



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

SECURITIES COUNCIL (AMENDMENT)
ACT, No. 26 OF 1991

[Certified on 5th July, 1991]

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Securities Council (Amendment)
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L. D.—O.62/89

AN ACT TO AMEND THE SECURITIES COUNCIL
ACT, No. 36 OF 1987

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Securities Council (Amendment) Act, No. 26 of 1991. Short title.

2. The long title of the Securities Council Act, No. 36 of 1987 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words "ESTABLISHMENT OF THE SECURITIES COUNCIL FOR THE PURPOSE OF REGULATING THE SECURITIES MARKET OF SRI LANKA, TO GRANT LICENCES TO STOCK EXCHANGE, STOCK BROKERS", of the words "ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA FOR THE PURPOSE OF REGULATING THE SECURITIES MARKET OF SRI LANKA, TO GRANT LICENCES TO STOCK EXCHANGES, UNIT TRUST, STOCK BROKERS". Amendment of the long title of Act No. 36 of 1987.

3. (1) In the principal enactment, and in any other written law, there shall be substituted—

(a) for the words "Securities Council Act", the words "Securities and Exchange Commission of Sri Lanka Act";

(b) for the words "Securities Council" and "Council" denoting the Securities Council, the words "Securities and Exchange Commission of Sri Lanka" and "Commission", respectively.

(2) Every reference to the "Securities Council Act" and the "Securities Council", in any notice, notification, contract, communication or other document shall be read and construed as a reference to the "Securities and Exchange Commission of Sri Lanka Act" and the "Securities and Exchange Commission of Sri Lanka", respectively.

"Securities Council Act", "Securities Council" and "Council" to be known as the "Securities and Exchange Commission of Sri Lanka Act", "Securities and Exchange Commission of Sri Lanka" and "Commission".

4. Section 5 of the principal enactment is hereby amended as follows:—

(1) in subsection (3) of that section by the substitution for the words "resignation or removal", of the words "resignation, removal or the operation of the provisions of subsection (5)";

Amendment of section 5 of the principal enactment.

(2) by the addition at the end of that section, of the following new subsection:—

“(5) An appointed member of the Commission who without leave of the Commission first being obtained, absents himself from three consecutive meetings of the Commission, shall be deemed to have vacated his office”.

Amendment
of section
7 of the
principal
enactment.

5. Section 7 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words “members to preside to such meeting.”, of the words “members to preside at such meeting.”

Amendment
of section
11 of the
principal
enactment.

6. Section 11 of the principal enactment is hereby amended by the repeal of subsection (3) of that section and the substitution therefor of the following subsection:—

“(3) The seal of the Commission shall not be affixed to any instrument or document except in the presence of one member of the Commission and the Director-General of the Commission or in the absence of the Director-General, in the presence of any two members of the Commission, who shall sign the instrument in token of their presence.”

Amendment
of section 12
of the
principal
enactment.

7. Section 12 of the principal enactment is hereby amended by the repeal of paragraph (b) of that section and the substitution therefor, of the following paragraph:—

“(b) the protection of the interests of investors;”.

Amendment
of section
13 of the
principal
enactment.

8. Section 13 of the principal enactment is hereby amended as follows:—

(1) by the insertion, immediately after paragraph (b) of that section, of the following new paragraph:—

“(bb) to grant a licence to a managing company to operate a unit trust and to ensure the proper conduct of the business of such unit trust;”;

(2) by the repeal of paragraph (c) of that section and the substitution therefor, of the following paragraph:—

“(c) to give directions to a licensed stock exchange or the managing company or trustee of a licensed unit trust or a licensed stock broker or a stock dealer, from time to time;”;

- (3) by the repeal of paragraph (g) of that section;
- (4) by the repeal of paragraph (h) of that section and the substitution therefor of the following paragraph:—

“(h) to cancel or suspend the listing of any securities or the trading of any given listed securities or to suspend the trading of all listed securities for not more than three days at a time, for the protection of investors;”;

- (5) by the substitution, in paragraph (i) of that section, for the words “stock dealer and public companies”, of the words “stock dealer, unit trust and public companies”;

- (6) by the substitution in paragraph (j) of that section, for the words “stock dealer or any public company”, of the words “stock dealer, the trustee or managing company of a licensed unit trust or any public company”;

- (7) by the repeal of paragraph (m) of that section, and the substitution therefor of the following paragraphs:—

“(m) to request the Registrar of Companies, in the exercise of the powers conferred on it by section 227 of the Companies Act, No. 17 of 1982, to call upon a private limited liability company to become a public limited company; and

(n) to do all such other acts as may be incidental or conducive to, the attainment of the objects of the Commission or the exercise of its powers under this Act.”.

9. Section 14 of the principal enactment is hereby amended as follows:—

Amendment
of section
14 of the
principal
enactment.

- (1) by the repeal of paragraph (a) of that section and the substitution therefor of the following paragraph:—

“(a) carrying out inspections of the activities of licensed stock exchanges, stock brokers, stock dealers and unit trusts in order to determine whether they are operating in conformity with the provisions of this Act or any rules or

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regulations made thereunder, and to charge the costs incurred in carrying out such inspections from the licensed stock exchange, stock broker, stock dealer or managing company of the unit trust whose activities are being inspected;"; and

(2) by the substitution in paragraph (b) of that section for the words "licensed stock brokers and stock dealers to", of the words "licensed stock exchanges, stock brokers, stock dealers and the managing companies of licensed unit trust to";

(3) by the addition at the end of that section of the following paragraph:—

"(c) require the managing company of a licensed unit trust to file with the Commission, in respect of every year, at least two reports of the activities of that unit trust for that year. Every such report shall contain the prescribed particulars. The first report shall be filed not later than the thirtieth of September of that year and the second report shall be filed not later than the thirty-first of March of the subsequent year."

Amendment
of section
18 of the
principal
enactment.

10. Section 18 of the principal enactment is hereby amended by the substitution for the words "set out in Part II of the Schedule", of the words "set out in Part III of the Schedule".

Insertion
of
new
section
18A in the
principal
enactment.

11. The following new section is hereby inserted immediately after section 18 and shall have effect as section 18A of the principal enactment:—

"Furnishing
incorrect
or false
information.

18A. (1) Where a licence is granted to a stock broker or stock dealer on the basis of particulars furnished by such stock broker or stock dealer which are subsequently found to be inaccurate or false, the Commission shall suspend for a specified period the licence granted to such stock broker or stock dealer and request such stock broker or stock dealer to furnish the correct particulars on or before the expiry of the period of suspension. The Commission may on receipt of the particulars and after consideration thereof, revoke the order of suspension.

(2) Where the particulars are not furnished within the period specified under subsection (1) in compliance with a request made under that subsection or the Commission determines on a consideration of the particulars furnished that the order of suspension should not be revoked, it shall cancel the licence.”.

12. Section 20 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:—

Amendment
of section
20 of the
principal
enactment.

“ (1) A licensed stock exchange may within six months prior to the expiry of the licence, make an application to the Commission in the prescribed form together with a prescribed fee for a renewal of the licence.”.

13. Section 21 of the principal enactment is hereby amended as follows:—

Amendment
of section
21 of the
principal
enactment.

(1) in subsection (2) of that section by the substitution for the words “Before the cancellation of a licence”, and for the words “should not be cancelled” of the words “Before the cancellation or suspension of a licence”, and of the words “should not be cancelled or suspended”, respectively;

(2) by the addition at the end of that section of the following new subsections:—

“ (4) where the Commission is satisfied that a licensed stock broker or stock dealer has contravened the provisions of paragraph (a) or (b) or (c) or (d) of subsection (1) and that such contravention is not of a serious nature, it may in lieu of acting under subsection (1), direct such licensed stock broker or stock dealer to take whatever action that the Commission may consider appropriate to—

- (a) rectify or set right the condition resulting from such contravention; or
- (b) comply with the provisions of this Act or any rule or regulation made under this Act or to desist from continuing such contravention.

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(5) The giving of a direction by the Commission, to a licensed stock broker or stock dealer under subsection (4) shall not affect or prejudice the institution or maintenance of a prosecution against such licensed stock broker or stock dealer for an offence under this Act."

**Amendment
of section
22 of the
principal
enactment.**

14. Section 22 of the principal enactment is hereby amended in subsection (1) of that section by the substitution in paragraph (b) of that subsection for the words "under section 21," of the words "under section 18A and 21,".

**Amendment
of section
23 of the
principal
enactment.**

15. Section 23 of the principal enactment is hereby amended by the substitution for the words "take over the outstanding contracts", of the words "take over the outstanding contracts relating to transactions in securities".

**Insertion of
new section
23A in the
principal
enactment.**

16. The following section is hereby inserted immediately after section 23 and shall have effect as section 23A of the principal enactment :—

**"Taking
over
administra-
tion
and
manage-
ment of
licensed
stock
exchange.**

23A. (1) Where the Commission is of the opinion that the public interest requires that the administration and management of a licensed stock exchange should be taken over, it may by Notice published in the *Gazette*, take over the administration and management of such stock exchange for such period as may be specified in such Notice. The Commission may by a subsequent Notice published in the *Gazette*, extend the period specified in the first notice. The Commission shall cause a copy of every such notice to be sent to the Registrar of Companies who shall make a minute thereof in the records relating to the company licensed to carry on the business of operating such stock exchange.

(2) Where the Commission takes over the administration and management of a licensed stock exchange it may enter into an agreement with any person for the management of such stock exchange, subject to such conditions as may be agreed upon between the Commission and such person, having regard to the interests of investors in companies listed in such stock exchange.

(3) Where the Commission takes over the administration and management of a licensed stock exchange, the Commission, or in any case where the Commission has entered into an agreement with any person under subsection (2), that person, may—

- (a) exercise, perform and discharge with respect to such stock exchange, all the powers, duties and functions conferred or imposed on, or assigned to, a licensed stock exchange by or under any written law or the articles of association of the company licensed to carry on the business of operating such stock exchange; and every such exercise, performance and discharge by the Commission or such person shall be as valid and effectual as if it were an exercise, performance and discharge by such licensed stock exchange; and
- (b) take possession of, and use any such movable or immovable property as was used by such licensed stock exchange on the day preceding the date of publication of the Notice referred to in subsection (1), for the purpose of carrying on the business of operating such licensed stock exchange, for such purpose.

(4) During the period for which the administration and management of a licensed stock exchange has been taken over by the Commission, every director or officer of such licensed stock exchange shall, unless expressly authorised to do so by the Commission, cease to exercise, perform and discharge with respect to such licensed stock exchange, any power, duty or function conferred or imposed on or assigned to, such licensed stock exchange, by or under any written law or by the articles of association of the company licensed to carry on the business of operating such stock exchange.

(5) The Commission may at any time before the expiry of the period specified in the Notice published under subsection (1), call upon a licensed stock exchange to reconstitute its Board of Directors in accordance with the rules of such stock exchange, and after such reconstitution, and on expiry of such period shall hand over the property taken possession of, under subsection (3), to the reconstituted Board of Directors.”

Amendment
of section
24 of the
principal
enactment.

17. Section 24 of the principal enactment is hereby amended as follows:—

(1) in subsection (2) of that section by the substitution for the words “alternation or adition”, of the words “alteration or addition,”;

(2) by the addition at the end of that section of the following subsection:—

“(5) Notwithstanding the provisions contained in subsections (3) and (4) of this section, amendments to rules of a stock exchange of such categories as may be specified by the Commission by rules made in that behalf, shall take effect immediately upon the forwarding of the written notice referred to in subsection (2) subject to the condition that the Commission may within twenty one days of such amendment taking effect disallow such amendment without prejudice to anything previously done thereunder and require the stock exchange to comply with the provisions of subsection (4) of this section.”

Amendment
of section
25 of the
principal
enactment.

18. Section 25 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section;

(2) by the addition immediately after the renumbered subsection (1) of the following new subsection:—

“(2) Notwithstanding the provisions contained in subsection (1) of this section, changes or alterations of such categories as may be specified by the Commission by rules made in that behalf, shall take effect immediately upon the Commission being informed of such change or alterations.”

19. Section 26 of the principal enactment is hereby amended by the substitution for the words "liable on conviction to a fine", of the words "liable on conviction after summary trial before a Magistrate to a fine".

Amendment
of section
26 of the
principal
enactment.

20. Section 28 of the principal enactment is hereby repealed and the following section is substituted therefor:—

Replacemnt
of section
28 of the
principal
enactment.

"Purchase,
sale &c,
of listed
securities.

28. (1) (a) No person holding shares in a public company listed in a licensed stock exchange shall, without the prior approval of the Commission, buy, sell, gift or otherwise deal in such shares except in compliance with the trading procedure adopted by such licensed stock exchange:

Provided that a person may gift any such share to a relation otherwise than in compliance with such trading procedure if he gives prior notice to the Commission and the licensed stock exchange, of the particulars relating to the proposed gift;

(b) No shares in a public company listed in a licensed stock exchange shall on the death of the holder of such shares, be registered in the name of any other person except with the approval of the Commission.

In this subsection "relation" in relation to a person means a parent, spouse or child of that person or the spouse of a child of that person.

(2) No licensed stock exchange, stock broker or stock dealer shall either directly or indirectly, in connection with the purchase, sale or otherwise of any listed securities—

- (a) employ any device, or artifice with a view to defrauding any person;
- (b) engage in any practice or course of business which would operate as a fraud or deceit upon any person; or

- (c) make any false or misleading statement in relation to a material fact or omit to state a material fact necessary in order to make any statement made not false or misleading.”.

**Replacement
of section 29
of the
principal
enactment.**

21. Section 29 of the principal enactment is hereby repealed and the following section is substituted therefor :—

“Trading or otherwise dealing in listed securities by licensed stock brokers and licensed stock dealers.

29. No licensed stock broker or licensed stock realer shall—

- (a) trade in or otherwise deal in listed securities outside the licensed stock exchange of which he is a member without the prior approval of the Commission ;
- (b) trade in listed securities in contravention of such rules as the Commission may formulate relating to the clearance, settlement, payment, transfer and delivery of listed securities ;
- (c) effect any transaction in a margin account in a manner contrary to the requirements set out by the stock exchange of which he is a member without the prior approval of the Commission ;
- (d) effect any transaction by means of any manipulative, deceptive or other fraudulent device or contrivance in order to induce or attempt to induce the purchase or sale of any listed securities.”.

**Amendment
of section
30 of
the principal
enactment.**

22. Section 30 of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section by the substitution for the words “licensed as a stock exchange”, of the words “licensed as a stock exchange” ;
- (2) in subsection (3) of that section by the substitution for the words “on conviction be liable”, of the words “be liable on conviction after summary trial before a Magistrate”.

23. The following new part is hereby inserted immediately after Part III and shall have effect as Part IIIA of the principal enactment:—

Insertion of
new Part
IIIA in the
principal
enactment.

“PART IIIA

GRANT OF LICENCE TO UNIT TRUST

Grant of a
licence to
operate a
unit trust.

31A. A managing company intending to operate a unit trust shall make an application in the prescribed form together with the prescribed fee to the Commission for the grant of a licence to operate such unit trust. Every such application shall be accompanied by the prescribed documents.

Terms and
conditions to
be complied
with for the
grant of a
licence under
this Part.

31B. No licence shall be granted under this Part for the operation of a unit trust unless such unit trust complies with the terms and conditions set out in Part IV of the Schedule hereto.

Grant of
licence.

31C. On receipt of an application made under section 31A the Commission, having considered the particulars stated therein and the documents accompanying such application and, where it deems it necessary, having given the applicant an opportunity of being heard, in person or by a representative, shall, by written notice to the applicant, inform the applicant, whether he is being granted a licence or not.

Cancellation
of a licence
granted to a
unit trust.

31D. (1) The Commission shall cancel or suspend the licence granted in respect of a unit trust where the Commission is satisfied that—

- (a) the trustee or managing company of that licensed unit trust has acted in breach of any provisions of this Act, or any rules or regulations made under this Act; or
- (b) the trustee or managing company of that licensed unit trust has ceased to be of good financial standing; or

(c) the managing company has since the grant of the licence, been disqualified for the grant of such licence;

(d) the trustee or managing company of that licensed unit trust is guilty of malpractice or irregularity in the management of his affairs ; or

(e) the managing company of that licensed unit trust has been dismissed by the trustee of that unit trust.

(2) Before the cancellation of a licence granted in respect of a unit trust in terms of the preceding subsection, the licensee shall be given an opportunity to show cause as to why such licence should not be cancelled.

(3) Where the licence granted in respect of a unit trust is cancelled, it shall be the duty of the licensee to forthwith surrender his licence to the Commission.

(4) Where the Commission is satisfied that the trustee or managing company of a unit trust has contravened the provisions of paragraph (a) or (b) or (c) or (d) of subsection (1) and that such contravention is not of a serious nature, it may in lieu of acting under subsection (1), direct such trustee, or managing company to take whatever action that the Commission may consider appropriate to—

(a) rectify or set right the condition resulting from such contravention ; or

(b) to comply with the provisions of this Act or any rule or regulation made under this Act or to desist from continuing such contravention.

(5) The giving of a direction by the Commission to a trustee, or managing company, under subsection (4), shall not affect or prejudice the institution or maintenance of a prosecution against such trustee or managing company for an offence under this Act.

Appeal from
a refusal,
cancellation
or suspension.

31E. (1) Any person aggrieved by a decision of the Commission—

(a) refusing to grant a licence under section 31A, or

(b) cancelling or suspending a licence under section 31D,

may appeal to the Secretary to the Ministry of the Minister against such refusal, cancellation or suspension, as the case may be, within three months from the date on which the decision is communicated to such person.

(2) The Secretary to the Ministry of the Minister may require the Commission to show cause for its decision to his satisfaction and shall, within three months of the receipt of such appeal, communicate his decision to the person making the appeal.

(3) An applicant who is aggrieved by the decision of the Secretary to the Ministry of the Minister may appeal against such decision to the Court of Appeal, within fourteen days from the date on which the decision is communicated to the applicant.

(4) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall, *mutatis mutandis*, apply to every appeal made under subsection (3) of this section.

(5) The Court of Appeal may, on an appeal made to it under this section confirm, revise, modify or set aside the decision of the Secretary to the Ministry of the Minister and may make any order as the interests of justice may require.

Amendment
of trust deed
relating to
unit trust.

31F. (1) The trust deed of a licensed unit trust shall not be amended, without the prior approval in writing of the Commission.

(2) Where the trustee of a licensed unit trust proposes to amend the trust deed of such unit trust he shall forward the proposed amendments, to the Commission.

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(3) The Commission shall, within twenty one days of receipt of the proposed amendments forwarded under subsection (2), give written notice to the managing company and trustee stating whether the proposed amendments to the trust deed are allowed or disallowed.

In case such amendments are disallowed the Commission shall give reasons for such disallowance.

(4) Upon receipt of a notice under subsection (3), trustee shall give immediate effect to such notice.

Alteration
of any
particulars
furnished.

31G. Where a person licensed under section 31A proposes to alter any particulars in his application for a licence or undergoes or intends to undergo a change from the state specified in the application for a licence under section 31A, it shall be the duty of such person to inform the Commission and obtain its prior consent before such alteration or change is effected.

Restriction
on use of
words "unit
trust" or
"licensed
unit trust".

31H. No person shall use the words unit trust or licensed unit trust, as the case may be, unless he has been authorised to operate a unit trust under section 31A.

Restriction
on issue of
advertisement
inviting
investment
in unit
trust.

31I. No person shall issue or publish a prospectus or an advertisement inviting the public to invest in units of a licensed unit trust (other than advertisements excluded by the Commission by rules) unless he has obtained the prior written approval of the Commission, for the contents of such prospectus or the text of such advertisement, as the case may be, and for its issue or publication.

Limitation
of liability
of trustee
for breaches
of trust.

31J. (1) Notwithstanding anything in the Trust Ordinance or any other law, a trustee of a licensed unit trust shall not be liable for any breach of trust arising from any act of the managing company of such unit trust if—

(a) such act was done without obtaining the concurrence of such trustee ;

(b) such act was done after obtaining the concurrence of such trustee and such concurrence was given, in good faith, on the faith of any written statement or representation made to such trustee by such managing company as to any matter relating to trust property or on the faith of any professional advice obtained by such managing company independently of such trustee.

(2) nothing contained in subsection (1) of this section shall be deemed to exempt a trustee from liability for a breach of trust which has been occasioned by fraud or negligence.”

24. Section 32 of the principal enactment is hereby amended as follows:—

Amendment
of
section 32 of
the principal
enactment.

(1) in subsection (1) of that section:—

(a) by the substitution for the words “subsection (8)”, and “knowingly connected”, of the words “subsections (8) and (9)”, and “connected” respectively ;

(b) by the substitution in paragraph (c) of that subsection for the words “he knows is unpublished”, of the words “he can reasonably be expected to know is unpublished” ;

(2) in subsection (2) of that section—

(a) by the substitution for the words “has been knowingly connected”, of the words “has been connected” ;

(b) by the substitution in paragraph (b) of that subsection for the words “to disclose”, of the words “not to disclose” ;

(c) by the substitution in paragraph (c) by the subsection for the words “he knows is unpublished”, of the words “he can reasonably be expected to know is unpublished” ;

(3) in subsection (3) of that section—

(a) by the substitution in paragraph (a) of that subsection for the words “has information which he knowingly obtained, whether directly or indirectly,”, of the words “has information which he obtained, or has reasonable cause to believe he obtained, whether directly or indirectly,”;

(b) by the substitution in sub-paragraph (i) of paragraph (b) of that subsection for the words “if he knows that the information”, of the words “if he can reasonably be expected to know that the information”;

(c) by the substitution in subparagraph (ii) of paragraph (b) of that subsection for the words “if he knows that the information”, and “company of involving”, of the words “if he can reasonably be expected to know that the information” and “company or involving”, respectively;

(4) in subsection (4) of that section by the substitution for the words “if he knows that the information”, of the words “if he can reasonably be expected to know that the information”;

(5) by the repeal of subsection (5) of that section and the substitution therefor of the following subsection—

“ (5) Subject to the provisions of subsections (8) and (9) where an individual has obtained, or has reasonable cause to believe he has obtained, from an individual to whom the provisions of subsection (4) apply, information that the offer referred to in subsection (4) is being contemplated or no longer contemplated the first mentioned individual shall not himself trade in listed securities of that company if he can reasonably be expected to know that the information is unpublished price sensitive information in relation to those securities.”;

(6) in subsection (8) of that section, by the substitution in subparagraph (i) of paragraph (c) of that subsection for the words “obtain by him”, of the words “obtained by him”; and

- (7) in subsection (9) of that section by the substitution for the words "facilitate the competition", of the words "facilitate the completion".

25. Section 33 of the principal enactment is hereby amended as follows:--

Amendment
of
section 33 of
the principal
enactment.

- (1) in subsection (1) of that section by the substitution in subparagraph (c) of that subsection, for the words "the individual holding it knows, is unpublished", of the words "is unpublished";

- (2) in subsection (3) of that section, by the repeal of paragraph (c) of that subsection and the substitution therefor of the following paragraph:—

" (c) shall not communicate to any person the information held or obtained by him as referred to in subsection (2) if he knows or has reasonable cause to believe that such person or any other person will make use of that information for the purpose of counselling or procuring any other person to trade in such relevant securities."

26. Section 35 of of the principal enactment is hereby amended in subsection (2) of that section by the repeal of paragraph (b) of that subsection and the substitution therefor of the following paragraph:—

Amendment
of
section 35 of
the principal
enactment.

- " (b) all sums of money as may be charged as costs incurred in carrying out all inspections under paragraph (a) of section 14 or paid as fees under section 15, section 20 and section 31A ;".

27. Section 38 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following subsection:—

Amendment
of
section 38 of
the principal
enactment.

- "(2) The Compensation Fund shall consist of—

- (a) such sums of money as may be voted upon by Parliament for the purpose of the Fund ;
(b) such sums of money as may be credited to the Fund under section 51A."

Amendment
of
section 39 of
the principal
enactment.

28. Section 39 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words "shall for all purposes be final and conclusive.", of the words "shall be final and conclusive for the purpose of this Act."

Amendment
of
section 42 of
the principal
enactment.

29. Section 42 of the principal enactment is hereby amended as follows:—

- (1) in subsection (1) of that section, by the substitution for the words "Minister shall, in consultation with the Council,", of the words "Minister shall, on the recommendation of the Commission,";
- (2) in subsection (4) of that section by the substitution for the words "Minister may remove from office", of the words "Minister may on the recommendation of the Commission, remove from office".

Amendment
of
section 46 of
the principal
enactment.

30. Section 46 of the principal enactment is hereby amended by the repeal of subsections (1), (2) and (3) of that section and the substitution therefor of the following subsections:—

" (1) The Commission may establish a Committee consisting of three members of the Commission to hear and determine—

- (a) complaints by shareholders of any listed public company or unit holders of licensed unit trust, relating to the professional conduct or activities of, a licensed stock exchange, any licensed stock broker or stock dealer of such stock exchange or of such listed company or the managing company of such licensed unit trust;
- (b) complaints by any licensed stock broker or stock dealer, relating to the professional conduct or activities of the licensed stock exchange of which such stock broker or stock dealer is a member.

(2) The Committee may on receipt of any written complaint made by any shareholder, or unit holder or a licensed stock broker or stock dealer, examine the documents and other evidence produced, if any, in support of such complaint and determine whether such licensed stock exchange, licensed stock broker or stock dealer or the listed company or the mana-

ging company of such licensed unit trust, as the case may be, has violated any provisions of this Act or any regulation or rule made under this Act or violated any rule of such licensed stock exchange. No such determination shall be made without affording such licensed stock exchange, licensed stock broker or stock dealer or the listed company or such managing company, as the case may be, an opportunity of being heard.

- (3) Where the Committee determines that a licensed stock exchange, licensed stock broker or a stock dealer or a listed company or managing company of such licensed unit trust, as the case may be, has violated any provisions of this Act or any regulation or rule made under this Act or violated any rule of such licensed stock exchange, the Committee shall recommend to the Commission the nature of action to be taken against such licensed stock exchange, licensed stock broker or dealer or the listed company or managing company, as the case may be. The Commission shall have the discretion either to take appropriate action to give effect to those recommendations or to refer the matter for further investigation to the appropriate authority.”.

31. Section 51 of the principal enactment is hereby amended as follows:—

Amendment
of
section 51 of
the principal
enactment.

(1) in subsection (1) of that section—

(a) by the substitution in paragraph (a) for the words “any regulation made thereunder;”, of the words “any regulation or rule made thereunder;”;

(b) by the substitution in paragraph (b) for the words “untrue or incorrect; or”, of the words “untrue, incorrect or misleading;

(c) by the substitution, in paragraph (c) of that section for the words “servant of the Council in”, of the words “servant of the Commission or any person with whom the Commission has entered into an agreement under subsection (2) of section 23A in ”;

(2) in subsection (2) of that section, by the substitution for the words "shall liable on conviction", of the tion 51A of the principal enactment :—

Insertion of new section 51A in the principal enactment.

32. The following new section is hereby inserted immediately after section 51 and shall have effect as section 51A of the principal enactment—

"Compounding of offences.

51A. The Commission may having regard to the circumstances in which the offence under this Act was committed, compound such offence for a sum of money not exceeding one-third of the maximum fine imposable for such offence and all such sums of money received by the Commission in the compounding of an offence under this section, shall be credited to the Compensation Fund established under section 38."

Amendment of section 53 of the principal enactment.

33. Section 53 of the principal enactment is hereby amended as follows :—

(1) by the renumbering of that section as subsection (1) of that section ;

(2) in the renumbered subsection (1) of that section—

(a) by the substitution in paragraph (b) of that subsection for the words "by dealers about share transactions by", of the words "by licensed stock brokers and stock dealers about share transactions and transactions relating to units in a licensed unit trust by";

(b) by the repeal of paragraph (c) of that subsection and the substitution therefor of the following paragraph :—

"(c) proper maintenance of books, records, accounts and audits by a licensed stock exchange, licensed stock broker or dealer or the managing company of a licensed unit trust and regular reporting by such licensed stock exchange, licensed stock broker or dealer or managing company to the Commission of their affairs ;"

(c) by the insertion immediately after paragraph (c) of that subsection of the following new paragraphs :—

“ (d) the annual audit of the books, records, accounts and the preparation of financial statements by a licensed stock exchange, licensed stock broker and stock dealer and the managing company of a licensed unit trust ;

(e) regulation of take-overs or mergers where such take-over or merger is between one or more listed companies or where at least one of the parties involved in such take-over or merger is a listed company ;

(f) a code of conduct to be observed by the trustee and managing company of a licensed unit trust ;

(g) matters in respect of which rules are required by this Act to be made.” ;

(3) by the addition immediately after renumbered subsection (1), of the following new subsection :—

“ (2) Every rule made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.”.

34. Section 55 of the principal enactment is hereby amended as follows—

Amendment
of
section 55 of
the principal
enactment.

(1) by the insertion immediately before the definition of “investor” of the following definition :—

“connected person” in relation to the trustee or managing company of a unit trust means—

(a) a person owning, directly or indirectly, a prescribed *per centum* or more of the ordinary share capital of the trust company, or managing company, or is able to exercise directly or indirectly a prescribed *per centum* or more of the total votes in the trust company, or managing company ;

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(b) a company, a prescribed *per centum* or more whose ordinary capital is owned, directly or indirectly, together by the trust company and managing company or a prescribed *per centum* or more of the total votes are exercised directly or indirectly by the trust company and managing company ;

(c) a director or officer of the trust company, managing company or a company referred to in paragraph (b) ;;

(2) by the insertion immediately after the definition of "listed securities", of the following definition :

"managing company" in relation to a licensed unit trust means a company, incorporated under the law for the time being in force relating to the incorporation of companies or any body corporate established by or under any written law, managing property held by the trustee of such unit trust for the benefit of unit holders of such unit trust ; ;

(3) by the repeal of the definition of "securities", and the substitution, of the following definition therefor :—

"securities" means debentures, stocks, shares, funds, bonds or notes issued, or proposed to be issued, by any Government or of any body, whether corporate or unincorporate, including any rights, options or interests (whether described as units or otherwise) therein or in respect thereof or any other instruments commonly known as securities, but does not include bills of exchange or promissory notes or certificate of deposits issued by a bank ;;

(4) by the addition, at the end of that section, of the following new definitions :—

"trustee" in relation to a licensed unit trust, means the person appointed as trustee in the instrument creating such unit trust ;

“unit holder” in relation to a unit trust means a person for the time being registered by the trust as the holder of a unit certificate under such unit trust ;

“unit trust” means any arrangement made for the purpose, or of having the effect, of providing for the participation by persons as beneficiaries under a trust, in profits or income and capital gains arising from the acquisition, holding, management or disposal of securities or any other property vested in the trustee of such trust.’.

35. The Schedule to the principal enactment is hereby amended in Part I of that Schedule, as follows :—

Amendment
of
the Schedule
to the
principal
enactment.

(1) by the substitution for item (g) of that Part of the following item :—

“ (g) that the Board of Directors of the applicant company consists of nine members approved by the Commission, out of whom not more than five members shall be from among individual stock brokers or stock dealers elected by the general membership, and not less than four members shall be appointed by the Minister from among persons recommended by the Commission ;”;

(2) by the substitution in item (i) for the words “ is satisfactory ; and ”, of the words “ is satisfactory ; ” ;

(3) by the substitution in item (j) (ii) for the words “ of person who are ”, of the words “ of persons who are ” ;

(4) by the substitution in item (j) (viii), for the words “ informed investment ”, of the words “ informed investments ” ;

(5) by the substitution in item (j) (ix), for the words “ and form the abuse of ”, of the words “ and from abuse of ” ;

(6) by the substitution in item (j) (xi), for the words “ stock dealers for conducting ”, of the words “ stock dealers and for conducting ” ;

(7) by the substitution for items (j) (xiii) and (xiv) of that Part, of the following items—

“ (xiii) with respect to the conduct of securities trading of stock brokers and stock dealers and the manner in which information relating to such transactions shall be maintained ;

(xiv) for ensuring that the customers funds and securities are segregated from other business of brokers and dealers ; and ” ;

(8) by the addition immediately after item (j) (xiv) of that Part of the following new item :—

“ (xv) for the appointment of a disciplinary committee a majority of the members of which are not associated with any licensed stock broker or licensed stock dealer.” ;

(9) by the addition immediately after item (j) of that Part of the following new item :—

“ (k) that the articles of association of the applicant company provide procedure for removal of stock exchange management officials only by the vote of at least two-thirds of all the member broker or licensed stock dealer.” ;

(10) by the addition of the following Part at the end of that Schedule which shall have effect as Part IV of the Schedule :—

“PART IV

Terms and conditions to be complied with for the purposes of the grant of a licence to operate unit trust are :

(a) that the trustees and managing company of the unit trust in respect of which the application is made, be separate persons ;

(b) that the trustee is not a connected person of the managing company ;

(c) that the trust deed creating such trust or the agreement between the trustee and the management company—

(i) sets out the restrictions on the investment of trust property ;

- (ii) provides that unit holders shall not be required to make any further payment or assume any further liability, except in the circumstances, if any, as are set out in such trust deed ;
- (iii) sets out the method of calculating the offer and redemption prices of units ;
- (iv) sets out the circumstances in which the redemption of units can be suspended ;
- (v) provides for the maintenance of a register of unit holders ;
- (vi) contains provisions requiring the trustee, the managing company and their connected persons to disclose their interest, whenever any business in which they have a material interest is being discussed at any meeting of the trust ;
- (vii) provides for the appointment as auditors of the unit trust of persons having the qualifications specified by rules of the Commission and empowers the Commission to require the retirement of such auditors when they cease to possess such qualifications ;
- (viii) empowers the trustee to dismiss the managing company on the managing company going into liquidation (other than voluntary liquidation) or on the appointment of a receiver in respect of any assets of the managing company or on the trustee being satisfied that a change of managing company is desirable in the interest of unit-holders or on the holders of at least seventy-five *per centum* of the units issued request the dismissal of the managing company ;
- (ix) provides for the appointment by the trustee of a successor, immediately on the dismissal of the managing company ;
- (x) prohibits the trustee from retiring until a new trustee is appointed ;
- (xi) prohibits the managing company from entering into any under-writing or subwriting contract on behalf of the trust, except with the approval of the trustee and the Commission ;

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- (xii) prohibits the making or granting of loans out of trust property, except with the consent of the trustee ;
- (xiii) provides for the approval in writing of the trustee, for any transaction between the managing company or any connected person of the managing company and the trust ;
- (xiv) does not exempt the managing company from any liability imposed on it by law nor indemnifies it against such liability at the expense of the unit holders ;
- (xv) provides that the consideration paid duly created units (less any charges that the managing company is entitled to retain) shall become subject to the trust immediately on receipt of such consideration by the trustee ;
- (xvi) provides that a certificate in respect of units shall be delivered to a third party only on the trustee being satisfied that the consideration paid for such units (less any charges that may be retained by the managing company) has been or will be, vested in the trustee ;
- (xvii) provides that where any trust property is registered in the name of a lender as security for a loan obtained by the trust the trustee shall be liable for any act or omission of the lender or his agent with respect to such property ;
- (xviii) prohibits the appointment of a new trustee except with the approval of the Commission ;
- (xix) specifies the minimum initial investment in units permitted ;
- (xx) specifies the maximum initial charge which can be levied on the purchase of units ;
- (xxi) provides for deposit of security by the trustee, guaranteeing against loss due to his misconduct or negligence, where required by the Commission."

36. For the avoidance of doubts, it is declared that— Savings.

(a) members of the Securities Council holding office immediately prior to the date of commencement of this Act shall be deemed to be members of the Securities and Exchange Commission of Sri Lanka and of the appointed members of such Securities Council holding office on that day--

(i) two members selected by the Minister shall, notwithstanding anything in section 4, hold office for a period of four years from the date of their appointment as members of the Council ; and

(ii) two members selected by the Minister shall, notwithstanding anything in section 4, hold office for a period of five years from the date of their appointment as members of the Council ;

(b) every licence issued to any stock broker or stock dealer by the Securities Council and which is in force immediately prior to the date of commencement of this Act, shall be deemed to be a licence issued by the Securities and Exchange Commission of Sri Lanka ;

(c) all rules and regulations made by the Securities Council and are in force on the day immediately prior to the date of commencement of this Act shall be deemed to be rules and regulations made by the Securities and Exchange Commission of Sri Lanka ;

(d) all contracts, agreements and other instruments of the Securities Council subsisting on the day immediately prior to the date of commencement of this Act, shall be deemed to be contracts, agreements or other instruments entered into by the Securities and Exchange Commission of Sri Lanka ;

(e) all suits, actions, and other legal proceedings instituted by or against the Securities Council and pending on the day, immediately prior to the date of commencement of this Act, shall be deemed to be suits, actions and other legal proceedings instituted by or against the Securities and Exchange Commission of Sri Lanka.

Application
of the Act in
respect of a
licence
issued to a
stock
exchange.

37. A licence issued to a stock exchange under the principal enactment and in force on the day immediately prior to the date of commencement of this Act shall notwithstanding anything to the contrary in the principal enactment be deemed to expire on the expiration of a period of ninety days from the date of commencement of this Act.

Sinhala text
to prevail
in case of
inconsistency.

38. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.