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**AN BILLE UM IONTAOBHAIS AONAD, 1970**  
**UNIT TRUSTS BILL, 1970**

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*Mar a ritheadh ag Seanad Éireann*  
*As passed by Seanad Éireann*

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**ARRANGEMENT OF SECTIONS**

**Section**

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**AN BILLE UM IONTAOBHAIS AONAD, 1970  
UNIT TRUSTS BILL, 1970**

**BILL**

*entitled*

AN ACT TO PROVIDE, IN THE PUBLIC INTEREST AND IN THE INTERESTS OF HOLDERS OF UNITS OF UNIT TRUST SCHEMES, FOR THE CONTROL AND REGULATION OF SUCH SCHEMES, TO PROHIBIT, IN CERTAIN CIRCUMSTANCES, THE ADVERTISING OF, AND THE PURCHASE OR SALE OF UNITS OF, SUCH SCHEMES, TO ENABLE THE MINISTER FOR INDUSTRY AND COMMERCE TO REQUIRE THAT SPECIFIED MINIMUM PROPORTIONS OF THE ASSETS OF CERTAIN SUCH SCHEMES SHALL BE PROPERTY IN THE STATE AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Interpretation.**

1.—(1) In this Act, unless the context otherwise requires—

1862, c. 89.

“company” means a company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, the Companies (Consolidation) Act, 1908, or the Companies Act, 1963, (but does not include a company registered under any of those enactments outside the State), or a company incorporated in the State by statute or charter;

1908, c. 69.

1963, No. 33.

“debentures” means any debentures, debenture stock or bonds of any body corporate, incorporated in or outside the State, whether constituting a charge on the assets of the body or not;

“holding company” has the same meaning as in the Companies Act, 1963;

“the Minister” means the Minister for Industry and Commerce;

“officer”, in relation to a body corporate, includes a director or secretary;

“the register” means the register established and maintained under section 2 of this Act;

“registered unit trust scheme” means a unit trust scheme that is registered in the register;

“the registrar” means the registrar of companies, within the meaning of the Companies Act, 1963;

“securities” means—

(a) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, or

(b) securities of the Government or the government of any country or territory outside the State, or

(c) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial and provident society, friendly society or building society.

and includes rights or interests (described whether as units or otherwise) which may be acquired under any unit trust scheme under which all property for the time being subject to any trust created in pursuance of the scheme consists of such securities as are mentioned in paragraph (a), (b) or (c) of this definition;

“shares” means shares in the share capital of a body corporate or stock of a body corporate;

“subsidiary company” has the same meaning as in the Companies Act, 1963;

10 “units”, in relation to a unit trust scheme, means any units (described whether as units or otherwise) into which are divided the beneficial interests in the assets subject to any trust created under the scheme;

15 “unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, but does not include any such arrangement participation in which is obtained by effecting a policy of assurance upon human life with the holder of a licence under the Insurance Act, 1936.

1936, No. 45.

20 (2) Any reference in this Act to a manager under a unit trust scheme or to a trustee under such a scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created in pursuance of the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.

25 2.—The registrar shall establish and maintain a register of unit trust schemes (in this Act referred to as the register).

Register of unit trust schemes.

30 3.—(1) Upon application to the registrar in accordance with this Act by the manager and trustee under a unit trust scheme, the registrar shall register the scheme in the register if, but only if—

Registration of unit trust schemes.

35 (a) the Minister is satisfied, after consultation with the Central Bank of Ireland and after consideration with that Bank of the relevant information in the application, that the competence in respect of matters of the kind with which they would be concerned in relation to a unit trust scheme and probity of the manager and trustee are such as to render them suitable to act as manager and trustee, respectively, under the scheme,

40 (b) the manager under the scheme is a body corporate that is incorporated in and has a place of business in the State,

45 (c) the trustee under the scheme is a body corporate that is incorporated in and has a place of business in the State, and—

50 (i) has a capital (in stock or shares) for the time being issued of not less than £500,000, of which an amount of not less than £250,000 has been paid up in cash, and the assets of the body are sufficient to meet its liabilities (including liabilities in respect of the repayment of its paid up capital), or

55 (ii) (I) is wholly owned by a body corporate (in this paragraph referred to as the parent body) in relation to which the conditions as to capital and assets specified in subparagraph (i) of this paragraph are complied with, and

(II) the discharge of the liabilities of which is guaranteed by the parent body,

60 (d) the Minister is satisfied that the scheme is such that the

effective control over the affairs of the manager and of the trustee under the scheme will be exercised independently of one another,

- (e) the Minister is satisfied that the scheme is such as to secure that every trust created in pursuance of the scheme is expressed in a deed which complies with the provisions of this Act and any orders for the time being in force under section 8 of this Act and applying in relation to the deed and that the deed contains a covenant providing that the scheme will be carried on in compliance with the provisions of this Act and any orders for the time being in force thereunder,
- (f) a copy of the deed aforesaid is deposited with the registrar, and
- (g) the name of the scheme is not, in the opinion of the Minister, undesirable.

(2) Whenever the registrar proposes to refuse to register a unit trust scheme in the register—

- (a) he shall notify the manager and the trustee under the scheme that he so proposes and of the reasons therefor and that the manager or the trustee may, within 30 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed refusal,
- (b) the manager or the trustee may make such representations in writing to the Minister within the time aforesaid,
- (c) the Minister shall before deciding to uphold or overrule the proposal of the registrar consider any representations duly made to him under this section in relation to the proposal, and he shall then direct the registrar (who shall comply with the direction) to register or refuse to register (as the case may be) the scheme in the register.

(3) Upon registration of a unit trust scheme in the register, the registrar shall certify under his hand that the scheme is registered in the register and the certificate shall be admissible in evidence in all legal proceedings and shall be conclusive evidence that the scheme is registered in the register.

(4) Where an application to register a unit trust scheme in the register is refused, the registrar shall forthwith notify the manager and the trustee under the scheme of the refusal and the manager or the trustee may, within 30 days after the date on which the notification is given to the manager or the trustee, as the case may be, appeal against the refusal to the High Court whose decision shall be final and unappealable.

(5) An application under this section shall be in writing and shall contain such information in relation to such matters and be accompanied by such documents as may be specified from time to time by the Minister.

Cancellation of registration of unit trust schemes.

4.—(1) Subject to the provisions of this section, if, in relation to a registered unit trust scheme—

- (a) there is a contravention of a provision of this Act or of an order thereunder,
- (b) the conditions specified in paragraphs (b), (c) and (f) of section 3 (1) of this Act are no longer fulfilled, or
- (c) the Minister is no longer satisfied in respect of the matters specified in paragraphs (a), (d), (e) and (g) of the said section 3 (1),

the Minister may direct the registrar to cancel the registration of the scheme in the register upon a day specified in the direction, and the registrar shall comply with the direction.

(2) Whenever the Minister proposes to give a direction under this section in relation to a unit trust scheme—

5 (a) he shall notify the manager and the trustee under the scheme of his proposal and of the reasons therefor and that the manager or the trustee may, within 30 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed direction,

(b) the manager and the trustee may make such representations in writing to the Minister within the time aforesaid,

10 (c) the Minister shall, before deciding to give or refrain from giving the direction, consider any representations duly made to him under this section in relation to the proposed direction, and if he decides to give the direction, shall give it within 30 days after the date of the making of the representations to him, or if none are made, within 15 30 days after the last day for making them.

(3) The Minister shall not give a direction under this section in relation to a unit trust scheme unless he is satisfied that it is necessary to do so in the public interest and in the interests of holders of units created under the scheme.

20 (4) (a) Where a direction in relation to a unit trust scheme is given under this section, the registrar shall notify the manager and the trustee under the scheme of the direction not less than 60 days before the day on which it is intended to take effect and the manager or trustee may, within 30 days after the date on which the notification is given to the 25 manager or the trustee, as the case may be, appeal against the direction to the High Court whose decision shall be final and unappealable.

30 (b) The High Court may, if it thinks it proper to do so, provide by order that a direction under this section in relation to which an appeal under this subsection relates shall not have effect during the period, or such part of it as it may specify in the order, prior to the determination of the appeal.

35 (5) (a) Whenever the Minister gives a notification under subsection (2) of this section in relation to a direction under this section, he may, at the same time or—

(i) in case he subsequently decides to refrain from giving the direction, at any time before such decision,

40 (ii) in any other case, at any time before the direction takes effect,

45 require the manager under the unit trust scheme to which the notification relates to refrain from selling units of the scheme, or publishing or procuring the publication of advertisements in relation to the scheme, during the period prior to his decision or before the direction takes effect, as may be appropriate, and the manager shall, subject to the provisions of this section, comply with the requisition.

50 (b) The manager under a unit trust scheme to whom a requisition under this subsection relates may, within 20 days after the date on which the requisition was given to him, appeal against the requisition to the High Court whose decision shall be final and unappealable.

55 (c) The High Court may, if it thinks it proper to do so, provide by order that a requisition under this subsection shall not have effect during the period, or such part of it as it may specify in the order, prior to the determination of the appeal against the requisition under paragraph (b) of this subsection or of an appeal against a direction under this

Appointment of  
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section in relation to the unit trust scheme to which the requisition relates.

(d) Whenever a direction under this section in relation to a unit trust scheme ceases to have effect, a requisition under this subsection in relation to that scheme shall also cease to have effect.

(e) A manager under a unit trust scheme who contravenes or fails to comply with a requisition under this subsection or section 5 (5) of this Act shall be guilty of an offence.

5.—(1) Subject to the provisions of this section, if the Minister—

(a) is satisfied that the circumstances in relation to a registered unit trust scheme are such that it would be proper to give a direction under section 4 of this Act in relation to the scheme, or

(b) has given a direction which is in force under that section in relation to the scheme, but the cancellation of the registration of the scheme in pursuance of the direction has not taken effect,

he may appoint—

(i) a person in relation to whom the Minister is satisfied in respect of the matters specified in section 3 (1) of this Act to be manager under the scheme in place of the existing manager thereunder or to be trustee under the scheme in place of the existing trustee thereunder, or

(ii) two persons in relation to each of whom the Minister is satisfied as aforesaid to be manager and trustee, respectively, under the scheme in place of the existing manager and trustee, respectively, thereunder.

(2) Whenever the Minister proposes to appoint a person under this section—

(a) he shall notify the manager and the trustee under the unit trust scheme to which his proposal relates that he so proposes and of his reasons therefor and that the manager or the trustee may, within 30 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed appointment,

(b) the manager or the trustee may make such representations in writing to the Minister within the time aforesaid,

(c) the Minister shall, before deciding to make or refrain from making the appointment, consider any representations duly made to him under this section in relation to the proposed appointment, and if he decides to make the appointment, shall make it within 30 days after the date of the making of the representations to him, or if none are made, within 30 days after the last day for making them.

(3) The Minister shall not make an appointment under this section in relation to a unit trust scheme unless he is satisfied that it is necessary to do so in the public interest and in the interests of holders of units created under the scheme.

(4) (a) Where an appointment (in relation to a unit trust scheme) is made under this section, the Minister shall notify the manager and the trustee under the scheme of the appointment not less than 60 days before the day on which it is

intended to take effect and the manager or the trustee may, within 30 days after the date on which the notification is given to the manager or the trustee, as the case may be, appeal against the appointment to the High Court whose decision shall be final and unappealable.

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2 (b) The High Court may, if it thinks it proper to do so, provide by order that an appointment under this section in relation to which an appeal under this subsection relates shall not have effect during the period, or such part of it as it may specify in the order, prior to the determination of the appeal.

10 (5) (a) Whenever the Minister gives a notification under subsection (2) of this section in relation to an appointment under this section, he may, at the same time or

15 (i) in case he subsequently decides to refrain from making the appointment, at any time before such decision, and

(ii) in any other case, at any time before the appointment takes effect,

20 require the manager under the unit trust scheme to which the notification relates to refrain from selling units of the scheme, or publishing or procuring the publication of advertisements in relation to the scheme, during the period prior to his decision or before the appointment takes effect, as the case may be, and the manager shall, subject to the provisions of this section, comply with the requisition.

25 (b) The manager under a unit trust scheme to whom a requisition under this subsection relates may, within 20 days after the date on which the requisition was given to him, appeal against the requisition to the High Court whose decision shall be final and unappealable.

30 (c) The High Court may, if it thinks it proper to do so, provide by order that a requisition under this section shall not have effect during the period, or such part of it, as it may specify in the order, prior to the determination of the appeal against the requisition under paragraph (b) of this subsection, or of an appeal against an appointment under this section in relation to the unit trust scheme to which the requisition relates.

35 (d) Whenever an appointment under this section in relation to a unit trust scheme ceases to have effect, a requisition under this subsection in relation to that scheme shall also cease to have effect.

40 (6) Upon the appointment under this section of a person to be a manager or trustee under a unit trust scheme, the person in whose place he is appointed to be manager or trustee, as the case may be, shall cease to hold office as manager or trustee, as the case may be, under the scheme and the direction (if any) under section 4 of this Act in relation to the scheme shall cease to have effect.

45 6.—(1) The manager or trustee (if any) under a unit trust scheme that is not a registered unit trust scheme or any other person concerned with the management or supervision of the scheme shall not purchase or sell units of the scheme.

50 (2) The prohibition contained in subsection (1) of this section does not apply to the purchase, from a holder thereof, of units of a unit trust scheme the registration of which under this Act stands cancelled.

Prohibition of certain purchases and sales of units of unregistered unit trust schemes.

(3) A person who contravenes this section shall be guilty of an offence.

(4) In *subsection (1)* of this section and in *section 7* of this Act "unit trust scheme" includes any arrangements (other than a company, a building society, a friendly society or an industrial and provident society) made for the purpose, or having the effect, solely or mainly, of providing facilities for the participation by the public, as beneficiaries, otherwise than under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, but does not include any such arrangement as aforesaid which is administered by the holder of a licence under the Insurance Act, 1936, and participation in which is obtained by effecting a policy of assurance upon human life, and "manager" and "units" shall be construed accordingly.

Prohibition of certain advertising in relation to unregistered unit trust schemes.

7.—(1) There shall not be published advertisements in relation to or referring to a unit trust scheme that is not a registered unit trust scheme.

(2) (a) Whenever it is shown to the satisfaction of the Minister, in the case of a newspaper or magazine printed outside the State, that compliance with this section would necessitate the production for circulation in the State of a special edition of the newspaper or magazine and that the cost of such production would impose a burden on the owner of the newspaper or magazine that would be unreasonably heavy in all the circumstances, the Minister may exempt from the application of this section advertisements published in the newspaper or magazine.

(b) An exemption under this subsection shall be subject to such conditions, if any, as the Minister may impose and specify in the exemption and its duration shall be either without limit as to time or for such period as the Minister may specify in the exemption.

(c) The Minister may revoke an exemption under this subsection, impose conditions to which such an exemption previously granted shall be subject, amend any conditions specified in such an exemption, specify, in relation to such an exemption whose duration is without limit as to time, a time for its expiration or vary the period of duration of such an exemption.

(d) Whenever the Minister exercises a power under this subsection, notice of such exercise and its nature and the name of the newspaper or magazine to which it relates shall be published in *Iris Oifigiúil*.

(3) Where an advertisement is published in contravention of *subsection (1)* of this section, the person who publishes the advertisement and any person who procures such publishing shall each be guilty of an offence.

Orders in relation to unit trust schemes.

8.—(1) The Minister may by order make such provision as he reasonably considers necessary for the protection of the interests of persons participating as beneficiaries under any trusts created under registered unit trust schemes.

(2) Without prejudice to the generality of *subsection (1)* of this section, an order under this section—

(a) may provide that the prices at which the manager under a registered unit trust scheme buys and sells units of the scheme and the yield from the units shall be respectively calculated in the manner specified in the order,

(b) may provide that accounts relating to the trusts created under the scheme shall be kept in such form as may be specified in the order and may specify, for the purposes of *section 14 (1)* of this Act, such of those accounts as the Minister thinks appropriate,

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(c) may prohibit or regulate (in such manner as may be specified in the order) the publishing by or on behalf of the manager under the scheme of advertisements or documents containing any statement with respect to the sale price of units of the scheme, or the payments or other benefits received or likely to be received by holders of such units, or containing any invitation to buy such units unless the advertisement or document in question also contains a statement of the yield from the units and statements giving such information in relation to such other matters (if any) as may be specified in the order,

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(d) may provide that before any advertisement or document containing any statement with respect to the sale price of units of the scheme or the yield therefrom, or containing any invitation to buy or offer to buy units, is published by or on behalf of the manager under the scheme, the trustee under the scheme shall be given a reasonable opportunity of considering the terms of the advertisement or document, and that the advertisement or document shall not be so published if, within a reasonable time after the advertisement or document first comes under his consideration, he notifies his disapproval of the terms thereof in writing to the manager,

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(e) may provide for the winding-up of the scheme if the registration of the scheme in the register is cancelled,

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(f) may specify matters in relation to which, pursuant to *section 10* of this Act, information shall be furnished in a document of the kind referred to in that section issued by or on behalf of the manager under the scheme in relation to the scheme and may, if the Minister thinks it necessary to do so, specify the scope and nature of the information which shall be so furnished,

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(g) may provide that the deed in which are expressed the trusts created in pursuance of the scheme shall make provision, to the satisfaction of the Minister, in relation to such of the requirements of the order as may be specified in the order,

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(h) may specify requirements in relation to the charges imposed for the services of the manager under the scheme (including, if the Minister so thinks fit, a requirement that the charges shall not exceed the amount or amounts obtained when calculated in such manner or by reference to such matters as may be specified in the order),

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(i) may specify (in addition to the matters specified in *section 15* of this Act) matters in relation to which particulars shall be furnished to the Minister under the said *section 15* and the form in which any particulars furnished under the section shall be so furnished.

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(3) (a) The Minister may by order provide in relation to all registered unit trust schemes or a specified class or specified classes thereof (denoted by reference to such matters as the Minister considers appropriate) or in relation to all such schemes other than a specified class or specified classes thereof (denoted as aforesaid) that not less than a proportion specified in the order of any property for the time being subject to any trust created under a scheme to which the order applies shall be Irish securities or other property in the State.

- (b) A proportion shall be calculated, for the purposes of this subsection and orders thereunder, by reference to the value, estimated by the Minister, of the property concerned.
- (c) Where securities are held under any trust created under a registered unit trust scheme—
- (i) in case any of the securities are shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, of a body corporate (other than an arrangement to which this paragraph applies) carrying on a business the whole of which is, in the opinion of the Minister, carried on in the State, the whole of those securities, 10
  - (ii) in case any of the securities are shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, of a body corporate (other than an arrangement to which this paragraph applies) carrying on a business a proportion only of which is, in the opinion of the Minister, carried on in the State, such proportion of those securities as, in the opinion of the Minister, is equal to the proportion which, in the opinion of the Minister, is carried on in the State of the business of the body corporate, 15 20
  - (iii) in case any of the securities are rights or interests (described whether as units or otherwise) acquired under an arrangement to which this paragraph applies, such proportion of the rights or interests as is equal to the proportion of the property for the time being the subject of the arrangement that— 25 30
    - (I) is, or if the arrangement is not a registered unit trust scheme, would be, but for that fact, deemed, for the purposes of this section, to be, Irish securities, or 30
    - (II) is other property in the State; and 35
  - (iv) in case any of the securities are securities other than— 35
    - (I) those specified in *subparagraph (iii)* of this paragraph, or
    - (II) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures, of a body corporate carrying on a business, 40
 

such of them as are issued in the State,

shall be deemed, for the purposes of this section, to be Irish securities. 45
- (d) In *paragraph (c)* of this subsection “arrangement to which this paragraph applies” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever. 50
- (e) Where a body corporate holds shares or debentures in another body corporate, the business of the first-mentioned body corporate shall be deemed, for the purposes of this subsection, to include such proportion of the business of the other body corporate as corresponds with the proportion of the shares or debentures of that other body corporate held by the first-mentioned body corporate. 55
- (4) The Minister may by order revoke or amend an order under this section (including an order under this subsection). 60

(5) Where, in relation to a unit trust scheme, there is a contravention of or failure to comply with a provision of an order under this section (other than a provision relating to a matter specified in *paragraph (f) or (i) of subsection (2) of this section*), the manager under the scheme shall be guilty of an offence.

(6) In a prosecution for an offence consisting of a contravention, in relation to a unit trust scheme, of an order under *subsection (3) of this section*, it shall be a defence to prove that the property subject to the trusts of the scheme was in compliance with the provisions of the order within a period of time after the date of the offence that the court in which the prosecution is brought considers reasonable in all the circumstances.

9.—The assets which at any particular time are subject to any trusts created under a registered unit trust scheme shall be of a value that is not less than the value of the units of the scheme for the time being standing issued thereunder calculated by reference to the price at which the manager under the scheme buys the units at that time.

Value of underlying assets of unit trust schemes.

10.—(1) The manager under a registered unit trust scheme shall prepare or cause to be prepared a document containing such information in relation to the scheme as the manager could reasonably be required to furnish and after approval of the document by the trustee under the scheme, a copy thereof shall be sent to the registrar and to every person who offers to buy units of the scheme and the copy sent to the registrar shall be signed by a director or the secretary of the manager under the scheme and by a director or the secretary of the trustee under the scheme.

Particulars in relation to unit trust schemes for prospective purchasers of units thereunder.

(2) There shall be included in a document of the kind referred to in *subsection (1) of this section* information in relation to such matters (if any) as may stand specified for the time being under *paragraph (f) of section 8 (2) of this Act* and the document shall comply with the provisions (if any) standing specified under that paragraph in relation to the scope and nature of the information.

(3) (a) Subject to the provisions of this subsection, the manager under a unit trust scheme shall be liable to pay compensation to a person who buys units of the scheme on the faith of a document of the kind referred to in *subsection (1) of this section* for the loss or damage he may have suffered by reason of any untrue statement included therein.

Prohibition of certain transactions and making of certain profits by managers under unit trust schemes.

(b) A manager under a unit trust scheme shall not be liable under this subsection if he proves that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert (which expression has the same meaning in this subsection as in section 46 of the Companies Act, 1963) or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the purchase of the units concerned believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the document believe that the person making the statement was competent to make it and that person had given his written consent to the issue of the document

Liability of managers under unit trust schemes.

with the statement included in the form and context in which it is included and had not withdrawn that consent before the purchase aforesaid; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(c) Where— 10

(i) a statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert is contained in a document of the kind referred to in *subsection (1)* of this section, and 15

(ii) the document is issued without the consent of the expert or the expert has withdrawn his consent to such issue before it is issued, 20

the manager under the unit trust scheme concerned shall be liable to indemnify the expert against all damages, costs and expenses to which he may be made liable by reason of the inclusion in the document of a statement purporting to have been made by him as an expert or in defending himself against any action or legal proceeding brought against him in respect thereof. 25

Obligation on managers under unit trust schemes to purchase units.

**11.**—Whenever the holder of units of a registered unit trust scheme or (subject to the provisions of any order under *section 8 (2) (e)* of this Act) of a unit trust scheme the registration of which under this Act stands cancelled so requests, the manager under the scheme shall buy from the holder such number of those units as the holder may specify at the price for the time being at which the manager buys units of the scheme. 30

Prohibition of certain transactions and making of certain profits by managers under unit trust schemes.

**12.**—Neither a body corporate that is a manager under a unit trust scheme or is a subsidiary or a holding company of the manager or is a subsidiary of the holding company of the manager nor a director or person engaged in the management of such a body corporate shall carry out transactions for itself or himself, or make a profit for itself or himself from transactions, in any assets held under the scheme. 35

Liability of trustees under unit trust schemes.

**13.**—(1) Any provision in the deed in which are expressed the trusts created in pursuance of a registered unit trust scheme shall be void in so far as it would have the effect of exempting the trustee under the scheme from or indemnifying him against liability for breach of trust where, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions, he fails to show the degree of care and diligence required of him as trustee. 40

(2) *Subsection (1)* of this section shall not invalidate— 45

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or 50

(b) any provision enabling such a release to be given— 50

(i) on the agreement thereto of a majority of not less than 75 per cent. in value of the holders of the units in issue of the unit trust scheme concerned present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and 55

- (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) of this section shall not operate—
  - (a) to invalidate any provision in force on the operative date so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection (4) of this section remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3) of this section, the benefit of that provision may be given either—

- (a) to all trustees of the deed, present and future; or
- (b) to any named trustee or proposed trustees thereof;

by a resolution passed by a majority of not less than 75 per cent. in value of the holders of the units in issue of the unit trust scheme concerned present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the High Court.

14.—(1) The accounts of a registered unit trust scheme shall be audited annually by a person appointed as auditor of the scheme by the manager under the scheme with the consent of the trustee under the scheme and a copy of the auditor's report on the accounts and of such of the accounts certified by the auditor as may stand specified for the time being under section 8 (2) (b) of this Act shall be sent by the manager to the Minister, the registrar and each holder of units created in pursuance of the scheme within such time after the end of the period to which the accounts relate as the Minister may from time to time specify.

Audit of accounts of unit trust schemes.

(2) A person shall not be qualified for appointment as auditor of a registered unit trust scheme unless—

- (a) he is a member of a body of accountants for the time being recognised for the purposes of section 162 (1) (a) of the Companies Act, 1963, by the Minister; or
- (b) he is for the time being authorised by the Minister under section 162 of that Act to be appointed auditor of a company.

(3) If an auditor is convicted of a criminal offence arising out of or connected with the performance of his duties or his conduct as an auditor, he shall not be qualified for appointment as auditor of a unit trust scheme without the permission of the High Court.

(4) None of the following persons shall be qualified for appointment as auditor of a registered unit trust scheme—

- (a) an officer or servant of the manager or the trustee under the scheme;
- (b) a partner of or in the employment of an officer or servant of the manager or the trustee under the scheme;
- (c) a body corporate.

References in this subsection to an officer or servant shall be construed as not including references to an auditor.

(5) A person shall also not be qualified for appointment as auditor of a registered unit trust scheme if he is, by virtue of section 162 (3) of the Companies Act, 1963, disqualified for appointment as auditor of a body corporate which is a subsidiary or holding company of the manager or the trustee under the scheme or a subsidiary of that person's holding company or would be so disqualified if the body corporate were a company.

(6) Any person who acts as auditor of a registered unit trust scheme when disqualified under this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £100.

(7) An auditor of a registered unit trust scheme shall have a right of access at all reasonable times to the books and accounts and vouchers of the scheme, and shall be entitled to require from the officers or past officers of the manager or the trustee under the scheme such information and explanations as he thinks necessary for the performance of the duties of the auditor.

(8) An auditor of a registered unit trust scheme shall be entitled to attend any general meeting of the manager or the trustee under the scheme at which the business of the scheme is to be or may be discussed and to receive all notices of and other communications relating to any general meeting which any member of the body corporate that is the manager or the trustee is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting relating to the scheme which concerns him as auditor.

Information in relation to unit trust schemes.

15.—(1) The manager under a registered unit trust scheme shall, within such time after the end of each quarter of a financial year, or of such other period of a financial year, of the scheme as the Minister may from time to time specify in relation to all or any one or more of the particulars referred to in this subsection, furnish to the Minister and the registrar and, in any case where the Minister so specifies, to the holders of units of the scheme—

(a) particulars of the total number of such units and the total number of them that have been bought from the holders thereof and are held for the time being by the manager under the scheme and particulars of any change in either total during the relevant quarter or period, as the case may be,

(b) particulars of the property for the time being subject to any trust created in pursuance of the scheme and of the value of the property, and of any purchase or sale of such property during the relevant quarter or period, as the case may be,

(c) particulars of any profits or losses made or incurred by the manager through dealing in, or holding, such units and of any such profits or losses so made or incurred by the manager during the relevant quarter or period, as the case may be,

(d) particulars of—

(i) any change of the name of the scheme,

(ii) any change of or addition to the trusts of the scheme or the deed in which they are expressed,

(iii) any change of or affecting the manager or the trustee under the scheme,

during the relevant quarter or period, as the case may be, and

(e) particulars of or in relation to such other matters connected with the business of the scheme during the relevant quarter or period, as the case may be, as may stand specified for the time being under *section 8 (2) (i)* of this Act,

5 and, if in relation to any such particulars, a form stands specified for the time being under the said *section 8 (2) (i)*, the particulars shall be furnished in that form.

(2) The Minister shall, not less than once in each year, cause such of the particulars furnished to him under this section of every unit trust scheme which is for the time being registered under this Act as he thinks fit to be laid before each House of the Oireachtas.

15 16.—(1) The Minister may, on his own initiative or on the application in writing of the holders of not less than 10 per cent. in value of the units in issue of a unit trust scheme (being an application in relation to which the Minister is satisfied that it is not merely vexatious), appoint one or more competent inspectors to investigate and report on the administration of a registered unit trust scheme or a unit trust scheme the registration of which under this Act stands cancelled if it appears to the Minister—

Investigation  
of affairs of  
unit trust schemes.

20 (a) that it is in the interests of holders of units created under the scheme to do so, and

(b) that the matter is one of public concern.

(2) Sections 167, 168 and 170 (other than subsection (3)) of the Companies Act, 1963, shall apply in relation to an inspector appointed under this section to carry out an investigation as they apply in relation to inspectors appointed under section 165 of that Act, but with the following, and any other necessary, modifications:

30 (a) the references therein to the company shall be construed as references to the unit trust scheme to which the investigation relates and the references therein to the affairs of the company shall be construed as references to the administration of the scheme, and

35 (b) the references therein to any other body corporate shall be construed as including references to the manager and the trustee under the said unit trust scheme, and

(c) the reference in the said section 167 to appointment under section 165 of the Companies Act, 1963, shall be construed as a reference to appointment pursuant to an application under *subsection (1)* of this section, and

40 (d) the references in the said section 170 to any report made under section 169 of the Companies Act, 1963, shall be construed as references to any report made under *subsection (3)* of this section.

45 (3) (a) (i) An inspector appointed under this section may, and if so directed by the Minister shall, make interim reports to the Minister and, on the conclusion of the investigation for which he was appointed, shall make a final report to the Minister.

50 (ii) Any such report shall be written or printed as the Minister directs.

(b) The Minister may, if he so thinks fit, forward a copy of any such report to the registered offices of the manager and the trustee under the unit trust scheme to which the report relates and to any person whom he considers to have a *bona fide* interest in the matter.

- (c) The Minister may cause any such report to be printed and published.
  - (d) The Minister may lay any such report before each House of the Oireachtas and such publication shall be privileged.
  - (e) A copy of any such report shall be admissible in any legal proceedings as evidence of the opinion of the inspector who made the report in relation to any matter contained in the report.
- (4) Section 171 of the Companies Act, 1963, shall apply in relation to the expenses of and incidental to an investigation under this section (including any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of section 170 (4), as applied by this section, of the Companies Act, 1963 (including expenses incurred by virtue of section 170 (5), as so applied, of that Act)) as it applies in relation to the expenses (as extended by subsection (3) of the said section 171) of and incidental to an investigation referred to in the said section 171, but with the substitution in subsection (1) (c) (ii) of the said section 171 for the reference to appointment under section 165 of the Companies Act, 1963, of a reference to appointment pursuant to an application under subsection (1) of this section and with any other necessary modifications.
- (5) Nothing in this section or in the provisions of the Companies Act, 1963, as applied by this section, shall require disclosure to the Minister or to an inspector appointed by the Minister—

- (a) by a solicitor of any privileged communication made to him in that capacity, or
- (b) by bankers as such of any information as to the affairs of any of their customers other than the unit trust scheme whose administration is being investigated or a body corporate whose affairs are being investigated by virtue of section 167, as applied by this section, of the Companies Act, 1963.

**17.—(1) Any person may—**

- (a) inspect the documents kept by the registrar under this Act, on payment of such fee as may be fixed by the Minister,
  - (b) require a certificate of registration of a unit trust scheme, or a copy of or extract from any document or any part of any document certified by the registrar, on payment for the certificate or the certified copy or extract of such fees as the Minister may fix.
- (2) No process for compelling the production of any document kept by the registrar under this Act shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.
- (3) A copy of, or extract from, any document kept and registered under this Act at the office of the registrar and certified to be a true copy under the hand of the registrar or other officer authorised by the Minister (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

Inspection, production and evidence of documents kept by registrar.

Fees.

**18.—(1) There shall be paid to the registrar by the manager under the unit trust scheme concerned a fee of ten pounds for registering a unit trust scheme in the register and a fee of one pound in respect of each document sent or furnished to the registrar pursuant to this Act.**

(2) All fees paid to the registrar in pursuance of this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(3) The Minister may by regulations made with the consent of the Minister for Finance vary the amount of a fee specified in subsection (1) of this section, and that subsection shall have effect in accordance with any regulations under this subsection for the time being in force.

19.—(1) Where in relation to a unit trust scheme, there is a contravention of section 9 or 10 of this Act, the manager and the trustee under the scheme shall each be guilty of an offence. Offences and punishments.

(2) Where the manager under a unit trust scheme contravenes section 11, 12 or 15 of this Act, he shall be guilty of an offence.

(3) A person guilty of an offence under this Act (other than section 14 (6)) shall be liable—

15 (a) on summary conviction, to a fine not exceeding one hundred pounds, or

(b) on conviction on indictment, to a fine not exceeding five thousand pounds,

20 and if the contravention or failure in respect of which he is convicted is continued after the conviction, he shall be guilty of a further offence and shall be liable on conviction on indictment to a fine not exceeding two hundred and fifty pounds for each day on which the contravention is so continued.

20.—Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any wilful neglect on the part of any person being a director, manager, secretary, member of any committee of management or other controlling authority of such body or official of such body, that person shall also be guilty of the offence. Offences in relation to certain bodies.

30 21.—Every order and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and, if a resolution annulling the order or regulation is passed by either such House within the next twenty-one days on which that House has sat after the order or regulation has been laid before it, the order or regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder. Laying of orders and regulations before Houses of Oireachtas.

22.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses of Minister.

40 23.—(1) This Act may be cited as the Unit Trusts Act, 1971. Short title and commencement.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

**BILLE**

*dá ngairtear*

Acht do dhéanamh socrú, ar leas an phobail agus ar mhaithe le sealbhóirí ar aonaid de chuid scéimeanna iontaobhais aonad, chun na scéimeanna sin a rialú agus a rialáil, dá thoirmeasc, in imthosca áirithe, na scéimeanna sin a fhógairt agus aonaid dá gcuid a cheannach nó a dhíol, dá chumasú don Aire Tionscail agus Tráchtála a cheangal gur maoin sa Stát a bheidh i gcionúireachtaí fosta sonraíthe de shócmhainní scéimeanna airithe díobh sin agus do dhéanamh socrú i dtaobh nithe eile a bhaineann leis na nithe réamhráite.

*An Seanadóir Tomás Ó Maoláin a thug isteach*

*Rite ag Seanad Éireann, 5 Bealtaine, 1971*

**BAILE ATHA CLIATH:**  
**ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR.**

Le ceannach díreach ón Oifig Díolta Foilseachán Rialtais An Stuara, Árd Oifig an Phoist, Baile Átha Cliath, nó trí aon díoltóir leabhar.

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**BILL**

*entitled*

An Act to provide, in the public interest and in the interests of holders of units of unit trust schemes, for the control and regulation of such schemes, to prohibit, in certain circumstances, the advertising of, and the purchase or sale of units of, such schemes, to enable the Minister for Industry and Commerce to require that specified minimum proportions of the assets of certain such schemes shall be property in the State and to provide for other matters connected with the matters aforesaid.

*Introduced by Senator Tomás Ó Maoláin*

*Passed by Seanad Éireann, 5th May, 1971*

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