasuriya had been shown in property list of the Case No. 1210/00T other than the properties mentioned in Last Will. However the information with relating to the receipt of that amount to the Department and accounting into the Sisil Wanigasuriya Estate account had not been presented to audit.
- (iv) By reselling of the balance land extent of 01 acre 4 roods 38 perches as per the Last Will, remained without selling of the land named Urolinkanatha of Miriswatta in Kadawatha which was entrusted before the death of Mr. C.E. Wanigasuriya to a private Auctioneer in Kadawatha to sell by portioning and preparing plans under two segments, and those cash should have been deposited by the name of Trust. However the balance land extent of 01 acre 2 roods 24 perches of Survey Plan No. 778 A which was remained without selling had been vested to Ministry of Public Security, Law and Order to donate for War Heroes from the order taken in Mount Lavinia District Court on 02 June 2009. Sufficient evidences had not been presented to audit to prove that, the vesting of land in this manner would be complied with the objectives of the Estate.
- (v) Relevant evidences had not been presented to audit to prove that the actions had been taken to credited cash into the estate by selling of those 3 lots of land, though it was further remained the lot No.3 and lot No.4 of Survey Plan No. 152/1988 aggregating 30 perches and 64 perches mentioned as “Gala Lot” of Survey plan 778/A which was given for selling.

- (vi) Receiving of the Probate with relating to the lands owned to late Mr. C.E. Wanigasuriya through Administrator License issued under paragraph 5 (iii) and (iv) of Last Will and on the decision of Court Case No. 33485/ T of Colombo District Court, which were located in 4 places with extent aggregating 03 acres 03 rood 8 perches, and properties located in 02 places which was not described the extent even as at the end of the year under review, and lands located in Sedawatta under the limits of Kolonnawa Urban Council, had been lapsed 11 years. However it was confirmed that actions had not been taken by the Department to credit those cash to Sisil Wanigasuriya Trust by selling those properties.
- (vii) The total assets as at that date had been shown as Rs. 98,182,155 in the balance sheet prepared by the Public Trustee for C.E. Wanigasuriya Estate as at 31 December 2007. However value of total assets as per the property list valued there to had been shown as Rs. 111,246,658. Accordingly un-reconciled difference of Rs. 13,064,503 was observed between the figures mentioned in above property list and the balance sheet prepared and filed as at 31 December 2007.
- (viii) According to the Paragraph 9 of Last Will, actions had not been taken by the Department to receive cash remained in two bank accounts in London with the name of Mr. C.E. Wanigasuriya, into the C.E. Wanigasuriya Estate. The objective of giving those cash into Maha Bodhi Society in Buddhist Temple in London which was expected from the Paragraph 9 of Last Will had not been implemented by the Department even as at the year under review. Further, evidences had not been presented to audit to verify that the all accounts in local and foreign banks belonging to C.E. Wanigasuriya Estate had been recognized and all the cash with the relevant interest amount remained in local and foreign banks accounts had been accounted into the name of C.E. Wanigasuriya Estate.
- (ix) According to the property list prepared in the month of August 2007, furniture belonging to C.E. Wanigasuriya Estate valued at Rs. 683,950 had been recognized. Furniture and equipment had been decayed and caused in diminishing its value due to improper attention and interest made by the Department.

**(c) Senavirathna Medical Trust Fund**

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A Trust Fund with the name of Senavirathna Medical Trust Fund had been established by his wife on 31 December 2013 with the capital of Rs. 25,000 by nominating the person as Guardian who held the officer of Public Trustee before the year 2015. The objectives of this Trust had been shown as providing financial assistance to that Public Trustee for medical treatment when needed, reimbursement of cash spent for medical facilities as at the end of the year under review and hospital bills could have to be spent in future in

according to the objectives of Social Service and General Trust Fund establish in the Department of Public Trustee, and for making gratification by performing annual religious observances on behalf of the parents of Public Trustee. A sum of Rs. 3,569,712 had been spent as at the year under review from cash belonging to this Trust and other Estate Trusts. Following observations are made in this regard.

- (i) It was mentioned in Paragraphs 6 (b) and 12 (d) of Deed of Trust that the objective of the establishment of this Trust as reimbursement of cash spent for medical facilities as at the end of the year under review and hospital bills could have to be spent in future through Social Service and General Trust Fund maintained in Department of Public Trustee. However no any hospital bills had been reimbursed by this Trust which was made from Social Service and General Trust Fund for medical facilities of Mr. Senavirathna. Further, records had not been maintained by the Department with regarding the settlement of medical bills of Mr. N.S.A.S. Senavirathna from “Social Service and General Trust Fund” maintained in the Department of Public Trustee which was made before and after the establishment of above Trust.
- (ii) It was shown that 25 per cent of the interest income received to the capital should be re-invested in terms of Paragraph 16 of Deed of Trust. Though fixed deposit of Rs. 1,500,000 was deposited on 21 January 2014 by Initiator as capital of the Trust, a sum of Rs. 1,069,712 which was more than its interest income and capital had been spent as at July 2014.
- (iii) It was observed that the scope of audit had been restricted by noting as “The founder has no aspiration and expectation to be audited under the scope of Government Audit Division as this was a private Trust” in Paragraph 18( c) of the Deed of Trust.
- (iv) It was observed that the expenditure had been made without the approval and also by exceeding the capital, for reimbursement of medical bills of Public Trustee from this Trust which was established by his wife, as the Initiator of the Former Public Trustee, to settle his medical bills.

**(d) Estate of Mrs. Florence Enid Widam**

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Sri Lanka Public Trustee had been nominated in the year 1975 as the Power of Attorney by Mrs. Florence Enid Widam who died in Singapore on 11 August 1968 for giving, The cash which would be received from selling of lands in 3 places in Sri Lanka with the land extent aggregating 3 rood 35.8 perches and 3 house buildings in those lands; and the cash of Rs. 54,476 remained in a private bank, for legatees / beneficiaries. Following observations are made in this regard.

- (i) The tender had been called through newspaper advertisement on 27 September 2004 for selling of land and house located in Colombo 05 with the land extent of 01 rood 5 perches. Legatee was occupied in this property at the time of advertise the tender and; it had been mentioned in the tender advertisement that vacating of residents and getting the clear ownership is a responsibility of the Tenderer and Public Trustee Department is not taking any responsibility in this regard.
- (ii) The composition and transparency of the tender board was questionable due to appointing all members of the Tender Board for selling of this property had completely been consisted with Department Officers.
- (iii) Four Tenderers had presented quotations for this, and tender had been awarded on 22 October 2004 for the Tenderer who quoted highest price of Rs. 50,511,000 by opening and evaluating the tender through the Tender Board consisting of 04 Officers of the Department of Public Trustee such as Public Trustee, Director Finance, Administrative officer, Trustee Officer. It was mentioned in the tender awarding letter that the actions for transferring the land would only been done after making payments of Rs. 1,000,000 within 14 days as advance. In this connection, no property sale agreement had been entered with the Buyer.
- (iv) Payment of cash for the sold out property had been defaulted by the Tender Receiver, and time extension for making payments had been requested in 06 instances within a long period for about 06 years once in each year. It had been created a situation not to take actions to cancel the tender and making the cash payments delayed for long period through granting approvals for all those requests of time extension by the Former Public Trustee.
- (v) A letter had been presented to Public Trustee by the Tender Receiver during the time period spending for making payments i.e. on 15 March 2007 and quotation had been presented again by mentioning of willingness to by the whole property of 38.37 perches for Rs. 69,066,000 by Rs. 1,800,000 per perch; during the same time period, another 05 Buyers had presented higher quotations than the quotation of the receiver of the tender, through letters to buy this property.
- (vi) Even though representation had been presented to Former Public Trustee by legatees of property mentioning that disagreement of price quoted in the tender and subsequently price quoted from his letter by the Tenderer, and this property is more valuable than that price, and could be sell at minimum of Rs. 77,123,700 as per the higher quotation presented by now; he had not given any reaction for this.
- (vii) Directions of Attorney-General had been requested on 31 July 2007 with regarding this problematic situation. Directions had been given by the Attorney-General mentioning that, the previous quotations had been canceled through

resending a higher quotation and non-making payments, though it had been given time extension for this, due to the inability for making payments of the Tenderer; and that, there is no agreement for selling of this property, to him, on the basis of non-accepting the new quotation presented by him, and that, actions should be taken to get more benefits for this legatees by selling out the property for higher price. Further Former Public Trustee had been charged to submit reasons mainly to Colombo District Court in this regard. Accordingly the information that the Tenderer had been agreed to buy the amount higher than the price mentioned in the valuation report that is for Rs. 69,066,000 and that quotation was the highest quotation, had been presented to Colombo District Court by the Former Public Trustee through the petition on 17 September 2008. District Court had given permission to sell the said property to the Tenderer for Rs. 69,066,000 due to non-presenting information above the subsequent quotation presented by 04 Buyers.

- (viii) Out of the sum of Rs. 69,066,000 received through the selling of this property, a sum of Rs. 25,615,209 had been given to 20 legatees and beneficiaries. Evidences had not been presented to audit to prove that the beneficiaries who received cash would be the correct legatees of this property. Though only 08 legatees were available for this property at the time of nominating Public Trustee as the Power of Attorney of this property i.e. in the year 1975, the legatees had been increased up to 46 as identified by now in spite of taking long period. Accordingly it was observed that these matters should have to be considered at the time of making cash payment.
- (ix) Out of the cash received from the selling of properties, a sum of Rs. 43,450,791 remained after making payments for 20 beneficiaries had been kept without making payments for other legatees / beneficiaries for more than 5 years lapsed as at 31 January 2016. Reasons for this had not been explained to audit.
- (x) Though policy of the Department is to invest unclaimed cash in fixed deposit, only a sum of Rs. 1,000,000 had been invested accordingly on 02 June 2015.
- (xi) The cash received from sale of properties had been utilized for the payments of other Trust Funds and Estates without using for investment or maintaining in bank accounts.
- (xii) Actions had not been commenced even as at 31 December 2016 to sell the property located at Clasan Place in Colombo 05 with the extent of 01 rood, 05.94 perches. The period more than 40 years had been spent as at that date for selling of this property.

- (xiii) Even though actions should be taken to obtain Government Valuation Report from Valuation Department to verify the value of the property before selling the land, it had not been performed accordingly.

### 3.8 Improper Transactions

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Some transactions entered by the Department were not in order. Some of such instances observed were shown below.

#### (a) Establishment and Spending of Religious Social Services and General Trust Fund

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Tri party Committee had been appointed by the Prime Minister and relevant line Minister to examine the activities of the Department of Public Trustee on 17 February 2005. Recommendations had been presented by that Committee, that the “General Invest Account” should be given a legal background. However a petition had been filed in Colombo District Court by Public Trustee on 16 February 2010 to acquire approval to establish separate fund by the name of “Religious and Social Service General Trust Fund”. After that date, amendments to the matters mention in the Deed of Trust had been presented, and permission had been granted in that regard by the Colombo District Magistrate on the dates of 16 July 2010 and 11 August 2010. Religious and Social Service General Trust Fund had been established in the year 2010 by taking Rs. 10 million from the “General Invest Interest Account” maintained in the Department. Following matters were observed in the audit test checks carried out in this regard.

- (i) According to the Recommendation No. 02 of Tri party Committee appointed by Prime Minister, though it had been proposed to include a rule to establish General Invest Account or to get advice from the Attorney-General to include a paragraph into the main act if more legal power is needed, a petition had been filed by a Former Public Trustee in Colombo District Court by requesting permission to establish separate account by the name of Religious and Social Service General Trust Fund without taking actions to create legal back ground for General Invest Account as which it was purpose by the Committee.
- (ii) Even though Accounts of Trusts should be presented to the all parties who are utilizing Trusts, by auditing those accounts in terms of Paragraph 39 of Public Trustee Ordinance by Public Trustee or person appointed by him; that had not been performed with relating to Religious and Social Service General Trust Fund.
- (iii) According to the Paragraph 43 of Public Trustee Ordinance, though Funds accumulated for 12 years or more periods remained without identifying should be credited to Government Consolidated Fund; that had not been done for the above Fund.

- (iv) Commenced of Attorney-General had been called by Public Trustee on 03 September 2015 with relating to the cancelling of this Trust due to unlawfulness of maintaining by establishing this Trust. In connection to this, it was informed by the Attorney-General on 03 November 2015 that Public Trustee has no legal power to request permission from Court to establish such a Fund. Actions had not been taken by the Department to get a Court Order in this regard even as at 31 December 2016 by providing legal status of the above trust fund to the Court in accordance with the opinion of Attorney-General.
- (v) A sum of Rs. 10,000,000 in the year 2010 and a sum of Rs. 5,000,000 in the year 2012 had been invested by the name of above Trust, and a sum of Rs. 5,090,415 for the period from the year 2011 and the year 2015 as interest income for those investment, a sum of Rs. 13,311,344 as sundry income, Revenue of Rs. 81,567,732 which should be credited to general investment interest account had been credited to Religious and Social Service General Fund with relating to this period. Accordingly income aggregating Rs. 99,969,491 had been received to this Fund. Expenditure had been incurred in such a way to occur adverse balance to the Trust by utilizing above cash for the implementation of objectives of Religious and Social Service General Trust Fund and also by spending a sum of Rs. 412,183,640 from the year 2011 to the year under review. Further a sum of Rs. 46,352,238 had been spent during the five years contrary to the objectives mention in the Deed of Trust for non-charity activities such as staff salaries, travelling expenses, fuel expenses and welfare expenses etc.

**(b) Unauthorized Transactions**

**Payment of Compensation to Sri Abhayarama Temple in Narahenpita**

Lands of above Temple had been acquired to Road Development Authority for the purpose of expansion of Thimbirigasyaya Road, and compensation of Rs. 33,360,000 had been given in this regard to the Public Trustee in the years 2007 and 2008. As per the request made by an Incumbent of Sri Abhayarama Temple mentioning that for the reconstruction and development activities, a sum of Rs. 15,000,000 had been paid out of that compensation amount, to that Reverent by the Department of Public Trustee on 06 December 2007. Following observations are made in this regard.

- (i) Compensation of Rs. 15,000,000 had been paid to a Monk who is not the Chief Incumbent of Narahenpita Sri Abhayarama Temple by the Former Public Trustee, without taking the approval of Commissioner General of Buddhist Affairs as per the Paragraphs 21 and 25 of Buddhist Temporalities Ordinance Act No.19 of 1931.



- (ii) Documents such as expenditure estimates, engineering estimates and engineering plans with relating to development activities of the Temple had not been presented to Commissioner General of Buddhist Affairs to release the above compensation amount.
- (iii) No evidences had been presented to audit to prove that the development activities of this Temple had been done by using this compensation amount, and no evidences had been presented to audit to prove that any inspection or follow up activities had been made by the Former Public Trustee for the activities performed in this regard.
- (iv) A sum of Rs. 24,876,740 had been received as at 09 February 2015 from the investment of compensation amount in fixed deposit as interest. However a sum of Rs. 34,108,952 had been paid to the Incumbent and thereby an illegal payment of Rs. 9,232,212 had been made. Further a sum of Rs. 339,000 had been paid to that Incumbent for legal fees with relating to the activities of the Case which was not relate with development activities of the Temple. Funds of other Trusts and Estates in the Department had been utilized for this.
- (v) Both approving certifying activities of payments with relating to this subjective matter aggregating Rs. 1,750,000 had been made by the Former Public Trustee without making attention on internal examination as mention in Financial Regulations 136 and 137.

### **3.9 Management Weakness**

Following weakness were observed in audit test checks.

#### **(a) Audit of Foreign Compensation Payment**

As per the paragraph 10 (a) of amended Public Trustee Ordinance No. 61 of 1988, distributing of compensation amount unpaid wages and salaries etc. received on behalf of deceased employees in numerous reasons at the foreign employment had been an objective of the Department of Public Trustee. Seventy nine foreign compensations aggregating Rs. 98,415,465 and American Dollar 93,936 with relating to the period from the year 2010 to the date of audit on 30 November 2016 had been remained without making payments. Following deficiencies were revealed in audit test checks carried out in this regard.

- (i) The information such as filing cases to verify the owners, only the cheques receipts to the Department from the Ministry of Foreign Affairs without the information of owners with relating to the compensations and withholding in the Department due to the non-recognizing the owners had been mentioned as the reasons for non-releasing of foreign compensation amount. However, proper and efficient procedure in releasing compensation to relevant owners by referring

those information from Foreign Employment Bureau or Offices of relevant Divisional Secretariat, had not been performed by the Department.

- (ii) Compensation amount aggregating Rs. 14,853,617 in 8 instances had only been invested and due to keeping those amounts in Common Bank Account belonging to other compensation Trust and Estates, there was a possibility in using those cash for other objectives of the Department. Further, it was observed that there is a risk of impossibility of paying compensation to relevant owners. Though disclosures had been made in this regard in several instances through audit queries, Department had not taken actions to prepare procedure that enabling the owner of the compensation to have interest benefit realizing from the investment of compensation amount by rectifying the current procedure, and to make efficient compensation payment.
- (iii) The primary objective of the Department was to take actions with regarding foreign compensation, and a separate account had not been maintained with regarding the foreign compensation due to unsatisfactory financial control in the Department. Receipts, payments and payable amounts of foreign compensation had not been disclose in Trust Final Accounts for the year 2015 which was finally been presented to the audit.

**(b) Audit of Investing in Shares of Associated Newspapers of Ceylon Ltd.**

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Public Trustee had been nominated to hold shares on behalf of the Government at the time of acquisition of Lake House Institute to the Government by the Associated Newspapers of Ceylon Ltd. (Special Provision) Act No. 28 of 1973. Following observations are made in this regard.

- (i) According to the Share Certificate presented to audit on 06 February 2009, though the number of Ordinary Shares of Associated Newspapers of Ceylon Limited holding by Public Trustee on behalf of the Government had been shown as 3,050,379, the shares recorded in each year at the time of declaring dividends for each year had gradually been decreased from 3,050,448 to 3,050,380 since the year 1989 to the year 2007.
- (ii) Though it was mentioned that the dividends aggregating Rs. 102,001,336 which were received from the year 1984 to year 2007 were sent by cheques to the General Treasury in each year, confirmations had not been taken from the Treasury for the receipt of such cash.
- (iii) According to the powers of Public Trustee mentioned in the Paragraph 12 of Associated Newspapers of Ceylon Ltd. (Special Provision) Act No. 28 of 1973, though written directions with regarding the institutional matters could have been given to the Board of Directors on behalf of the Government, direct involvements

such as maximizing the profit of the Institute, minimizing the uneconomical expenses and other welfare activities had not been made by implementing those powers.

- (iv) Though the major shareholder of Associated Newspapers of Ceylon Limited was the Department of Public Trustee, no any disclosures in this regard had been made in Trust Estate Accounts of the Department.

**(c) The Estate of Hary Hapugoda**

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According to the Last Will No. 133 of Mr. Hary Hapugoda dated on 29 March 1949 and Probate No. T/8509 of Galle District Court dated on 24 July 1953, Public Trustee had been nominated as the Trustee for the Estate of Mr. Hary Hapugoda. Accordingly, Public Trustee is the Guardian for all immovable and movable properties belonging and due to be belonged to Mr. Hary Hapugoda that time as well as the implementation responsibility of objectives mentioned in the Last Will of Owner of the Estate had been accredited to Public Trustee. The following observations were observed in the test check carried out in this regard.

- (i) According to the Last Will No. 35197 of brother of Mr. Hary Hapugoda named Adiriyana Alwis Hapugoda dated on 15 September 1936, his Estate had been belonged to his brother Mr. Hary Hapugoda. According to the Last Will of Mr. Adiriyana Alwis Hapugoda, if Mr. Hary Hapugoda deceased without a marriage, his Estate should be belong to Parama Vinchanartha Buddhist Society for promotion and improvement of Buddhist activities. However, information about the ownership of the Parama Vinchanartha Buddhist Society was not confirmed as per the files of the Department and ownership of the Estate had been accredited to Public Trustee as per the Last Will of Mr. Hary Hapugoda.
- (ii) The land lot of 3 perches, the building located at Sri Hemananda Mawatha within the boundary of Galle Municipal Council and its all assets belonging to Hary Hapugoda Estate had been leased out to a Person from a Deed of Lease on 01 January 2012 for business activities for 5 years. The monthly lease rent of the leased out property was Rs. 750 and though the valuation of the property should be done once in 5 years, the monthly rent had been decided as Rs. 750 without a proper valuation of the property.
- (iii) Attention of the Department had not been directed on utilizing those lands in effective activities such as using for cultivation, leasing out as necessary by doing portioning activities and verifying the ownership of non-portioned land belonging to the Estate.
- (iv) Scholarship of Rs. 21,000 and Rs. 36,000 respectively had been paid out of this Estate by the Department in the years 2014 and 2015. However, the objectives of

the Owner of the Estate had not been implemented by the Department in the year under review due to non-taking actions to pay scholarship in the year 2016.

- (v) According to the Last Will of the Owner of the Estate, it had been mentioned that 1/5 of the revenue of the Estate should be saved and when that saving reached to Rs. 100,000 that should be pooled to grant scholarship and to grant relief in emergency situation. However, the revenue saving had not been made by the Department to implement those objectives of the Estate.
- (vi) Surcharges of Rs. 70,680 had to be paid due to non-payment of Gratuity in due date for three employees who retired after the service in Suduvalipotha Watta belonging to the Estate and a sum of Rs. 2,993 had to be paid as surcharges due to non-payment of Employees Trust Fund in due time with relating to employees for the year 2015 of Maththaka Watta belonging to the Estate.
- (vii) According to the Last Will No. 133 dated on 29 March 1949 and Probate dated on 24 July 1953, though the Estate had been accredited to the Public Trustee, legal fees had to be paid continuously due to non-completing of legal activities with relating to the property even as at the date of audit and legal fees aggregating Rs. 69,775 had been paid from the year 2014 to year 2016.

**(d) The Estate of G.S. Jayasuriya**  
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The activities of the Estate of Mr. G.S Jayasuriya who lived in No. 49 Remand Road Nugegoda and deceased on 08 April 1982 had been entrusted to Public Trustee of Sri Lanka by the Codicil No. 505 of the Last Will No. 472 dated on 20 September 1980, and Public Trustee of Sri Lanka had legally been appointed as the nominated Executor with relating to all properties and Estate, rights and receivable debts of deceased person by Probate dated on 09 November 1982 of Court Case No. 744/T in Mount Lavinia District Court. It was mentioned in the Last Will and the Codicil that the objectives of the Estate should be implemented by establishing “George Stephen Jayasuriya Trust” and by using the cash receiving from making encashment the investment and selling of the assets belonging to the Estate as initial capital of the Trust. Following observations are made in this regard.

- (i) Though the compensation amount received with relating to the Madampe Sembukattiya Plantation and Dikoya Poistern Plantation which were vested to Land Reform Commission by the Last Will No. 472 dated on 20 September 1980, cash received from selling of shares of 4 Companies or dividends receiving from those shares had been given to “George Stephen Jayasuriya Trust”, no written evidence were presented for the receipt of such asset to the Trust.
- (ii) It was observed in examining the accounts of the Trust that the dividends income had not been received with relating to the investments made in share capital of

Companies, and actions had not been taken to implement follow up activities for taking dividend income.

- (iii) A Case was filed in Court with relating to the ownership of the compensation amount to be received for the acquisition of land lot of Rathmalana Lady Catherine watta to Land Reform Commission. Though, 36 years had been lapsed for the engagement of this property under the Custody of Public Trustee, the ownership could not be verified due to non-presenting sufficient evidence to the Court with relating to verify the ownership of the property and non-involving in the activities of the case efficiently. However, a sum of Rs. 1,413,650 had been paid from Trust fund for these Court Case activities as Lawyer fees from the year 2000 to the year 2015.
- (iv) Objectives of the Trust could not be implemented due to the management inefficiency prevailing in collecting cash or revenue receivable from all assets and properties remained in the Estate.

### 3.10 Human Resource Management

#### Approved Cadre and Actual Cadre

The position of cadre as at 31 December 2016 had been as follows.

Category of Employee	Approved Cadre	Actual Cadre	No. of Vacancies
(i) Senior Level	06	04	02
(ii) Tertiary Level	02	-	02
(iii) Secondary Level	59	50	09
(iv) Primary Level	17	13	04
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Total	<b>84</b>	<b>67</b>	<b>17</b>
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