

# THE UNIT TRUST OF INDIA (AMENDMENT) ACT, 1985

No. 63 OF 1985

[7th December, 1985.]

An Act further to amend the Unit Trust of India Act, 1963.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short  
title and  
commence-  
ment.

1. (1) This Act may be called the Unit Trust of India (Amendment) Act, 1985.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

Amend-  
ment of  
section 2.

2. In section 2 of the Unit Trust of India Act, 1963 (hereinafter referred to as the principal Act),—

52 of 1963.

(a) after clause (cb), the following clause shall be inserted, namely:—

‘(cc) “General Insurance Corporation” means the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972;’

57 of 1972.

(b) after clause (f), the following clause shall be inserted, namely:—

‘(fa) “public financial institution” means every financial institution, other than the Trust, specified by or under section 4A of the Companies Act, 1956;’

1 of 1956.

(c) for clause (i), the following clause shall be substituted, namely:—

‘(i) “security” means—

(a) any share, stock, bond, debenture or debenture stock, of any body corporate;

(b) any unit or sub-unit issued by, or other participation in a unit scheme framed by, any body or authority (not being the Trust) outside India or a mutual fund established outside India;

and includes—

(i) a government security as defined in section 2 of the Public Debt Act, 1944;

18 of 1944.

<sup>1</sup> 23-4-1986 *vide* Notification No. S.O. 202 (E), dated 23-4-1986 Gazette of India Extraordinary, 1986, Part II, Sec. 3 (ii)

46 of 1959.

(ii) a savings certificate to which the Government Savings Certificates Act, 1959 applies;

(iii) any security issued by any local authority in India, or by the Government of, or a local authority in, any such country outside India as may be approved by the Reserve Bank; and

46 of 1973.

(iv) any foreign security as defined in section 2 of the Foreign Exchange Regulation Act, 1973, as may be approved by the Reserve Bank;

3. In section 4 of the principal Act, in sub-section (5), for the words "it may refund the whole or any part of such capital", the words "the Board may, and if the Central Government being of like opinion so directs, the Board shall, refund the whole or as the case may be so much of such capital as is in excess of its requirements" shall be substituted.

Amend-  
ment of  
section 4.

4. After section 14 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
14A.

"14A. If the Chairman, whose appointment is whole-time, is of opinion that circumstances exist which render it necessary for him to take immediate action in respect of any matter which is within the competence of the Board and that the interests of the Trust may be prejudicially affected if such action is deferred until after the next meeting of the Board, then, notwithstanding anything contained in clause (c) of sub-section (2) of section 14, the Chairman may take such action in respect of that matter as he deems necessary and for such purpose, he may exercise all powers and do all acts and things which may be exercised or done by the Board, but in every such case, he shall, as soon as may be after the action is taken, make a written report to the Board containing a statement of the action taken and the circumstances under which it was taken."

Emer-  
gency  
powers  
of the  
whole-  
time  
Chair-  
man.

5. For section 19 of the principal Act, the following section shall be substituted, namely:—

Substitu-  
tion of  
new section  
for  
section 19.

'19. (1) Subject to the provisions of this Act and the regulations made under section 43, the Trust may carry on and transact any of the following kinds of business in India, namely:—

Business  
of Trust.

(1) selling and purchasing units;

(2) investing in, and acquiring, holding or disposing of, securities and exercising and enforcing, all powers and rights incidental thereto including protection or realisation of such investment and the taking over of the administration of any property offered as security for such investment;

(3) granting of loans and advances upon the security of any movable or immovable property or otherwise;

(4) accepting, collecting, discounting, rediscounting, purchasing, selling or negotiating or otherwise dealing with, any bills of exchange, hundies, promissory notes, coupons, drafts, bills of

lading, railway receipts, warehouse receipts, documents of title to goods, warrants, certificates, scrips and other mercantile instruments;

(5) purchasing, selling or issuing participation certificates in relation to any loan or advance granted by any public financial institution or scheduled bank or such other institution as may be prescribed;

(6) keeping money on deposit with companies or other bodies corporate, scheduled banks or such other institutions as may be prescribed;

(7) investing in any special paper or security floated by the Central Government or the Reserve Bank or by any such foreign government or foreign bank as may be prescribed;

(8) formulating in relation to any unit scheme,—

(a) savings and life insurance plan or plans under which a person may acquire an interest in units in association with or as the agent of, the Life Insurance Corporation or the Central Government, but not including the life insurance business;

(b) savings and insurance plan or plans under which a person may acquire an interest in units in association with or as the agent of, the General Insurance Corporation but not including the general insurance business; or

(c) any other plan or plans, under which a person may acquire an interest in units;

(9) acquiring immovable property or any interest therein, the development (including construction) and sale of such property and the rendering of financial and other assistance to any person for the acquisition of any immovable property or any interest therein and for the development (including construction) of such property;

(10) providing leasing and hire purchase finance to persons, companies, and other bodies corporate;

(11) providing merchant banking and investment advisory services;

(12) extending investment or fund or portfolio management services to persons resident outside India;

(13) opening of an account or the making of an agency arrangement with a bank incorporated outside India;

(14) buying or selling of, or entering into such other dealings in, foreign exchange, as may be necessary for the discharge of its functions;

(15) doing any other kind of business connected with mobilisation of savings or investments which the Central Government may authorise;

(16) generally, doing all such acts and things as may be incidental to or consequential upon the discharge of its functions under this Act.

*Explanation.*—For the purposes of clause (12) and clause (14), the expressions “persons resident outside India” and “foreign exchange” shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1973.

46 of 1973.

(2) Subject to the provisions of this Act and the regulations made under section 43, the Trust may carry on outside India also any of the kinds of business mentioned in clauses (1), (2), (4), (6), (7), sub-clause (c) of clause (8) and clauses (11), (12), (13) and (15) of sub-section (1).

6. After section 19A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 19B.

‘19B. (1) Where a company or other body corporate, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof, or in meeting its obligations or otherwise fails to comply with the terms of its agreement with the Trust, then, without prejudice to the provisions of section 69 of the Transfer of Property Act, 1882, any officer of the Trust generally or specially authorised by the Trust in this behalf may apply to the Court for one or more of the following reliefs, namely:—

Special provision for enforcement of claim by the Trust.

4 of 1882.

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Trust as security for the loan or advance, or

(b) for transferring the management of the company or other body corporate to the Trust, or

(c) for an *ad interim* injunction where there is apprehension of the machinery or the equipment being removed from the premises of the company or other body corporate without the permission of the Trust.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the company or other body corporate to the Trust, the grounds on which it is made and such other particulars as may be prescribed.

(3) When the application is for the reliefs mentioned in sub-clauses (a) and (c) of sub-section (1) the Court shall pass an *ad interim* order attaching the security or so much of the property of the company or other body corporate as would on being sold realise in its estimation an amount equivalent in value to the outstanding liability of the company or other body corporate to the Trust together with the costs of the proceedings taken under this section with or without an *ad interim* injunction restraining the company or other body corporate from transferring or removing its machinery or equipment.

(4) Where the application is for the relief mentioned in sub-clause (b) of sub-section (1) the Court shall grant an *ad interim* injunction restraining the company or other body corporate from transferring or removing its machinery or equipment and issue a notice calling upon the company or other body corporate to show cause on a date to be specified in the notice why the management of the company or other body corporate should not be transferred to the Trust.

(5) Before passing any order under sub-section (3) or sub-section (4), the Court may, if it thinks fit, examine the officer making the application.

(6) At the same time as it passes an order under sub-section (3), the Court shall issue to the company or other body corporate a notice accompanied by copies of the order, the application and the evidence, if any, recorded by it calling upon the company or other body corporate to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(7) If no cause is shown on or before the date specified in the notice under sub-sections (4) and (6), the Court shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the company or other body corporate to the Trust or confirm the injunction.

(8) If cause is shown the Court shall proceed to investigate the claim of the Trust and the provisions of the Code of Civil Procedure, 1908, shall as far as practicable apply to such proceedings.

5 of 1908.

(9) On an investigation made under sub-section (8) the Court shall pass an order—

(a) confirming the order of attachment and directing the sale of the attached property; or

(b) varying the order of attachment so as to release a portion of the property from attachment and directing the sale of the remainder of the attached property; or

(c) releasing the property from attachment, if it is satisfied that it is not necessary in the interests of the Trust; or

(d) confirming or vacating the injunction; or

(e) transferring the management of the company or other body corporate to the Trust or rejecting the claim made in this behalf.

Provided that when making any order under clause (c), the Court may make such further orders as it thinks necessary to protect the interests of the Trust, and may apportion the costs of the proceedings in such manner as it thinks fit:

Provided further that unless the Trust intimates to the Court that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to until the expiry of the period fixed under sub-section (12) within which an appeal may be preferred, or if an appeal is preferred, unless the Court empowered to hear appeals from the decisions of the said Court otherwise directs until the appeal is disposed of.

(10) An order of attachment or sale of property under this section shall be carried into effect as far as may be practicable in the manner provided in the Code of Civil Procedure, 1908, for the attachment or sale of property in execution of a decree, as if the Trust were the decree-holder.

5 of 1908.

(11) An order under this section transferring the management of a company or other body corporate to the Trust shall be carried into effect, as far as may be practicable, in the manner provided in the

5 of 1908.

Code of Civil Procedure, 1908, for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Trust were the decree-holder.

(12) Any party aggrieved by an order under sub-section (7) or sub-section (9) may, within thirty days from the date of the order, appeal to the Court empowered to hear appeals from the decisions of the Court which passed the order and the appellate court may after hearing the parties pass such orders as it thinks proper.

(13) Nothing in this section shall be construed, where proceedings for liquidation in respect of the company or other body corporate have commenced before an application is made under sub-section (1) as giving to the Trust any preference over the other creditors of the company or other body corporate not conferred on it by any other law.

(14) For the removal of doubts, it is hereby declared that any Court competent to grant an *ad interim* injunction under this section shall also have the power to appoint a receiver and to exercise all other powers incidental thereto.

(15) For the purpose of this section "Court" means the High Court within the local limits of whose jurisdiction,—

(i) the defendant or respondent, or where there is more than one defendant or respondent any one of them—

(1) has his registered office; or

(2) carries on the whole or part of his business,

at the time of the commencement of any legal proceedings, against him under this Act; or

(ii) the cause of action for such legal proceedings, wholly or in part, arises.

(16) The provisions of this section shall not apply to or in relation to any proceedings (whether by way of suits or appeals or other proceedings) under this Act pending before a District Judge or an Additional District Judge or a High Court at the commencement of the Unit Trust of India (Amendment) Act, 1985.

7. In section 20 of the principal Act, in sub-section (1), for the words "The Trust may borrow", the words "The Trust may borrow, whether in India or outside India," shall be substituted.

Amend-  
ment of  
section 20.

8. After section 20B of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
20C.

"20C. The rights and interests of the Trust (including any other rights incidental thereto) in relation to any loan or advance granted, or any amount recoverable, by it may be transferred by the Trust, either in whole or in part, by the execution or issue of any instrument, or by the transfer of any instrument by endorsement or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred, and the Trust may, notwithstanding such transfer, act as the trustee within the meaning of section 3 of the Indian Trusts Act, 1882, for the transferee."

Power to  
transfer  
rights.

Amend-  
ment of  
section  
21.

9. In section 21 of the principal Act,—

(a) in sub-section (1), for the words "unit schemes," the words "unit schemes, including one or more unit schemes for issuing units to persons resident outside India in such foreign currencies, as the Trust may deem fit." shall be substituted;

(b) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

"(a) the issue of units and the face value of each unit:

Provided that the face value of each unit shall, where such value is in Indian currency, be not less than ten rupees or more than one hundred rupees and where such value is in any foreign currency, be in multiples of ten;"

Amend-  
ment of  
section  
25A.

10. In section 25A of the principal Act, to sub-section (2), the following proviso shall be added, namely:—

"Provided that in relation to any year in which the Trust has declared a dividend of not less than ten per cent. on the unit capital the requirement as to distribution of not less than ninety per cent. of such income in such year as so reduced shall not apply."

Amend-  
ment of  
section 43.

11. In section 43 of the principal Act,—

(a) in sub-section (1), for the words "The Board may, with the previous approval of the Development Bank," the words "The Board, with the previous approval of the Development Bank, may, by notification in the Official Gazette," shall be substituted;

(b) in sub-section (2), for clause (i), the following clauses shall be substituted, namely:—

"(i) the institutions to which loans or advances may be granted or with which money may be kept in deposit;

(ia) special papers or securities floated by governments or banks in which investment may be made;

(ib) the particulars which may be included in an application under section 19B;"

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."