

Resub (4) BDO Report

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The General Secretary
Colombo Swimming Club
148 "Storm Lodge" Galle Road,
Colombo 3

9th March, 2024

I, wish to bring the following before the Annual General Meeting, pursuant to Article 28 (a) (ii) and the request that the General Committee provide responses, accordingly:

RESOLUTION 09-03-2024

The General Committee has circulated a Special Audit Report, prepared by BDO Partners, Chartered Accountants (BDO), on 09th March, 2024. This was as a consequence, of the Members requesting form such an audit, at the last AGM, due to suspected financial irregularities. BDO, we believe was chosen by the Audit Committee.

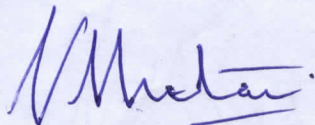
We are reliably informed that the Audit Report was received by the Audit committee sometime ago, and rather than releasing the report to the Membership immediately, the Report was then discussed with the previous General Committee, and then have now been released to the Member, giving little or no time to read and comprehend the findings provided to in the Report. Delaying tactics avoiding the tabling at the AGM and Resolutions being tabled?

"BDO REPORT (REPORT)

EXECUTIVE SUMMARY

BDO Findings:

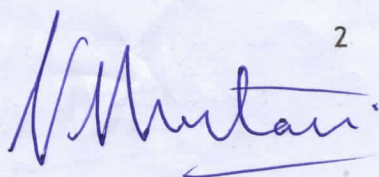
- (i) *Approval of projects by members The Constitution states that capital expenditure exceeding Rs. 1,000,000 for a one new entire project must be approved by members at a General Meeting of the Membership and this excludes maintenance required for normal wear and tear of buildings, pools, machinery, and equipment. The Constitution of the club lacks a clear definition of the term "one new entire project." Consequently, the GC has*





interpreted that the majority of CAPEX projects undertaken in the year 2022 do not fall within the scope of "one new entire project." As a result, these projects were not placed before the membership for approval. It should be noted that under clause 39, where the constitution is ambiguous, the GC is empowered to interpret its provisions. Hence, determining that most projects' CAPEX expenditure in 2022 does not necessitate member approval. It must be noted that some of these projects involve new concepts, ideas, extensive refurbishments, and significant upgrades. They seem to represent new projects, especially considering that the existing facility was in working order. In such instances, it is our view that certain projects should have been placed before membership approval based on past practice. However, it is acknowledged that the GC is empowered to interpret the constitution due to its ambiguity. Therefore, the GC retains full authority to make such interpretations. We reviewed the CAPEX incurred in the year 2022 and checked whether these projects obtained approval from the General Committee. In most instances, we observed that these projects had not obtained GC approval at the GC meetings. We also noted that the GC, being the main governing body, had not approved some of these projects at a GC meeting. Upon inquiry, it was asserted that GC approval was not necessary. However, in our opinion, since the GC is the main governing body, there should be a threshold established for any expenditure necessitating deliberation and approval from the GC. This includes the final selection of suppliers, which should be endorsed by the GC. Past Practice However, we reviewed past practices over the past 10 years on a sample basis. We conclude that, compared to past practices, there was a deviation in the year 2022 in obtaining AGM approval.

- (ii) We observed refurbishments and modifications that had been tabled for member approval in the past years. We have highlighted these instances in the relevant sections. There is a deviation in 2022 based on past practice. While acknowledging the economic challenges faced by the country in 2022, including import restrictions and a shortage of suppliers, we noted during our audit review that only one quotation was obtained. There appears to be a lack of competitive bidding in the procurement process. We recommend the formulation of procurement guidelines and the

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establishment of a procurement committee to oversee the procurement process.


(iii) Other Findings

We observed delays in capitalizing certain capital expenditures in the year 2022. It is best practice [as per accounting standards] to capitalize the costs incurred for the entire project at the time it was launched and available to use. We recommend the establishment of proper guidelines aligned with the Sri Lankan Accounting Standards to ensure the timely capitalization of assets. When attempting to physically locate the fixed assets purchased during the year, we encountered difficulties in properly identifying the assets due to the absence of proper fixed asset labels. Therefore, we recommend conducting a fixed asset verification process and ensuring that all assets are properly labeled. Additionally, we recommend preparing a comprehensive fixed asset register containing all essential details for effective asset management. As best practice, competitive quotations should be called for projects above a specific value. We recommend retaining all the quotations obtained or attaching them to the payment vouchers, along with the justification provided for selecting the supplier."

Hence, irrespective of the Audits Committee providing the Ex GC Members the right to provide the comments based on the initial report of the BDO, even after considering the comments provided by the Members of the EX- CG, the **BDO has concluded as re-produced above, and we leave it to the members to fully read the Report and to formulate their own well-informed conclusions.**

On perusing the report, together with the Executive Summary provided by BDO, it appears that, many financial discrepancies/irregularities, seem to have been caused by the employees of the Colombo Swimming Club (Club), as well as the members of the General Committee, with one Member of the GC, who outside his responsibilities had taken upon himself to approve many of the quotations, which were Direct quotations, without having gone through a bidding process.

Further, it may be argued by the Ex GC that Article 18 provides immunity for Trustees and General Committee members from any disciplinary action against them being instituted by the Club. This is a fallacy and hence the GC should interpret it accordingly, as the Constitution provides the GC the right to interpret the Rules. This is also confirmed by the Report where in its Executive Summary it is stated that "It should be noted that under clause 39, where the constitution is ambiguous, the GC is empowered to interpret its provisions". Whether the interpretations are right or wrong is an ultimate decision that would be taken by the Members.



In support that the GC and the Trustees are subject to disciplinary proceeding and are not exempted under Article 18, we wish to state the following:

Based on the context of the language contained in Article 17 and 18, the indemnity referred to Article 18 read together with Article 17, refers to claims made and actions instituted by 3rd parties (including any Member) and not disciplinary action by the Club including but not limited to pursuant to Article 22 (Expulsion), for any act or omission in their capacity as a Trustee or a General Committee (GC) Member. Consequently, the Club has the right to commence any disciplinary actions against a Trustee or a GC Member, essentially for a breach of the Club Rules or for any conduct that is detrimental to the Club and/or its Members. In such a scenario, it would lead to an absurd situation, if the Trustee or the GC member subject to such disciplinary action is indemnified by the assets of the Club.

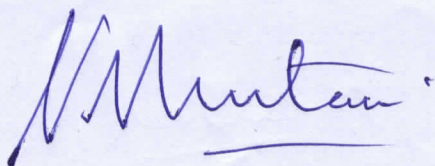
The Trustees shall be subject to the duties, obligations and liabilities set forth in the Trusts Ordinance, in carrying out their functions as Trustees of any trust arrangement envisaged under the Club rules. Any right or benefit that the Trustees may enjoy under the rules, as far as their trustee functions are concerned, will be subject to the provisions of the Trusts Ordinance and in the event of any inconsistency, the provisions of the Trusts Ordinance shall prevail.

With regard to the indemnity, the right of the trustees to indemnified for their acts and omissions will be subject to the provisions of the Trusts Ordinance. If any Trustee has committed any breach of trust, the trustee is liable under section 23 of the Trusts Ordinance to make good any loss sustained by the trust property or a beneficiary, and the indemnity clause as provided in Article 18, would not apply to and benefit of the Trustee in respect of such liability.

The indemnity clause (Article 18), by itself, is not a breach of the Trusts Ordinance but the Article will be inapplicable and ineffective, where the Trustees are guilty of breach of Trust.

Hence It is resolved that the present GC make the required decisions immediately and table same at the AGM, to be table on the 30th march, 2024 based on the following.

- (i) Table the Report, as an Agenda item of the AGM, and allocate sufficient time to discuss same.
- (ii) The GC appoint a panel of inquiry **immediately**, consisting of experts in the spheres of accounting, law and management to conduct an inquiry pertaining to the findings of the Report and act according to Articles 21 and 22. Provide timelines to conclude the inquiry. Also, where a Member has been provided date and unable to appear, then provide one more final date, with mutual consent, which date shall not be more than Seven (7) days from the original date provided. If the Member fails to appear for the second time, to deem that the said Member has nothing further to state;
- (iii) Also, the inquiry to ascertain, as to the actions or the non-action of the Trustees. As the Trustees (presently the President and the Secretary during the said period), are the only persons permitted to enter into agreements (Article 8), and other arrangements

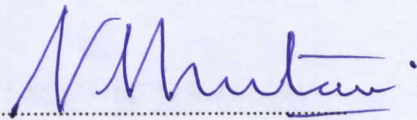


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for and on behalf of the Club, how did the Trustees enter into the agreements with the Contactors and other Vendors, without first establishing whether the required procurement and financial procedures were followed? This is a fiduciary duty owed by the Trustees to the Members and they should have acted accordingly. The only defense would be, where the signing of such agreements or documents by the Trustees, were based on directions given by the GC. In fairness to the Trustees, we request that copies of the pages of the minute book required to be maintained pursuant to Article 8 (b), recording these irregular transactions as detailed in the Report, be submitted to Members at the AGM, thus relieving the Trustees of any alleged involvements in the said irregular transactions.

- (iv) The GC identify the Members who had been named in the Report for the financial irregularities and acting outside the authority entrusted that member without obtain GC approval for such lapses, and based on the findings, suspend them their membership forthwith, until the conclusion of a formal inquiry pursuant to Article 21;
- (v) Inquire into the failure of the Chef Finance and Operating Officer and any other employee of the Club, to follow procurement and financial guidelines;
- (vi) As there seem to be an indication of alleged fraudulent activities, hand over a copy of the Report to CID, to conduct further inquiries. Failure to do so, and a complaint by a Member that the GC has not taken adequate action against alleged fraud may provide an opportunity for Police to enter the Club Premises and take appropriate action as provided under the Clauses 6 (a) 6 (c) (ii), 7, 19 (d), 20, of Licensing of Club Law.
- (vii) We are also reliably informed that there was a contingent of Police Officers who entered the Club, seeking information. Was this due to any of the irregularities as stated above, in the Report and pursuant the Licensing of Club Law? If not, can the Membership be informed the reason for the Police entering the Club premises and making inquiries?

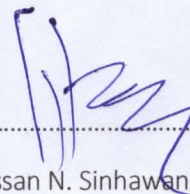


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