

Securities Industry (Amendment) Act, 2000 Act 590

ARRANGEMENT OF SECTIONS

Section

1. Section 1 of P.N.D.C.L. 333 amended
2. Section 2 of P.N.D.C.L. 333 amended
3. Section 5 of P.N.D.C.L. 333 amended
4. Insertion of section 6A in P.N.D.C.L. 333
5. Section 7 of P.N.D.C.L. 333 amended
6. Insertion of section 7A in P.N.D.C.L. 333
7. Section 8 of P.N.D.C.L. 333 amended
8. Insertion of section 8A in P.N.D.C.L. 333
9. Insertion of new Part 1A
10. Part IV of P.N.D.C.L. 333 substituted
11. Section 141 (2) of P.N.D.C.L. 333 amended
12. Section 142 of P.N.D.C.L. 333 amended
13. Consequential amendments and revision of penalties and pecuniary values in P.N.D.C.L. 333
14. Repeal, Saving and Transitional provisions

Schedule

Act 590



THE FIVE HUNDRED AND NINETIETH

ACT

OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA
ENTITLED

THE SECURITIES INDUSTRY (AMENDMENT) ACT 2000

AN ACT to amend the Securities Industry Law 1993 (PNDCL. 333) to make fuller provisions for the operation and regulation of unit trust and mutual fund; to provide for the settlement of disputes arising under the Law; to revise penalties in the Law; to provide for consequential amendments arising from the Constitution and to provide for related purposes.

DATE OF ASSENT: *19th December, 2000*

BE IT ENACTED by Parliament as follows:

Section 1 of P.N.D.C.L. 333 amended

1. The Securities Industry Law 1993 (PNDCL. 333) referred to in this Act as the principal enactment is amended in subsection (1) of section (1) by the substitution for “Securities Regulatory Commission” of “Securities and Exchange Commission” and any reference in any enactment or other document in existence immediately before the coming into force of this Act to the Securities Regulatory Commission shall be read and construed accordingly.

Section 2 of P.N.D.C.L. 333 amended

2. The principal enactment is amended by the substitution for section 2 of the following

“Composition
of the
Commission

2. (1) The Commission shall consist of
- (a) a chairman;
 - (b) the Director-General;

- (c) the two Deputy Directors-General;
 - (d) a representative of the Bank of Ghana not below the rank of a Director;
 - (e) a representative of the Ministry of Finance not below the rank of a Director;
 - (f) the Registrar-General or his representative; and
 - (g) four other persons including either a judge of the Superior Court or a lawyer qualified to be appointed a judge of the Superior Court.
- (2) The President shall in making appointments under section 2 (1)(g) have regard to the expertise, knowledge and experience of the persons in matters relating to securities or investment.
- (3) The members of the Commission shall be appointed by the President acting in consultation with the Council of State.”

Section 5 of PNDCL. 333 amended

3. The principal enactment is amended by the substitution for subsections (1), (2), (3) and (4) of section 5 of the following

“Appointment of Director General and other staff of Commission.

5. (1) There shall be appointed by the President in accordance with the advice of the Commission given in consultation with the Public Services Commission a Director-General of the Commission who shall be the chief executive of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment.
- (2) There shall be appointed by the President in accordance with the advice of the Commission given in consultation with the Public Services Commission two Deputy Directors-General of the Commission on such terms and conditions as may be specified in their letters of appointment.
- (3) The Deputy Directors-General shall assist the Director-General in the performance of his duties and perform such other functions as the Commission may direct.
- (4) There shall be appointed by the President in accordance with the advice of the Commission given in consultation with the Public Services Commission such employees as the Commission may require for the performance of its functions upon such terms and conditions as the appointing authority may determine except that the President may in accordance with article 195(2) of the Constitution delegate his power of appointment of public officers.”

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Insertion of section 6A in P.N.D.C.L. 333

4. The principal enactment is amended by the insertion after section 6 of the following new section.

“Imposition
of transaction
levy 6^A. (1) The Commission shall by regulations impose a levy
in respect of such investments in securities as it may deter-
mine.

(2) The levy shall be of such rate and be payable by a
buyer and a seller on the investment transactions.

Section 7 of PNDCL 333 amended

5. The principal enactment is amended in section 7 as follows

(a) by the substitution for subsection (4) of the following

“(4) The financial year of the Commission shall be the same
as the financial year of Government.”

(b) by the repeal of subsection (5).

Insertion of section 7A in PNDCL 333

6. The principal enactment is amended by the insertion of a new section 7^A as follows

“Annual
report and
other reports. 7^A. (1) The Commission shall submit to the Minister as soon
as practicable and in any event not more than six months after
the end of each financial year, an annual report dealing gener-
ally with the activities and operations of the Commission
during the year to which the report relates which shall include

(a) the audited accounts of the Commission and the
Auditor-General’s report on the accounts; and

(b) such other information as the Commission may
consider necessary.

(2) The Minister shall within two months after receipt
of the annual report submit the report to Parliament with such
statements as he considers necessary.

Section 8 of PNDCL 333 amended

7. The principal enactment is amended by the substitution for section 8 of the following

“Allowance for
members of
Commission. 8. The members of the Commission other than the
Director-General and the Deputy-Directors General shall be
paid such allowances as the Minister may determine.”

Insertion of section 8^A in P.N.D.C.L. 333

8. The principal enactment is amended by the insertion after section 8 of the following new section

“Committees of the Commission.

8^A. The Commission may for the discharge of its functions under this Law appoint committees composed of members of the Commission or non-members or both and may assign to the committee such of its functions as the Commission may determine, except that a committee composed exclusively of non-members may only advise the Commission.”

Insertion of new Part 1A

9. The principal enactment is amended by the insertion of a new Part 1A as follows

“PART 1A—ADMINISTRATIVE HEARINGS COMMITTEE

Establishment of Administrative Hearings Committee.

8^B. (1) Without limiting the scope of section 8A there is hereby established an Administrative Hearings Committee of the Commission hereafter referred to in this Law as the “Hearings Committee”.

(2) The Hearings Committee shall be composed of the chairman of the Commission who shall be the chairman of the Hearings Committee and four other members of the Commission elected by the members.

- (3) The functions of the Hearings Committee are
 - (a) to examine and determine complaints and disputes related to, in respect of, or arising out of any matter to which this Law applies; and
 - (b) to perform any duty related to the function specified under paragraph (a) as may be referred to it by the Commission.

Submission of complaint and examination of issues.

8^C. (1) A complaint, dispute or any violation arising under this Law shall, before any redress is sought in the courts, be submitted to the Commission for hearing and determination in accordance with this Part.

(2) A matter to which subsection (1) applies shall be submitted in writing to the Director-General of the Commission and where it is not in writing the Director-General shall cause the matter to be reduced into writing.

- (3) The Director-General shall cause the matter to be investigated and shall unless he
 - (a) considers the matter to be frivolous or vexatious; or

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(b) can settle the disputed matter or complaint to the satisfaction of parties concerned, refer the matter together with the findings of the investigations to the Hearings Committee within thirty days from the date of receipt of the written complaint, dispute or violation and shall at the same time inform the complainant or persons concerned of the submission to the Hearings Committee.

(4) Subject to section 8^F, the Hearings Committee shall upon receipt of a complaint or any matter under this Part examine and determine the complaint or matter.

(5) The Hearings Committee shall not determine any complaint or matter which is the subject matter of an action before a court unless the parties to the action so agree.

Representation
before
Hearings
Committee.

8^D. A person appearing before the Hearings Committee may
(a) make a representation to the Hearings Committee;
(b) be represented by a lawyer or other expert of his choice;
(c) produce such evidence as he considers necessary for the adjudication of the complaint or matter.

Proceedings of
the Hearings
Committee.

8^E (1) The Hearings Committee may exclude persons from its proceedings, other than parties to the proceedings and their lawyers or experts, where it considers it necessary in the interest of public order, public morality or the protection of the private lives and interest of persons concerned in the proceedings.

(2) The Hearings Committee may call such witnesses and request the production of such documents as it considers necessary to determine the issue before it.

(3) Witnesses appearing before the Hearings Committee may be paid such allowances as the Commission may determine.

(4) The Hearings Committee shall give a fair hearing to all persons who appear before it and shall be guided by natural justice in its proceedings.

(5) Where a complaint is submitted to the Hearings Committee under subsection (1) of section 8^C, the Hearings Committee shall, within a period of thirty days from the date of receipt of the complaint or matter examine and determine the complaint or matter unless there is delay caused by the complainant, his representative or witness.

(6) Except as otherwise provided in this Part the Hearings Committee shall determine the procedure for its hearings.

Decisions of Hearings Committee subject to approval of the Commission.

8^F. (1) Every decision of the Hearings Committee on any matter submitted to it for determination shall be referred to the Commission.

- (2) The Commission upon receipt of the decision may
 - (a) approve of the decision;
 - (b) remit the issue to the Hearings Committee for further consideration; or
 - (c) modify the decision.

Appeals from decision of Hearings Committee.

8^G. A person dissatisfied with a decision of the Hearings Committee under this Part confirmed by the Commission may appeal to the High Court.”

Part IV of P.N.D.C.L. 333 substituted

10. The principal enactment is amended by the substitution for Part IV of the following

“PART IV—UNIT TRUST AND MUTUAL FUND

Sub-part I—Unit Trust

Prohibition to operate unit trust without licence.

- 32. (1) No person shall
 - (a) establish or operate a unit trust;
 - (b) issue any invitation to the public to acquire any units in any unit trust; or
 - (c) maintain or hold himself out as carrying on the business of dealing in units of a unit trust

unless the person is licensed by the Commission.

(2) No licence shall be granted to any person to operate a unit trust unless it is a company incorporated under the Companies Code 1963 (Act 179).

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or imprisonment for a term not exceeding two years or to both and where the contravention is by a body corporate, the body corporate shall on conviction be liable to a fine of not less than 500 penalty units.

Manager and trustee.

32^A. (1) A company seeking to establish a unit trust shall be the manager of the unit trust.

(2) The manager shall appoint a trustee for the unit trust but the manager and the trustee shall be independent of each other.

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Trust deed.

32^B. (1) A unit trust is constituted by a document made under seal between the manager of the unit trust and the trustee and the document shall be the trust deed.

(2) The trust deed shall be in such form and contain such particulars as may be prescribed by Regulations made under this Law.

Application for licence to operate a unit trust.

33. (1) An application for a licence for a unit trust shall be made to the Commission and shall be in such form as the Commission may determine.

(2) The applicant manager shall also submit to the Commission

- (a) the names and qualifications of its directors and other principal officers and those of the trustee;
- (b) its certificate of incorporation;
- (c) a copy of the trust deed; and
- (d) such particulars as may be prescribed by Regulations under this Law.

Licence to operate a unit trust.

33^A. (1) The Commission may license a unit trust if it is satisfied that

- (a) the manager and trustee are qualified to act in that capacity;
- (b) the manager is a company incorporated in Ghana;
- (c) the trustee is either a bank, an insurance company or a financial institution or a wholly owned subsidiary of any of them approved by the Commission;
- (d) the trustee has the minimum paid up capital required by the Commission;
- (e) the business of the manager in relation to the unit trust is administered independently of the trustee; and
- (f) the trust deed complies with the provisions of this Law and Regulations made under this Law.

(2) The Commission shall within ninety days of receipt of an application for a licence communicate its decision on it in writing to the applicant.

(3) A licence granted under subsection (1) shall be subject to such conditions as may be specified in it or in relation to it.

Prohibition of activities in unlicensed unit trust.

33^B. (1) No person shall undertake any activity in or related to a unit trust either directly or indirectly unless

- (a) the units are those of a unit trust licensed by the Commission; and
- (b) the particulars of the unit trust have been approved by the Commission.

(2) A person who acts contrary to subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or to a term of imprisonment not exceeding two years or to both and where the person is a body corporate to a fine of not less than 500 penalty units.

Interest of investors in unit trust and pricing of unit.

34. (1) The interest of a unit holder in a unit trust consists of units including fractions of a unit.

(2) The calculation of prices at which units of any unit trust may be bought or sold shall be in accordance with provisions to be prescribed by the Commission.

Scheme particulars.

34^A. (1) Any letter, notice, circular, document or prospectus prepared by a manager of a unit trust for the purpose of offering its units to the public shall be approved by the trustee of the scheme and the Commission before publication.

(2) There shall be included in a document of the kind referred to in subsection (1), information in relation to such matters as may be prescribed or specified from time to time by the Commission.

Redemption of units.

34^B. (1) The manager of a licensed unit trust shall, if requested by a holder of units of the unit trust, buy from the holder any number of units the holder may specify at the price at which the manager buys the units of the unit trust.

(2) Where the licence of a unit trust has been revoked, the manager shall buy all the units under the scheme at the last bid price at which the manager bought units of the unit trust before the revocation.

Duties and powers of a manager of a unit trust.

35. (1) The manager of a unit trust shall manage the assets of the unit trust on a day to day basis and shall select the investments to be made on behalf of the trust in the best interest of the unit holders.

(2) The manager shall act in accordance with the trust deed and comply with its investment objectives and policy under the directions given by the trustee.

(3) The manager shall provide such information on the management and administration of the unit trust as any trustee may request.

(4) The manager of a unit trust shall maintain such minimum capital requirement as the Commission may determine .

(5) The manager shall ensure that its directors or other persons concerned with the management of its business have such qualifications and experience as are specified by the Commission.

Duties and powers of trustee.

35^A. (1) The trustee of a unit trust shall comply with the provisions of this Law, Regulations made under it, the terms of the trust deed and all prescribed particulars of the unit trust.

(2) The trustee shall take into its custody or under its control the property of the unit trust and hold it in trust for the investors in accordance with this Law, Regulations made under it, the trust deed and any other applicable enactment.

(3) The trustee shall ensure that an asset attributable to a particular unit trust is separately identified.

(4) The trustee shall

(a) ensure that the method used by the manager in the calculation of prices at which interest is issued and redeemed is within the limits determined by the Commission; and

(b) maintain the minimum paid up capital determined by the Commission.

(5) The trustee may execute documents to secure acquisitions, disposals and loans made by the manager in accordance with this Law or Regulations made under it and the trust deed.

(6) Subject to subsection (7), this Law or Regulations made under it and the terms of the trust deed, the trustee shall carry out the instructions of the manager in respect of investments which constitute the property of the scheme.

(7) The trustee may give notice to the manager that it is unwilling to accept the transfer of any property which contravenes this Law or Regulations made under it or the trust deed.

(8) The manager may, with the approval of the trustee, determine that each unit shall be sub divided into two or more units or that two or more units shall be consolidated.

Prohibited transactions by manager.

35^B. (1) No company that is a manager of a unit trust or is a subsidiary or holding company of the manager shall

- (a) borrow money on behalf of the unit trust for the purpose of acquiring securities or other property for the unit trust;
- (b) lend money that is subject to the unit trust to a person to enable him to purchase units of the unit trust;
- (c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the unit trust; or
- (d) engage in any transaction which in the opinion of the Commission is not in the interest of the holders of the units of the unit trust,

provided that paragraphs (a) and (c) shall not apply to borrowings made on behalf of the trust solely for the purpose of meeting obligations to redeem units from the holders when requested and provided further that the borrowings shall be subject to such conditions and restrictions as the Commission shall prescribe.

(2) A company that contravenes subsection (1) commits an offence and every officer of the company who acted in breach of the provision shall also be liable on summary conviction

- (a) in the case of the company to a fine of not less than 500 penalty units; and
- (b) in the case of an officer to a fine not exceeding 250 penalty units or to a term of imprisonment of not less than six months or to both.

Sub-part II—Mutual Fund

Prohibition of operation of mutual fund without licence.

36. (1) No person shall

- (a) establish or operate a mutual fund;
- (b) issue any invitation to the public to acquire any shares in a mutual fund; or
- (c) maintain or hold himself out as carrying on the business of dealing in a mutual fund

unless the mutual fund is licensed by the Commission.

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(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units or imprisonment for a term not exceeding two years or to both and where the contravention is by a body corporate, the body corporate is liable upon summary conviction to a fine of not less than 500 penalty units.

Appointment
of a manager
and custodian.

36^A. (1) The directors of a company applying to operate as a mutual fund shall appoint for the mutual fund

- (a) a manager which shall be a company incorporated in Ghana and independent of the mutual fund company; and
- (b) a custodian which shall be independent of the mutual fund company and be a bank, an insurance company or any other financial institution approved by the Commission or a wholly owned subsidiary of any of them approved by the Commission.

(2) The custodian shall have and maintain such minimum capital requirement as shall be determined by the Commission.

Application
for a mutual
fund licence.

36^B. (1) The Commission may on an application made to it by

- (a) a public company incorporated under the Companies Code, 1963 (Act 179); or
- (b) an external company with a place of business in Ghana within the meaning of Chapter V of the Companies Code, 1963 (Act 179)

license the company as a mutual fund company.

(2) The company referred to in subsection (1) must have been incorporated solely to hold and manage securities or other financial assets.

(3) The application shall be in such form and contain such particulars as are specified by or under this Law and as may be directed by the Commission.

(4) The Commission shall within ninety days of receipt of the application communicate its decision on it in writing to the applicant.

Licence for operation of mutual fund.

37 (1). The Commission shall not grant a licence to any company to operate as a mutual fund company unless the Commission is satisfied that

- (a) if an invitation is made to the public to subscribe for its shares, the price at which the shares will be offered will be based on the net value of the company's assets at the time of the offer with no addition except for a reasonable service charge;
- (b) the company will at all times repurchase the shares from the holder at a price based on the net value of its assets at the time of the repurchase without any deduction other than a reasonable service charge, provided that where the shares of the mutual fund company are to be listed on an approved stock exchange, the Commission may waive or modify the requirements of this paragraph;
- (c) a manager and custodian for the scheme have been appointed by the directors;
- (d) the manager is a company incorporated in Ghana and is separate from and independent of the custodian; and
- (e) the custodian being a bank or an insurance company or a wholly owned subsidiary of either of them has and maintains the required minimum paid up capital.

(2) The licence may be subject to such other conditions as the Commission may specify.

Interest of an investor in a mutual fund.

37^A. The interest of an investor in a mutual fund consists of shares in the company.

Exemption from specific provisions of the Companies Code.

37^B. The following provisions of the Companies Code shall not affect the mutual fund company unless otherwise specified in writing by the Registrar of Companies acting in consultation with the Commission

- (a) section 59 (acquisition by a company of its own shares);
- (b) section 60 (redemption of redeemable preference shares);
- (c) section 61 (purchase by company of its own shares);
- (d) section 62 (limit on number of shares acquired);
- (e) section 63 (opening of share deals account);
- (f) section 66 (stated capital);

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- (g) section 67 (reduction of stated capital);
- (h) sections 275 to 279 (relating to invitation to the public and prospectus);
- (i) section 281 to 284 (relating to waiting periods after publication of prospectus; withdrawal of application for shares; invitations in respect of securities to be dealt in on a stock exchange and minimum subscription); and
- (j) section 314 (control of public invitations relating to external companies).

Regulations of a mutual fund.

37^C. A mutual fund shall make regulations which shall be in such form and contain such matters as are prescribed by Regulations made under this Law or as may be directed by the Commission.

Directions by directors of a mutual fund.

38. (1) Subject to the Companies Code the directors of a mutual fund shall determine the investment and general policies of the company and shall give directions to the manager accordingly.

(2) No director shall give any directions which are likely to make the manager act in contravention of this Law and Regulations made under it; and the directors shall act in accordance with the terms of the regulations or the constitution of the mutual fund and any management agreement.

(3) Any director who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five million cedis or imprisonment for a term not exceeding one year or to both.

Custodian of mutual fund and its duties.

38^A. (1) The directors of a mutual fund shall appoint a custodian for the mutual fund which shall take into its custody or put under its control the property of the mutual fund which shall be held in accordance with this Law and any relevant agreement not inconsistent with this Law.

(2) The custodian of a mutual fund shall have such minimum capital requirement as may be determined by the Commission.

(3) The custodian may give notice to the manager that it is not prepared to accept the transfer of assets in contravention of this Law and may require the manager to give security for the transfer of assets.

(4) Subject to subsection (3), the terms of its contract of appointment and this Law, the custodian shall carry out the instructions of the manager as regards investments which comprise the assets of the company.

Duties of directors of mutual fund.

38^B. The directors of a mutual fund shall take reasonable care

- (a) to ensure that the property of the mutual fund is managed by the manager in accordance with this Law, Regulations made under it and the constitution or regulations of the mutual fund;
- (b) that the manager performs its functions and discharges its duties under this Law and Regulations made under it; and
- (c) that the methods used by the manager to calculate prices at which shares are issued and redeemed are legal; and shall carry out periodic checks to verify whether the manager has determined prices within those limits.

Duties of a manager of a mutual fund company.

38^C. (1) The manager shall manage the mutual fund on a day to day basis, select investments to be owned by the company and carry out any other functions assigned to it under contract from the mutual fund.

(2) The manager shall be subject to the directions of the directors of the mutual fund and shall perform the normal functions carried out by the managing director of a company.

(3) Where the directions given to the manager by the directors of the mutual fund contravene this Law or any other enactment, the manager shall refer the matter to the Commission for guidance.

(4) The manager of a mutual fund shall maintain such minimum paid up capital and have the amount and type of financial and material resources as may be directed by the Commission.

(5) The manager shall not allow the property of the company to be used or invested contrary to the investment restrictions under this Law or Regulations made under this Law.

(6) The manager shall ensure that its directors or other persons concerned with the management of its business have the necessary qualifications and experience required by the Commission.

(7) The manager shall act in accordance with investment policies laid down by its directors and the provisions of this Law.

Sub-part III—Spread of Investment and General Provisions on Unit Trust and Mutual Fund

Spread of investments.	<p>39. (1) The value of a scheme’s holding of securities issued by a single issuer shall not exceed twenty per cent at book value or 25 per cent at market value.</p> <p>(2) No scheme shall hold more than ten per cent of any class of securities issued by a single issuer.</p>
Unlisted securities.	<p>39^A. The value of a scheme’s holding of securities not listed or quoted on a stock exchange may not exceed fifteen per cent of its total net asset value.</p>
Government securities.	<p>39^B. Up to thirty per cent of a scheme’s total net assets value may be invested in government securities of the same issue.</p>
Futures and commodities.	<p>39^C. No scheme shall enter into any future financial contract or hold any physical commodities.</p>
Investment in other schemes.	<p>40. (1) The value of a scheme’s holding of units or shares in other collective investment schemes shall not in aggregate exceed ten per cent of its total net value.</p> <p>(2) No increase in the total of initial charges, the manager’s annual fee or any other costs and charges borne by the investors or by the scheme shall be made, if the scheme is managed by the same manager or by his agent.</p>
Restriction on real estate investment.	<p>40^A. No scheme shall invest more than ten per cent of its net asset value in any type of real estate including buildings or interests in real estate except in shares of real estate companies.</p>
Amendment of limits of spread of investment.	<p>40^B. The provisions on the level and spread of investments of unit trust and mutual fund and the prohibited investment of unit trust and mutual fund specified in sections 39 to 40A may be waived or modified by the Minister on the advice of the Commission in appropriate circumstances.</p>
Unit trust and mutual fund company annual fee for licence.	<p>40^C. There shall be paid in respect of a licence issued under this Part such application fee and annual licence fee as the Commission may determine.</p>

Inconsistency with this Law and Regulations made under it.

40^D. If any provision in a trust deed establishing a unit trust or any provision in the regulations or constitution of a mutual fund is inconsistent with a provision of this Law or Regulations made under this Law, that provision shall be of no effect to the extent of the inconsistency.

Changes in unit trust and mutual fund.

41. (1) A proposal for change in a unit trust or mutual fund shall be subject to approval by a special resolution of holders of interests in the unit trust or mutual fund.

(2) The manager of a unit trust or mutual fund shall submit the proposal to the Commission for approval and the Commission shall acknowledge receipt in writing within seven days of receipt.

(3) If the Commission does not take a decision on the proposal within a period of sixty days after its submission, the manager may assume that it has been approved.

Change and retirement of trustee or custodian.

41^A. (1) The manager of a unit trust or the directors of a mutual fund shall give written notice to the Commission of any proposal to replace the trustee or custodian of the scheme and seek the approval of the Commission and the Commission shall acknowledge in writing the receipt of the proposal within seven days of receipt.

(2) Any proposal for a change of a trustee or custodian shall be subject to approval by a special resolution of holders of interest in the scheme.

(3) If the Commission does not indicate its decision on the proposal within a period of sixty days after its submission, it may be assumed that the proposal has been approved.

(4) A trustee or a custodian may be replaced by a person who satisfies the requirements of this Law.

(5) A trustee or a custodian may retire upon giving notice of not less than ninety days.

Change of manager of unit trusts and mutual funds.

41^B. (1) A trustee, or directors of a mutual fund, shall give written notice to the Commission of any proposal to replace a manager of the scheme and seek the approval of the Commission and the Commission shall acknowledge receipt in writing within seven days of receipt.

(2) If the Commission does not indicate its decision on the proposal within a period of sixty days after its submission it may be assumed that there has been approval.

(3) The manager shall be replaced by a person who satisfies the requirements of this Law.

(4) The manager shall cease to hold office if

- (a) it goes into liquidation, except a voluntary liquidation to reconstruct or amalgamate on terms previously approved in writing by the trustee or directors;
- (b) a receiver is appointed in respect of the unit trust or mutual fund;
- (c) the unitholders or shareholders take a decision to remove the manager in terms of this Law; or
- (d) the trustee of a unit trust or directors of a mutual fund states in writing giving reasons that a change of manager is desirable in the interest of the investors and the Commission approves.

(5) If the name of the scheme makes reference to the name of the former manager, the former manager may require the new manager to propose a change in the name of the scheme.

(6) Where the manager ceases to act as a manager, the trustee of a unit trust or the directors of the mutual fund shall appoint a person eligible under this Law to be the manager of the scheme subject to that person entering into an agreement with the trustee of the unit trust or the directors of the mutual fund to secure the due performance of its duties as manager.

Retirement of
manager.

41C. (1) The manager may retire in favour of another eligible person upon the written approval of the trustee or the directors of the mutual fund if

- (a) in the case of a unit trust, the appointment is made under the seal of the retiring manager;
- (b) the rights and duties of the retiring manager have been assigned to the new manager; and
- (c) any other act required to be done for the assumption of duty as manager has been done.

(2) The retiring manager shall be absolved from any obligation upon retirement but this shall be without prejudice to the rights of any person for any act or omission of the retiring manager prior to its retirement.

(3) Upon assumption of office as the new manager, the manager shall enjoy the rights and exercise the powers as manager and also be subject to the duties and obligations of a manager.

Liability of manager, director trustee and custodian.

42. The manager of a unit trust, the trustee of a unit trust or the director, the manager or custodian of a mutual fund shall be liable to an investor for any loss suffered by the investor by reason of failure to perform the duties of office under this Law or Regulations made under this Law.

Prohibited transactions under mutual fund.

42^A. A manager or custodian of a mutual fund shall not

- (a) borrow money on behalf of the mutual fund for the purpose of acquiring securities or other property for the mutual fund;
- (b) lend money that is subject to the mutual fund to a person to enable that person acquire an interest in the mutual fund or for any purpose;
- (c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the mutual fund; or
- (d) engage in any transaction which in the opinion of the Commission is not in the interest of the shareholders of the mutual fund,

provided that paragraphs (a) and (c) shall not apply to borrowings made on behalf of the fund solely for the purpose of meeting obligations to redeem shares from the holders when requested, and provided further that the borrowings shall be subject to such restrictions as the Commission shall prescribe.

Limitation on securities in which officers have interest.

42^B. No scheme shall invest in any securities of a class in a company or other body if an officer or collectively, officers of the manager own more than such per cent of the total nominal amount of the issued securities of that class as the Commission may determine.

Limitation on nil-aid or partly paid securities.

42^C. (1) The portfolio of a scheme shall not include any securities where a call is made for any sum unpaid on that security unless that call can be met in full out of cash by the scheme's portfolio.

(2) Subject to subsection (1), the portfolio of a scheme shall include any security where a call is to be made for a sum unpaid on that security if the issue has been allotted under the terms of a rights issue or an existing holding.

Unlimited liability.

43. No scheme shall acquire any asset which involves the assumption of any liability which is unlimited.

Register of investors.

43^A. (1) The manager of a scheme shall keep at a prescribed place a register of persons who hold interest in the scheme containing such particulars as may be prescribed by Regulations.

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(2) Regulations shall provide for inspection of the registers of the licensed schemes.

Commission to keep register of unit trust and mutual fund.

43^B. (1) The Commission shall keep a register of licensed unit trusts and mutual fund companies.

(2) Any person who so wishes may inspect the register and upon payment of a fee obtain a copy of or extract from the register.

Court may rectify.

43^C. The court may on an application order

- (a) that a register be rectified if it is just to do so; or
- (b) the manager to pay for any loss or damage if it is satisfied that a person has suffered loss or damage by an error or defect in the register of investors.

Court may order appointment of temporary manager of a scheme.

44. (1) The court may, on application, order the appointment of a person as a temporary manager of a scheme.

(2) The application may be made by

- (a) the Commission;
- (b) the manager;
- (c) the directors of a mutual fund;
- (d) the trustee or custodian; or
- (e) an investor in the scheme.

(3) The appointment shall be for not more than ninety days but the court may, on application by the temporary scheme manager, extend the appointment.

(4) A temporary scheme manager shall, before the end of the appointment, report to the court recommending a course of action to be taken in relation to the scheme.

(5) The court may make such orders as are just, including orders to call an investors' meeting to consider a proposed resolution to nominate a replacement scheme manager or for the termination of the scheme.

(6) A temporary scheme manager shall have the same powers and rights in respect of the property of the scheme as the manager of the scheme.

Termination of scheme in accordance with constitution of the Scheme.

44^A. (1) A scheme is terminated when an event, date or state of affairs specified for the purpose in the scheme's constitution occurs.

(2) A provision in the constitution of a scheme, which provides or has the effect of providing that the scheme is terminated if the manager is removed as manager, is void.

Scheme manager may terminate scheme.

44^B. (1) The manager of a scheme may, in writing and with the approval of the Commission, terminate the scheme on the ground that the purpose of the scheme has been, or cannot be, accomplished.

(2) No manager shall terminate a scheme unless he has given notice as required under subsection (3) and a period of 60 days has passed.

(3) The notice shall include

- (a) an explanation of the proposal;
- (b) a statement of the circumstances under which the purpose of the scheme has been, or cannot be, accomplished; and
- (c) a statement of the right of the investors to requisition a meeting of investors.

Court may terminate scheme.

45. The court may, on an application by the manager of a scheme or by

- (a) the Commission;
- (b) an investor in the scheme;
- (c) a director of the manager; or
- (d) a temporary scheme manager,

make an order to terminate the scheme if it is just and equitable to do so or the scheme is insolvent.

Winding up of a unit of scheme.

45^A. (1) The trustee shall after the termination of the scheme realise the assets and after the payment from it of all liabilities and costs of the winding up, distribute the proceeds of the realisation to the manager and the investors upon the production by the manager and investors of evidence as to the proportion of their entitlement or interest in the scheme.

(2) The trustee shall pay into court any unclaimed net proceeds or other cash held by the trustee after the expiration of twelve months after the day on which the net proceeds became payable.

(3) The trustee may deduct any reasonable expenses incurred by him in making that payment into court from the unclaimed net proceeds.

(4) The trustee shall notify the Commission after the completion of the winding up.

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Revocation of
licence of a
scheme.

45^B. (1) The Commission may, subject to the provisions of this Law and upon notification revoke the licence of a scheme if

- (a) in the opinion of the Commission the interests of the holders of the units or shares created or held under the scheme require that; or
- (b) the Commission is satisfied that the scheme as operating no longer qualifies as provided under this Law.

(2) The Commission shall before revoking the licence notify the manager and trustee of the unit trust or the directors of the mutual fund of its intention to revoke the licence.

(3) The manager of the unit trust or the directors of the mutual fund may within twenty-one days of the notification make representations in writing in respect of the proposed revocation to the Commission.

(4) The Commission shall consider the representations made before deciding whether to revoke the licence or not.

(5) The Commission shall communicate its decision to revoke the licence of the scheme within thirty days after representations have been made or if none is made, within thirty days after the last day for making the representation.

Suspension
of licence of
unit trusts
and mutual
funds.

46. (1) Nothing in this Part prevents the Commission from suspending the licence of any unit trust or mutual fund subject to such conditions as the Commission shall specify in writing.

- (2) The Commission shall
 - (a) before suspending a licence notify the unit trust or mutual fund of its intentions; and
 - (b) by the notice, invite the unit trust or mutual fund to make, within a period of not more than thirty days from the date of the service of the notice, any representations it may desire to make in respect of the suspension of the licence.

(3) The Commission may revoke the licence of the unit trust or mutual fund if

- (a) after the expiration of the period the unit trust or mutual fund has not made any representations; or
- (b) it is not satisfied with representations made by the unit trust or mutual fund.

Winding up of a mutual fund company.

46^A. A mutual fund shall be wound up in accordance with the provisions of the Companies Code 1963 (Act 179).

Cancellation of licence.

46^B. The Commission shall cancel the licence of a scheme upon the termination of the scheme in accordance with law.

General penalty.

47. Any person who does any act which constitutes a contravention of a provision of this Part commits an offence and except specifically provided in this Part in respect of that provision the person shall be liable upon summary conviction to a fine not exceeding 500 penalty units or imprisonment for a term not exceeding two years or to both.

Unauthorised Schemes.

47^A. No person shall operate any other form of collective investment scheme unless it is licensed by the Commission”.

Section 141(2) of PNDCL 333 amended

11. The principal enactment is amended in section 141(2) by the deletion of “and” after paragraph (e) and the addition of the following paragraphs

- “(g) form and contents of trust deed of unit trusts and the regulations of mutual funds;
- (h) matters relating to content of scheme particulars of unit trusts and prospectus of mutual funds;
- (i) pricing, valuation and dealing in units and shares;
- (j) reports to unit holders or shareholders in unit trusts and mutual funds;
- (k) matters relating to the criteria for identification, licensing and administration of collective investment schemes other than unit trusts and mutual funds;
- (l) matters relating to the content of invitations to the public and the examination and approval of invitations;
- (m) matters relating to the continuing disclosure of information and forms, content, frequency and standards of financial reporting by issuers of securities;
- (n) matters relating to stock exchanges and stock markets; and
- (o) generally on the management of unit trusts and mutual funds.”

Section 142 of PNDCL 333 amended

12. The principal enactment is amended in section 142 as follows—

- (a) by the substitution or insertion in the section in appropriate alphabetical order of the following—

“advertising” includes every form of advertising, whether in a publication or by the display of notices or by means of

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circulars or other documents or by an exhibition of photographs or films or videos or by way of sound broadcasting or television or on computer screens or in any other manner; and “advertise” shall be construed accordingly;

“assets of the scheme” means the capital and income of the scheme;

“book” includes document in any form including information stored in an electronic form;

“collective investment scheme” means an arrangement by which

- (a) contributions to the scheme by persons taking part in the scheme are pooled;
- (b) the contributions are invested in eligible assets by the Manager of the scheme on behalf of the contributors;
- (c) persons making contributions to the scheme become shareholders or unit holders in the scheme but do not have day to day control over the management of the assets;
- (d) as shareholders or unit holders, contributors to the scheme participate in or receive profits or income or sums paid out of the profits or income arising from the acquisition, holding, management and disposal of the assets or any part thereof by the Manager;

“constitution of a scheme” in the case of a unit trust means the trust deed and in the case of mutual fund means the regulations of the mutual fund;

“dealer” means a person who carries on a business of dealing in securities whether he carries on any other business or not and includes—

- (a) a stock broker;
- (b) a share transfer agent;
- (c) a trustee of a collective investment scheme;
- (d) a person who provides custodial services with regard to securities;
- (e) a person who performs the functions of central securities depository and/or provides securities clearing and settlement facilities;

- (f) a registrar to a public issue of securities;
- (g) an underwriter;
- (h) a person including a bank as defined in section 48 of the Banking Law, 1989 (PNDCL 225), or a Merchant Bank approved by the Bank of Ghana that undertakes or performs the services of an issuing house or manager to a public issue of securities; and
- (i) such other persons performing securities or capital market related functions as the Minister by notice in the *Gazette* may prescribe;

“independent” in relation to the trustee and manager of a unit trust or the mutual fund company and the manager or custodian of a mutual fund means

- (a) in the case of a unit trust, that the manager is not a substantial shareholder of the trustee and that the trustee is not a substantial shareholder of the manager; and
- (b) in the case of a mutual fund, that the mutual fund company is not a substantial shareholder of the manager or custodian.

“interest” in the case of a

- (a) unit trust means the beneficial interest held under the trust;
- (b) mutual fund, means the shares in the mutual fund;

“investor” in the case of a

- (a) unit trust means a unitholder;
- (b) mutual fund means a shareholder.

“manager” in the case of a

- (a) unit trust means the manager referred to in section 32^A; and
- (b) mutual fund means a company appointed by the board of directors of the mutual fund company to manage the mutual fund;

“marketing” in relation to interests means

- (a) issuing or causing to be issued any advertisement inviting persons to become or offer to become investors in that scheme or containing information

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calculated to lead directly or indirectly to persons becoming or offering to become investors in that scheme; or

(b) advising or procuring any person to become an investor in that scheme and “to market” shall be construed accordingly;

“mutual fund” means a public or external company incorporated solely to hold and manage securities or other financial assets and which has made satisfactory arrangements for ensuring that if any invitation is made to the public to subscribe to its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer with no addition except for a reasonable service charge subject to the proviso to section 37 (1)(b) and is willing at any time to repurchase any of its shares from the holder at a price based on the net value of its assets at the time of repurchase without any deduction except for a reasonable service charge;

“officers of a company” includes the directors and any persons acting as such;

“redemption” in relation to interest in a scheme, means the purchase of interest from an investor by the manager as a principal and “redeem” and “redemption price” shall be construed accordingly;

“scheme” means a unit trust or mutual fund;

“scheme particulars” means particulars of a unit trust or mutual fund prepared and published in accordance with Regulations made under this Law;

“trust deed” has the meaning assigned to it in section 32^B;

(b) by the repeal of the following

“mutual fund” shall have the same meaning as that provided in section 319 of the Companies Code 1963 (Act 179)’.

Consequential amendments and revision of penalties and pecuniary values in PNDCL 333

13. The sections of the principal enactment set out in the Schedule to this Act are amended to the extent indicated in the Schedule.

Repeal, Saving and Transitional provisions

14. (1) Section 319 of the Companies Code 1963 (Act 179) is hereby repealed.

(2) Notwithstanding the repeal under subsection (1) any unit trust or mutual fund authorised to operate under the Companies Code 1963 (Act 179) and in existence on the date of the coming into force of this Act shall be deemed to have been approved and licensed under PNDCL 333 as amended by this Act.

(3) A scheme to which subsection (2) applies shall continue to operate under its conditions of authorisation and other terms specified in the applicable legislative instrument for a period of twelve months from the date of the coming into force of this Act.

(4) Where a scheme continued in operation under this section desires to continue in operation after the expiry of the period of twelve months, it shall before the expiration of the twelve months apply to the Commission for the requisite licence.

SCHEDULE

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SCHEDULE
(Section 13)

P.N.D.C.L. 333 sections	Repeal or amendment
(i) Section 3	in subsection (2) by the substitution for “P.N.D.C.” of “President”;
(ii) Section 4	substitution for subsection (5) of the following “(5) The quorum at a meeting of the Commission shall be five members and shall include the Director-General or in his absence a Deputy Director-General”;
(iii) Section 9	(a) in paragraph (a) substitute for “Secretary” “Minister” wherever it appears thereafter in the Law; (b) in paragraph (j) deletion of “(9a)”; (c) insert a new paragraph (jj) as follows “(jj) examine and approve invitations to the public;
(iv) Section 10	in subsection (1)(e) substitution for “paragraph (s)” of “paragraph (a)”;
(v) Section 14	substitution for “1 million cedis or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years”;
(vi) Section 17	in subsection (2) substitution for “1 million cedis” of “250 penalty units”;
(vii) Section 19	in subsections (6) and (7) substitution for “1 million cedis or to a term of imprisonment not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years”;
(viii) Section 21	in subsection (5) substitution for “1 million cedis” of “250 penalty units”;
(ix) Section 22	in subsection (5) substitution for “1 million cedis or to imprisonment for a term not exceeding one year” of “500 penalty units or to a term of imprisonment not exceeding 2 years”;
(x) Section 28	in subsection (3) deletion of “whose decision on it shall be final”
(xi) Section 30	(a) in subsection (2) substitution for “¢200,000.00” and “¢5,000.00” of “50 penalty units” and “25 penalty units” respectively; (b) repeal of subsections (3) and (4);

(xii) Section 31	(a) repeal of subsections (4) and (5); (b) in subsection (6) substitution for “¢100,000.00” of “50 penalty units”;
(xiii) Section 55	substitution for “1 million cedis or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years”;
(xiv) Section 57	in subsection (4) by the addition to the subsection of the following “and shall be liable on summary conviction to a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 1 year or to both.”;
(xv) Section 58	in subsection (1) substitution for “¢5 milliom” of “500 penalty units”;
(xvi) Section 64	repeal whole section;
(xvii) Section 65	repeal whole section;
(xviii) Section 66	insertion after paragraph (d) in subsection (1) paragraph (e) as follows “(e) an investment adviser”;
(xix) Section 68	in subsection (5) substitution for “¢100,000.00” of “25 penalty units.”
(xx) Section 71	in subsection (2) the addition at the end of the following “and shall be liable on conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 1 year or to both”;
(xxi) Section 75	in subsection (11) substitution for “1 million cedis or to imprisonment for a term not exceeding one year” of “500 penalty units or to a term of imprisonment not exceeding 2 years”;
(xxii) Section 76	in subsection (3) substitution for “¢1 million cedis” of “100 penalty units”;
(xxiii) Section 77	in subsection (7) substitution for “¢500,000” of “100 penalty units”;
(xxiv) Section 78	in subsection (2) substitution for “¢500,000” of “100 penalty units”;
(xxv) Section 79	in subsection (2) substitution for “¢500,000” of “100 penalty units”;
(xxvi) Section 80	in subsection (2) substitution for “1 million cedis or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years.”;

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(xxvii) Section 81	in subsection (2) substitution for “¢500,000” of “100 penalty units”;
(xxviii) Section 83	in subsection (2) substitution for “one million cedis” of “250 penalty units”;
(xxix) Section 84	in subsection (5) substitution for “¢500,000” of “100 penalty units”;
(xxx) Section 85	(a) in subsection (6) substitution for “one million cedis” of “250 penalty units”; (b) in subsection (7) substitution for “2 million cedis” of “500 penalty units”;
(xxxii) Section 86	(a) in subsection (1) substitution for “one million cedis” of “250 penalty units”; (b) in subsection (2) substitution for “2 million cedis” of “500 penalty units”; (c) in subsection (8) substitution for “2 million cedis” of “500 penalty units”;
(xxxii) Section 87	in subsection (4) addition at end of the subsection of the following “and upon conviction shall be liable to a fine of not less than 50 penalty units each or to imprisonment for a term not exceeding one year or to both”;
(xxxiii) Section 129	(a) in paragraph (a) substitution for “¢5 million” and “3 years” of “500 penalty units” and “2 years”; (b) in paragraph (b) substitution for “¢5 million” of “500 penalty units”;
(xxxiv) Section 132	in subsection (1) substitution for “¢500,000” of “250 penalty units”;
(xxxv) Section 133	substitution for “¢1 million or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years.”;
(xxxvi) Section 134	substitution for “¢1 million or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years.”;
(xxxvii) Section 137	in subsection (7) substitution for “¢1 million or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years.”;
(xxxviii) Section 138	substitution for “¢1 million or to imprisonment for a term not exceeding one year” of “500 penalty units or to imprisonment for a term not exceeding 2 years.”;

