Sri Lanka Legislative Drafting Workshops

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Boston University
AN ACT TO AMEND THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA 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 and Exchange Commission of Sri Lanka (Amendment) Act, No. of 1998.

2. The long title to the Securities and Exchange Commission of Sri Lanka Act, No.36 of 1987 (hereinafter referred to as the "principal enactment") as amended by Act, No.26 of 1991, is hereby further amended by the substitution for the words "TO GRANT LICENCES TO STOCK EXCHANGES, UNIT TRUST, STOCK BROKERS AND STOCK DEALERS WHO ENGAGE IN THE BUSINESS OF TRADING IN SECURITIES;" OF THE WORDS "TO GRANT LICENCES TO STOCK EXCHANGES, MANAGING COMPANIES IN RESPECT OF EACH UNIT TRUSTS, STOCK BROKERS, AND STOCK DEALERS WHO ENGAGE IN THE BUSINESS OF TRADING IN SECURITIES; TO REGISTER MARKET INTERMEDIARIES;".

3. Section 12 of the principal enactment as amended by Act, No.26 of 1991 is hereby further amended in paragraph (c) thereof by the substitution for the words "from the failure of a licensed stock broker or licensed stock dealer to meet" of the words "as a result of any licensed stock broker or licensed stock dealer being found incapable of meeting".

4. Section 13 of the principal enactment as amended by Act, No.26 of 1991 is hereby further amended as follows: -
(1) by the insertion, immediately after paragraph (bb) of that section, of the following new paragraph -

"(bbb) to grant a certificate of registration to any person to carry on business as a market intermediary and to ensure the proper conduct of such business;"

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

"(c) to give general or specific directions to a licensed stock exchange, a licensed stock broker or a licensed stock dealer or a licensed managing company or trustee of a unit trust or a registered market intermediary from time to time;"

(3) by the substitution in paragraph (d) of that section for the words "resulting from the failure of a licensed stock broker or a licensed stock dealer to meet" of the words, "as a result of any licensed stock broker or licensed stock dealer being found incapable of meeting"

(4) by the insertion immediately after paragraph (f) of that section, of the following new paragraphs:

"(g) to regulate listing and issue of securities in a licensed stock exchange;

(gg) to direct a licensed stock exchange to
(gg) to direct a licensed stock exchange to reject any applications made to it for listing;"

(5) by the substitution in paragraph (h) of that section, for the words "any given listed securities", of the words "any listed securities";

(6) by the repeal of paragraph (i) of that section, and the substitution therefor of the following paragraph:

"(i) to inquire and conduct investigations into any activity of a licensed stock exchange, a licensed stock broker or licensed stock dealer, a licensed managing company and a trustee of a unit trust, a registered market intermediary or any listed public company;"

(7) by the repeal of paragraph (j) of that section, and the substitution therefor of the following paragraph:

"(j) to publish findings of malfeasance by any licensed stock broker or licensed stock dealer, or a licensed managing company or trustee of a unit trust, or a registered market intermediary or any listed public company;"

(8) by the repeal of paragraph (n) of that section and the substitution therefor of the following paragraphs:
Amendment of section 14 of the principal enactment.

5. Section 14 of the principal enactment as amended by Act, No.26 of 1991, is hereby further amended as follows: -

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

"(a) carry out inspections of the activities of licensed stock exchanges, licensed stock brokers, licensed stock dealers, licensed managing companies and trustees of unit trusts, or registered market intermediaries in order to determine whether they are operating in conformity with the provisions of this Act or any
may be specified by the Minister by Order published in the Gazette on every purchase and sale of securities recorded on a licensed stock exchange or notified to it under its rules by both such purchaser and the seller. Different rates may be specified in respect of different classes of securities.

(2) The cess imposed under this section shall be in addition to any other tax or cess levied under any other written law.

14B. (1) There shall be established a fund called the Cess Fund to which shall be credited the proceeds of cess imposed under section 14A.

(2) There shall be paid out of the Cess Fund such sums as may be authorised by the Commission for the purpose of-

(a) developing the securities market;

(b) enhancing monies lying to the credit of the Compensation Fund established under section 38; and

(c) exercising, performing and discharging any of the powers, duties and functions for the purpose of achieving the objects of the Commission."
7. Section 15 of the principal enactment is hereby amended by the repeal of all the words from "shall make an application", to the end of that section and the substitution of the following therefor: -

"shall make an application to the Commission for the grant of a licence as a stock exchange, stock broker or a stock dealer, as the case may be, in such form, together with such documents and such fee as may be, specified by the Commission from time to time in that behalf.".

8. The heading appearing in Part III immediately before section 15 of the principal enactment is hereby repealed and the following new heading is substituted therefor: -

"GRANT OF LICENCE TO A STOCK EXCHANGE, A STOCK BROKER OR A STOCK DEALER, AND THE REGISTRATION OF MARKET INTERMEDIARIES"

9. The following new section is hereby inserted immediately after section 19 and shall have effect as section 19A of the principal enactment -

"Registration

19A.(1) Any person who of market is carrying on or who intends intermediaries. to carry on business as a market
intermediary shall register with the Commission for the purpose.

(2) An application for the purpose of registration under subsection (1) shall be made to the Commission in such form, together with such documents and such fee as may be specified by the Commission from time to time in that behalf.

(3) On receipt of an application for registration, the Commission having considered the particulars stated therein and where it deems necessary having given the applicant an opportunity of being heard, shall be written notice inform the applicant whether he is being registered as a market intermediary or not, and where he is registered as a market intermediary, issue him with a certificate of registration valid for a period of one year effective from the date of issue of such certificate. Every person issued with a certificate of registration is hereinafter referred to as a "registered market intermediary."

(4) No person shall be registered as a market intermediary unless he complies with the terms and conditions set out in Part V of the Schedule hereto."
10. Section 20 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended as follows:—

(1) in subsection (1) of that section by the substitution for the words "within six months prior to the expiry", of the words "six months prior to the expiry"; and

(2) by the repeal of subsection (2) of that section and the substitution therefor of the following subsection—

"(2) A licensed stock broker or a licensed stock dealer or a registered market intermediary may three months prior to the expiry of the licence or the registration as the case may be; make an application to the Commission in the prescribed form or a form adopted pursuant to Commission rules as the case may be together with the prescribed fee for a renewal of his licence or the registration as the case may be.", and

(3) in subsection (3) of that section, by the repeal of all the words from "a renewal of licence" to "as the case may be" and the substitution of the following therefor—

"a renewal of licence or registration the Commission shall
Amendment of section 21 of the principal enactment.

Insertion of new section 21A in the principal enactment.

11. Section 21 of the principal enactment is hereby amended in subsection (4) and (5) of that section by the substitution for the words "licensed stock broker or stock dealer", of the words "licensed stock broker or licensed stock dealer".

12. The following new section is hereby inserted immediately after section 21 and shall have effect as section 21A of the principal enactment:—

"Suspension and cancellation of a registration.

21A. (1) The Commission shall have the power to suspend or cancel the certificate of registration granted to a market intermediary under section 19A of this Act.

(2) The provisions of section 21 of this Act shall mutatis mutandis apply to and in relation to any suspension or cancellation as the case may be, of a certificate of registration under subsection (1)."

13. Section 22 of the principal enactment as amended by Act, No. 26 of 1991 is hereby repealed and the following section is substituted therefor:—

"Appeal to— 22. (1) Any person aggrieved the
the Court of Appeal. by the decision of the Commission:—
(a) refusing to grant a licence under section 19 or a registration under section 19A;
(b) cancelling or suspending a licence or a registration as the case may be, under sections 18A, 19A, 21, or 21A; or
(c) refusing to grant a renewal of a licence or registration as the case may be under section 20, may appeal against such decision to the Court of Appeal, within fourteen days from the date on which the decision was communicated to the applicant.

(2) 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 apply to every appeal made under subsection (1) of this section.

(3) The Court of Appeal may, on an appeal made to it under subsection (1), reverse, modify or set-aside the decision made by the Commission or make such an order as the interest of justice may require."
Amendment of section 25 of the principal enactment.

14. Section 25 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended as follows:-

(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:-

"(1) where a licensed stock exchange, a license stock broker or a licensed stock dealer, as the case may be, proposes to alter any particulars already furnished or undergoes or intends to undergo a change from the state specified in the application for a licence as a stock exchange, stock broker or stock dealer under section 15, it shall be the duty of such licensed stock exchange, licensed stock broker or licensed stock dealer as the case may be, to inform the Commission and obtain its prior consent before such alteration or change is effected."; and

(2) by the insertion immediately after subsection (1) of that section of the following new subsection:-

"(1A) Where a registered market intermediary proposes to alter any particulars already furnished or undergoes—or intends to
undergo a change from the state specified in the application for registration as a market intermediary under section 19A, it shall be the duty of such registered market intermediary to forthwith inform the Commission of such alteration or change."

15. Section 28 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended as follows:

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

(a) by the substitution for the words and figure "(1) (a) No person holding shares in a public company" and for the words "relating to the proposed gift;", of the words and figure "(1) No person holding securities", and of the words "relating to the proposed gift." respectively;

(b) by the repeal of paragraph (b) of that subsection; and

(2) in subsection (2) of that section, by the substitution for the words "stock broker or stock dealer shall", of the words "licensed stock broker or licensed stock dealer, the licensed managing company of a unit trust or a registered market intermediary shall".
16. The following new section is hereby inserted immediately after section 28 and shall have effect as section 28A of the principal enactment:

"Prohibition against the listing of shares in certain cases.

28A. Where shares in any public company are allotted to any person, prior to its listing in a licensed stock exchange, no shares or any security convertible to shares in any such company shall be listed on a licensed stock exchange within a period of one year from the date of the last allotment unless the written approval of the Commission is obtained for that purpose prior to such listing."

17. The following new section is hereby inserted immediately after section 29 and shall have effect as section 29A of the principal enactment:

"Issue of securities.

29A. (1) No listed public company or any public company which has applied to obtain a listing in a licensed stock exchange shall make any issue of securities unless the issue has been approved by the Commission or any person authorized in that behalf by the Commission.

(2) For the purposes of this section, "issue of securities" means -
(a) in relation to a public company which has applied to obtain a listing, an introduction, an offer for subscription an offer for sale or any placement of securities on a licensed stock exchange,

(b) in relation to a listed public company -

(i) new issues or offer for sale of securities to the public, whether such issues or offers for sale are by way of public issues or otherwise or any placements of securities;

(ii) rights issues of securities;

(iii) bonus issues of securities;

(iv) schemes of arrangements, schemes of reconstruction, take over schemes, share option schemes and acquisition of assets by way of issues of securities."
18. Section 31 of the principal enactment is hereby repealed.

19. The heading appearing in PART IIIA immediately before section 31A of the principal enactment is hereby repealed and the following heading substituted therefor:

"GRANT OF A LICENCE TO OPERATE A UNIT TRUST"

20. Section 31A of the principal enactment is hereby amended by the renumbering of that section as section 31 of that enactment.

21. Section 31B of the principal enactment is hereby repealed and the following section is substituted therefor:

"Requirements to be complied with for purpose of granting a licence to operate a Unit Trust.

31A. (1) No licence shall be granted under this Part for the operation of a unit trust, unless -

(a) the trustee has been approved by the Commission; and

(b) the managing company complies with the terms and conditions set out in Part IV of the Schedule hereto.
22. The following new section is hereby inserted immediately after section 31A and shall have effect as section 31B of the principal enactment:—

"Withdrawal 31B. (1) The Commission may withdraw the approval of a trustee of a unit trust where the Commission is satisfied that—

(a) the trustee of that unit trust has acted in breach of any provision of this Act or any rules or regulations made thereunder;

(b) the trustee of that unit trust has ceased to be of good financial standing; or

(c) the trustee of a unit trust is guilty of malpractice or irregularity in the management of its affairs."
(2) Upon any withdrawal of the approval under subsection (1), the trustee shall be deemed to have retired but such retirement shall not take effect until a new trustee duly approved by the Commission has been appointed.

Amendment of section 31D of the principal enactment.

23. Section 31D of the principal enactment is hereby amended as follows:--

(1) by the repeal of subsections (1) (2) and (3) of that section and the substitution therefor of the following subsections:--

"(1) The Commission shall cancel or suspend the licence granted to a managing company in respect of a particular unit trust where the Commission is satisfied that--

(a) the managing company of such unit trust has acted in breach of any provision of this Act or any rules or regulations made thereunder;

(b) the managing company of such unit trust has ceased to be of good financial standing;

(c) the managing company of such unit trust is guilty
of malpractice or irregularity in the management of its affairs;

(d) the managing company of such unit trust has been dismissed by the trustee of a unit trust; or

(e) the approval granted to the trustee of a unit trust has been withdrawn by the Commission under section 31CC and a new trustee has not been approved by the Commission.

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

(3) Where the licence granted to a managing company of a unit trust is cancelled, it shall be the duty of such managing company to forthwith surrender its licence to the
Amendment of section 31F of the principal enactment is hereby amended as follows:

24. Section 31F of the principal enactment is hereby amended as follows:

(2) in subsection (4) of that section, by the repeal of all the words from "the trustee or managing company of a unit trust" to "managing company to take" and the substitution of the following therefor:

"the managing company of a unit trust has contravened the provisions of paragraphs (a) or (b) or (c) of subsection (1) and that such contravention is considered by the Commission as being not of a serious nature, it may, in lieu of acting under subsection (1), direct such managing company to take";

(3) in subsection (5) of that section by the substitution for the words "trustee or managing company" wherever those words occur in that subsection of the words "managing company";

(4) by the substitution for the marginal note of that section, of the following marginal note:

"Cancellation of a licence granted to a managing company".
enactment.

(1) in subsection (1) of that section by the substitution for the words "of a licensed unit trust" of the words "relating to a unit trust";

(2) in subsection (2) of that section by the substitution for the words "a licensed unit trust" of the words "a unit trust".

Amendment of section 31G of the principal enactment.

Replacement of section 31H of the principal enactment.

Replacement of section 31I of the principal enactment.

25. Section 31G of the principal enactment is hereby amended by the substitution for the word "person" and for the word "his" wherever they appear in that section of the word "managing company" and of the word "its", respectively.

26. Section 31H of the principal enactment is hereby repealed and the following section substituted therefor -

"Restriction 31H. No person shall use the words use on the "unit trust" unless he has of the words been licensed to operate such unit trust "unit trust". under section 31A."

27. Section 31I of the principal enactment is hereby repealed and the following section is substituted therefor:-

"Restriction 31I. No person shall issue or on issue of publish or cause to be issued or advertisement published an explanatory memorandum inviting or advertisement inviting the investment public to invest in units of a
Amendment of section 31J of the principal enactment.

Insertion of new section 33A of the principal enactment.

28. Section 31J of the principal enactment is amended by the substitution for the words "a licensed unit trust" wherever they appear in that section, of the words" a unit trust".

29. The following new section is hereby inserted immediately after section 33 of the principal enactment and shall have effect as section 33A of that enactment:-

"Offences under this Part.

33A. Any person who contravenes any provision of this Part of this Act shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not less than one million rupees or to a sentence of imprisonment of either description for a period not less than two years and not exceeding five years or to both such fine and imprisonment.".

Amendment of section 34 of the principal enactment.

30. Section 34 of the principal enactment is hereby amended in subsection (1) thereof, by the insertion immediately after paragraph (b) of that subsection of the following new paragraph :-
Amendment of section 35 of the principal enactment.

31. Section 35 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended in subsection (2) of that section by the substitution in paragraph (b) of that subsection for the words and figures "section 15, section 20 and section 31A", of the words and figures "section 15, section 19A, section 20 and section 31A."

Amendment of section 38 of the principal enactment.

32. Section 38 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended as follows: -

(1) in subsection (1) of that section, by the substitution for the words "resulting from the failure of a licensed stock broker or licensed stock dealer to meet his contractual obligations.", of the words "as a result of any licensed stock broker or licensed stock dealer being found incapable of meeting his contractual obligations."; and

(2) in subsection (2) of that section by the addition immediately after paragraph (b) thereof of the following new paragraph: -

"(c) he has access to information in relation to listed securities, which he knows, is unpublished price sensitive information and which it would be reasonable to expect him not to disclose except in the course of performing his duties."
Amendment of section 40 of the principal enactment.

"(c) such sums of money as may be transferred to the fund under section 14B."

Replacement of section 45 of the principal enactment.

33. Section 40 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words "due to the failure of a licensed stock broker or a licensed stock dealer to meet", of the words "as a result of any licensed stock broker or a licensed stock dealer being found incapable of meeting".

34. Section 45 of the principal enactment is hereby repealed and the following section substituted therefor:

"Production of documents and disclosure of information."

45. (1) The Commission or a person authorized in that behalf by the Commission may by notice in writing require any person within such period as shall be specified in the notice to furnish any information or produce any document (other than any information or document which is prohibited from being disclosed or produce under any law which provides for the imposition and recovery of any tax) as shall be specified in such notice as the Commission may consider necessary for the proper exercise of its powers or the discharge of its functions under this Act.

(2) It shall be the duty of any person who receives a notice under subsection (1) to, notwithstanding
A mendmen t o f s e cti o n 4 6 o f t he pri n cipa l e nactment.

anything to the contrary in any law, comply with the requirements of such notice within the time specified therein and where in compliance with such notice such person discloses any information or produces any document which he is prohibited from doing under any written law, such disclosure or productions shall, notwithstanding anything to the contrary in such written law not be deemed to be a contravention of the provisions of such written law.

(3) No information furnished or the contents of a document produced, in compliance with a notice issued under this section, shall be published or communicated by the Commission to any other person, except with the consent of the person furnishing such information, or producing such document, as the case may be or in the course of discharge of the functions of the Commission."

Amendment of section 46 of the principal enactment.

35. Section 46 of the principal enactment as amended by Act, No. 26 of 1991 is hereby further amended as follows:-

(1) by the repeal of subsections (1), (2) and (3) of that section and the substitution therefor of the following subsections:

"(1) The Commission may establis h a Committee consisting of three members of the Commission to hear and determine -

(a) complaints by any person relating to
the professional conduct or activities of, a licensed stock exchange, any licensed stock broker or licensed stock dealer of such stock exchange or of any listed public company or the licensed managing company or trustee of any unit trust or a registered market intermediary;

(b) complaints by any licensed stock broker or licensed 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;

(c) any matter referred for its hearing and determination by the Commission.

(2) The Committee may on receipt of any written complaint made by any person, or a licensed stock broker or a licensed 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 licensed stock dealer, or the listed public company or the managing company of such licensed unit trust or the registered market intermediary 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, licensed stock
dealer, the listed public company, such managing company, or such market intermediary as the case may be, an opportunity of being heard.

(3) Where the Committee determines that a licensed stock exchange, licensed stock broker, licensed stock dealer, a listed public company or licensed managing company or trustee of such unit trust or a registered market intermediary 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, licensed stock dealer, the listed public company or managing company or trustee or the market intermediary as the case may be. The Commission shall have the discretion either to take appropriate action to give effect to these recommendations or to refer the matter for further investigation to the appropriate authority.";

(2) by the insertion immediately after subsection (3) of that section, of the following new subsection -

"(3A) Notwithstanding the preceding provisions of this section, the Committee shall also have the power to inquire into any matter referred to it by the Commission and upon the conclusion of such inquiry recommend to the Commission the nature of the action that may be taken in relation to such matter."; and
36. The following new section in hereby inserted immediately after section 46 and shall have effect as section 46A of the principal enactment:—

"Inquiries

46A.(1) The Commission or any person duly authorized in that behalf by the Commission may carry out such investigations or hold such inquiries as it may consider necessary or expedient for the exercise, performance and discharge of any of its powers, duties and functions under this Act and for such purpose summon and call upon any person to appear before it to give evidence or to produce any books or documents in the possession or control of such person, as are required for the purpose of such investigation or inquiry.

(2) For the purpose of carrying out an investigation or inquiry under subsection (1) the Commission may authorize in writing any officer to enter at all reasonable hours of the day any premises of a licensed stock exchange or any licensed stockbroker or any licensed stock dealer or any listed public company or a licensed managing company of any unit trust or a registered market intermediary, and
inspect and take copies of any records required to be kept by or under this Act or any other law in respect of such business.

(3) Any person summoned or called upon to appear before the Commission or any person duly authorized in that behalf under subsection (1), may be examined orally and any statement made by the person so examined may be reduced to writing. Every such statement reduced to writing shall be signed by the person so examined provided that prior to signing the same, such statement shall be shown or read to such person or if he does not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to the same.

(4) Every person who fails to appear before the Commission or the person authorized as the case may be, when required to do so under subsection (1) or who refuses to answer any question put to him by the Commission or a person duly authorized by the Commission or who refuses to produce any book or document in his possession or control when required to do so, or knowingly gives any false answer to any question put to him by the Commission or a person duly authorized by the Commission, shall be
Amendment of section 47 of the principal enactment.

Section 47 of the principal enactment is hereby amended by the substitute for the words purposes of the Penal Code., of the words "for the purpose of the Penal Code and of the Code of Criminal Procedure Act, No.15 of 1979.".

Amendment of section 51 of the principal enactment.

Section 51 of the principal enactment as amended by Act, No.26 of 1991 is hereby further amended as follows:

1. in subsection (1) of that section by the repeal of paragraph (b) of that subsection and the substitution of the following paragraph therefor:

"(b) furnishes or produces, for the purposes of this Act or any requirement imposed under the provisions of this Act or of any regulations or any rule made thereunder any information which is, or any return, document or statement the contents of which are, to his knowledge, untrue, incorrect or misleading; or"

2. in subsection (2) of that section by the substitution for the words from "shall be liable on conviction" to the end of that subsection, of the words
"shall be liable on conviction after trial by a Magistrates Court to a sentence of imprisonment of either description for a period not exceeding five years or to a fine not less than fifty thousand rupees and not exceeding ten million rupees or to both such imprisonment and fine.";

(3) by the addition immediately after subsection (2) of that section (2) of the following new subsection:

"(3) Where any offence under this Act is committed by a body corporate, any person who is at the time of the commission of the offence, a director, manager, secretary or other similar officer of the body corporate shall be deemed to be guilty of that offence unless he proves that such offence was committed without his knowledge or connivance or that he exercised all due diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.".

Amendment of section 53 of the principal enactment.

39. Section 53 of the principal enactment as amended by Act, No.26 of 1991 is hereby further amended, in subsection (1) of that section as follows:

(1) by the repeal of paragraph (a) of that subsection and the substitution therefor of the following paragraph:

"(a) listing and trading of securities in a licensed stock exchange and the
subsequent issue of any additional securities by way of rights or bonus or otherwise, by listed public companies, ";

(2) in paragraph (b) of that subsection, by the substitution for the words -

"by licensed stock brokers and stock dealers about share transactions and transactions relating to units in a licensed unit trust by", of the words "by licensed stock brokers and licensed stock dealers about share transactions and transactions relating to units in a unit trust by";

(3) 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 the licensed stock dealer or the licensed managing company of a unit trust or a registered market intermediary and regular reporting by such licensed stock exchange, licensed stock broker or licensed stock dealer or licensed managing company or registered market intermediary to the Commission of their affairs; ",

(4) in paragraph (d) of that subsection by the
substitution for the words "licensed stock broker and stock dealer and the managing company of a licensed unit trust," of the words "licensed stock broker and licensed stock dealer and the licensed managing company of a unit trust and a registered market intermediary;"

(5) by the repeal of paragraph (f) of that subsection and the substitution therefor of the following paragraph:

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

(6) in paragraph (g) of that subsection, by the substitution for the words "to be made", of the words", to be made;"

(7) by the addition immediately after paragraph (g) of that subsection, of the following new paragraphs:-

"(h) the capital requirements, staff qualifications, record keeping and other documentation systems to be followed by licensed stock brokers and licensed stock dealers, licensed managing companies of a unit trust and registered market intermediaries;

(i) the form and contents of
advertisements proposed to be issued by a licensed stock exchange, licensed stock broker, licensed stock dealer, licensed managing company of a unit trust, a registered market intermediary or a listed public company or a public company which has applied for listing and information to be contained in such advertisements;

(j) the operation of shares in a margin account by a licensed stock broker or licensed stock dealer or by a registered market intermediary;

(k) the business affairs and activities of registered market intermediaries in relation to listed securities;

(l) disclosure and reporting and the provisions of information by listed companies;

(m) rejection of applications for listing made to a licensed stock exchange and the suspension and cancellations of listing by a licensed stock exchange; and

(n) the regulation of the activities of stock lenders and stock borrowers.".

34
Amendment of section 55 of the principal enactment.

40. Section 55 of the principal enactment as amended by Act, No. 26 of 1991 is further amended as follows:

(1) by the insertion immediately before the definition of phrase "connected person" of the following new definitions:

"advertisement" includes advertising done in any publication or by way of display of notices, signs, labels or business cards or by means of circulars, catalogues, price list or other documents or by an exhibition of pictures or photographic or cinematographic films or by way of sound broadcasting or television or by the distribution of recordings or in any other similar manner;

"bonus issue" means the offer of any shares or of shares to be issued in the future of a listed company to existing shareholders of such company, howsoever such offer is described or referred to, without consideration and in proportion to the shares held by them in such company on the date of such offer;"

(2) in the definition of the term "connected person" by the substitution for paragraph (c) thereof of the following paragraph -

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

(3) by the insertion immediately after the definition of "connected person" of the following new definitions:

"credit rating agency" means a person engaged in the business of assessing and evaluating the credit-worthiness of any issue of listed securities or securities to be listed with particular regard to the issuer's ability to perform any obligations imposed on the issuer thereon.

"investment manager" means a person who for a fee or commission engages in the business of managing a portfolio of listed securities on behalf of an investor or advises any person on the merits of investing, purchasing or selling listed securities but shall not include the licensed managing company of a unit trust;

(4) by the repeal of the definition of phrase "listed public company" and the definition of phrase "listed securities" and the substitution of the following definitions therefor:

"listed public company" means any public company which has its securities listed or quoted on a
licensed stock exchange, and includes -

(a) any public corporation which has its securities listed on a licensed stock exchange; and

(b) any private company which has its securities (other than shares) listed on a licensed stock exchange;"

"listed securities" means any securities listed on a licensed stock exchange;"

(5) by the insertion immediately after the definitions of the phrase "managing company" of the following new definitions: -

"margin provider" means a person who is in the business of providing credit to investors to purchase securities of a listed public company;

"market intermediary" means an underwriter, a margin provider, a credit rating agency, or an investment manager and includes a person who performs the functions of a clearing house which shall be responsible for handling all securities deposited with it and which permits or facilitates the
settlement of securities transactions of a licensed stock exchange;

"offer" or "offering" includes any attempt to sell or dispose of any listed securities or interest in such security for value by means of a prospectus or otherwise but does not include a bona fide invitation to any person to enter into an underwriting agreement with respect to any such listed securities;

"public company" means any company other than a "private company" as defined in section 30 of the Companies Act, No.17 of 1982;

"rights issue" means the offer of any shares or of shares to be issued in the future, of a listed company to existing shareholders of such company, howsoever such offer is described or referred to, for consideration, and in proportion to the shares held by them in such company on the date of such offer, prior to their issue to the public.

(6) in the definition of the term "stock dealer", by the substitution for the words, "retailing securities.", of the words "retailing of securities but shall not include --an
settlement of securities transactions of a licensed stock exchange;

"offer" or "offering" includes any attempt to sell or dispose of any listed securities or interest in such security for value by means of a prospectus or otherwise but does not include a bona fide invitation to any person to enter into an underwriting agreement with respect to any such listed securities;

"public company" means any company other than a "private company" as defined in section 30 of the Companies Act, No.17 of 1982;

"rights issue" means the offer of any shares or of shares to be issued in the future, of a listed company to existing shareholders of such company, howsoever such offer is described or referred to, for consideration, and in proportion to the shares held by them in such company on the date of such offer, prior to their issue to the public."

(6) in the definition of the term "stock dealer", by the substitution for the words, "retailing securities.", of the words "retailing of securities but shall not include an
Amendment of the Schedule to the principal enactment.

41. The Schedule to the principal enactment is hereby amended as follows:

(1) in Part I of that Schedule by the substitution for the words "a licence as a stock exchange to a body corporate", of the words "a licence underwriter who is a registered market intermediary;";

(7) by the insertion immediately after the definition of "stock dealer" of the following new definition:

"stock lender" means a person who engages in the business of loaning listed securities;".

(8) by the insertion immediately after the definition of "trustee" of the following new definition:

"underwriter" means any person who in connection with a public issue of securities of a listed public company or a company which has applied for a listing guarantees to purchase unsubscribed securities of such company for a fee or commission or who negotiates with such company to purchase such securities in the event of the offer being not fully subscribed and includes any person who purchases such issue from the company specifically with a view to offering such securities to the public;".
as a stock exchange to a body corporate and a renewal of such licence, ";

(2) in Part II of that Schedule -

(a) by the substitution for the words "a licence as a stock broker or stock dealer to a body corporate are - ", of the words "a licence as a stock broker or stock dealer to a body corporate and the renewal of such licence, are - ";

(b) by the substitution for item (d) of that Part of the following item :

"(d) that all executive directors and employees who will be dealing with clients on behalf of the applicant company, have been trained and certified by the Licenced Stock Exchange in accordance with the requirements laid down by the Licenced Stock Exchange and by the Commission from time to time;" and

(3) in Part III of that Schedule -

(a) by the substitution for the words "a licence as a stock broker or a stock dealer to an individual" of the words "a licence as a stock broker or a stock dealer to an individual and the renewal of such licence";
(b) by the insertion immediately after item (b) of that Part of the licenced following new item -

"(bb) has been trained and certified by the Stock Exchange in accordance with the requirements laid down by the Licensed Stock Exchange and by the Commission from time to time;"

(4) by the repeal of Part IV of that Schedule and the substitution therefor of the following Part :-

"PART IV

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

(a) that the trustee and the managing company of the unit trust are separate persons;

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

(c) that the managing company is a company formed and registered under the Companies Act, No.17 of 1982 and includes a company duly incorporated outside Sri Lanka, or formed in pursuance of any statute of any foreign country, Royal Charter, Letters Patent and a body corporate established by or under any written law;
(d) that the managing company has the necessary professional experience and is financially sound;

(e) that the Directors of the managing company are fit and proper persons;

(f) that an explanatory memorandum has been prepared by the managing company and approved by the Commission;

(g) that the trustee has been approved by the Commission;

(h) that the trust deed between the managing company and trustee creating the trust has been approved by the Commission;

(i) that the trust deed:

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

   (ii) sets out the responsibilities of the trustee;

   (iii) provides that unit holders shall not be required to make any further payment or assume any further liability, except in circumstances, if any, set out in such trust deed;

   (iv) sets out the method of calculating the offer and redemption prices of units;
(v) sets out the circumstances in which the redemption of units can be suspended;

(vi) provides for the maintenance of a register of unit holders;

(vii) 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;

(viii) 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;

(ix) prohibits the trustee from retiring until a new trustee is appointed;

(x) prohibits the managing company from entering into any underwriting or sub-underwriting contract on behalf of the trust, except with the approval of the trustee and the Commission;
(xi) prohibits the making or granting of loans out of the trust property, except with the consent of the trustee;

(xii) 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;

(xiii) provides that the consideration paid in respect of any 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;

(xiv) 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;

(xv) specifies the minimum initial investment in units permitted, which amount shall be subject to the approval of the Commission;
(xvi) specifies the maximum initial charge which can be levied on the purchase of units, which charge shall be subject to the approval of the Commission;

(xvii) provides for a deposit of security by the trustee, guaranteeing against loss due to his misconduct or negligence, where required by the Commission;

(xviii) contains such other information as the Commission may, from time to time, determine by rules made for that purpose."

(5) by the insertion immediately after Part IV of that Schedule of the following new Part :-

"PART V

A. Terms and conditions to be complied with for the purpose of granting registration as a market intermediary to an investment manager, margin provider or underwriter which is a body corporate and the renewal of such registration are :-

(i) that the applicant is a company formed and registered under the Companies Act, No. 17 of 1982 and includes a company duly incorporated outside Sri Lanka, or formed in pursuance of any statute of any foreign country, Royal
Charter or Letters Patent and a body corporate established by or under any written law;

(ii) that the Directors of the applicant company -

(a) have never been declared bankrupt;

(b) have never been persons, or been Directors of a Company, whose registration as a market intermediary or license as a stock broker, stock dealer or managing company of a unit trust has been cancelled or suspended by the Commission;

(iii) that all Directors and employees who will be dealing with clients on behalf of the applicant company possess such adequate qualifications' and training as may be determined by the Commission from time to time;

(iv) that the applicant company is in good financial standing; and

(v) that the applicant company meets any other criteria that may be imposed by the Commission from time to time.

B. Terms and conditions to be complied with for the purpose of registration as a market intermediary to an investment manager who is an individual and the renewal of such registration are that the applicant -
(i) is a citizen of Sri Lanka;

(ii) is a fit and proper person, and has not been declared bankrupt at any time;

(iii) possesses such qualifications and training as may be determined by the Commission from time to time; and

(iv) meets any other criteria that may be imposed by the Commission from time to time.

C. Terms and conditions to be complied with for the purpose of registration as market intermediary of a person who performs the functions of a clearing house and the renewal of such registration are -

(i) that the applicant is a company incorporated under the Companies Act, No. 17 of 1982;

(ii) that the directors of the applicant company -

(a) have never been declared bankrupt;

(b) have never been persons or been directors of a company whose registration as a market intermediary or licence as stock broker, stock dealer or managing company to a unit trust has been cancelled or suspended by the Commission;

(iii) that the applicant is of good financial standing;
(i) is a citizen of Sri Lanka;

(ii) is a fit and proper person, and has not been declared bankrupt at any time;

(iii) possesses such qualifications and training as may be determined by the Commission from time to time; and

(iv) meets any other criteria that may be imposed by the Commission from time to time.

C. Terms and conditions to be complied with for the purpose of registration as market intermediary of a person who performs the functions of a clearing house and the renewal of such registration are -

(i) that the applicant is a company incorporated under the Companies Act, No. 17 of 1982;

(ii) that the directors of the applicant company -

(a) have never been declared bankrupt;

(b) have never been persons or been directors of a company whose registration as a market intermediary or licence as stockbroker, stock dealer or managing company to a unit trust has been cancelled or suspended by the Commission;

(iii) that the applicant is of good financial standing;
(iv) that a licensed stock exchange is a shareholder of the applicant;

(v) that the rules of the applicant make satisfactory provision -

(a) with respect to the conditions under which securities may be deposited, withheld by, withdrawn from or transferred;

(b) for the holding of deposited securities;

(c) for the processing of dealings in deposited securities;

(d) for facilitating the settlement of deposited securities;

(e) for the protection of the interests of depositors and the protection and control of information on deposited securities and dealings therein;

(f) for the monitoring of compliance with, and for the enforcement of the rules of the applicant company;

(g) with respect to the maintenance of a policy or policies of insurance, the obtaining of guarantees from participants and the establishment and maintenance of compensation funds, for the purpose of settling claims by depositors against the applicant company; and
(h) generally for the carrying on of the business of the applicant company with due regard to the interests of the public;

(vi) that the applicant company meets any other criteria that may be imposed by the Commission from time to time.

D. Terms and conditions to be complied with for the purpose of granting registration as a market intermediary to a credit rating agency and the renewal or such registration are -

I. that the applicant is a company incorporated under the Companies Act No.17 of 1982 and includes a company duty incorporated outside Sri Lanka or formed in pursuance of any statute of any foreign company. Royal charter, Letter patent and a body corporate established by or under any written law;

II. that the directors of the applicant company -

(a) have never been declared bankrupt;

(b) have never been persons or been directors of a company whose registration as a market intermediary or licence as stock broker, stock dealer or managing company of a unit trust has been cancelled or suspended by the Commission;

III. that the applicant company is of good financial standing;
IV. that no director, officer or employee of the applicant company has been convicted of fraud or criminal breach of trust or cheating or criminal misappropriation or has been declared bankrupt or found guilty of contravening any provisions of this Act or any rules and regulations made thereunder;

V. that the promoters of the applicant company are, in the opinion of the Commission persons of means and integrity and have special knowledge of matters which the company may have to deal with as a credit rating agency;

VI. no director of the applicant company is a director of a corporate entity or a business firm or a shareholder holding five per centum or more of any corporate entity or business firm or any other way interested in such an entity subject to rating by the applicant;

VII. an undertaking that no director, officer or employee of the applicant company shall communicate the information acquired by him for use of rating purposes, to any other person except when required under law to do so."

Validation of cess imposed under section 14A.

42. Section 14A of this Act shall be deemed for all purposes to have come into operation on .... and accordingly any cess charged, levied and paid during the period commencing on and ending on the date of commencement of this Act shall be deemed to have been and to be validly charge, levied and paid.
In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.