



AN BILLE UM CHISTÍ INFHEISTÍOCHTA AINMNITHE, 1985
DESIGNATED INVESTMENT FUNDS BILL, 1985

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
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ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
Companies Acts, 1963 to 1982	
Companies Acts, 1963 to 1983	
Companies (Amendment) Act, 1983	1983, No. 13
Unit Trusts Act, 1972	1972, No. 17
Finance Act, 1984	1984, No. 9



AN BILLE UM CHISTÍ INFHEISTÍOCHTA AINMNITHE, 1985
DESIGNATED INVESTMENT FUNDS BILL, 1985

BILL

entitled

AN ACT TO MAKE FURTHER PROVISION REGARDING 5
FUNDS DESIGNATED FOR THE PURPOSES OF CHAP-
TER III OF PART I OF THE FINANCE ACT, 1984, BY THE
REVENUE COMMISSIONERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.	1.—(1) In this Act—	10
	“the Act of 1984” means the Finance Act, 1984;	
	“designated investment fund” means a fund which for the time being stands designated for the purposes of Chapter III of Part I of the Act of 1984 by the Revenue Commissioners;	
	“eligible shares” means eligible shares within the meaning of Chapter III of Part I of the Act of 1984;	15
	“the Minister” means the Minister for Industry, Trade, Commerce and Tourism;	
	“participant” means a person who is a participant within the meaning of section 27 (8) of the Act of 1984;	20
	“prospectus” means any prospectus, notice, circular, advertisement or other invitation inviting the public to subscribe to a designated investment fund;	
	“the relief” means relief under section 12 of the Act of 1984.	
	(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as extended, adapted or otherwise amended by any subsequent enactment.	25

Designated investment fund not unit trust.

2.—It is hereby declared that a designated investment fund is not a unit trust scheme within the meaning of the Unit Trusts Act, 1972,

and accordingly none of the provisions of that Act shall apply as regards any such fund.

3.—A person shall not be entitled to act as a trustee under the scheme by which a designated investment fund is established unless the person is a body corporate incorporated in, and has a place of business in, the State, and—

Requirements regarding trustees under scheme establishing designated investment fund.

(a) has assets that are sufficient to meet its liabilities (including liabilities in respect of the repayment of its paid up capital) and 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, or

(b) (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 paragraph (a) of this section are complied with, and

(ii) the discharge of the liabilities of which is guaranteed by the parent body.

4.—(1) There shall be prepared in respect of each designated investment fund a prospectus and the prospectus shall include particulars of the manner in which the fund will be applied and specify the terms and conditions on or subject to which subscriptions to the fund will be accepted from participants.

Prospectus.

(2) Without prejudice to the generality of subsection (1) of this section, a prospectus shall—

(a) state that subscriptions to the designated investment fund to which the prospectus relates will, and will only, be accepted on or subject to terms and conditions specified in the prospectus pursuant to the requirement of subsection (1) of this section, and

(b) be dated.

5.—(1) Neither a person who, under a scheme establishing a designated investment fund, is either a trustee or the manager of the fund, or is acting as auditor or solicitor to the fund, nor any other person shall issue, publish or circulate or cause to be published or printed—

Issuing, publishing or circulation of certain documents relating to designated investment funds restricted.

(a) a prospectus relating to the fund, or

(b) a notice, brochure, circular or other document advertising, promoting or tending to promote—

(i) such a prospectus, or

(ii) the fund,

unless, at the time it is issued, published or circulated or caused to be published or printed, the terms of the prospectus, notice, brochure, circular or other document stand approved of by the Minister under this section.

(2) Where a prospectus, notice, brochure, circular or other document has been approved of by the Minister, a person shall not amend

or otherwise alter its terms without the prior approval of the Minister of the amendment or other alteration.

(3) Subject to *subsection (4)* of this section, the Minister may, on an application for an approval under this section, allow the application, refuse the application or approve of the prospectus, notice, brochure, circular or other document to which the application relates subject to such modifications as may be specified in the approval. 5

(4) Without prejudice to the generality of *subsection (3)* of this section, the Minister shall not give an approval under this section as regards a prospectus or an alteration to or other amendment of a prospectus unless he is satisfied that— 10

(a) the requirements of *section 4 (2)* of this Act are satisfied as regards the prospectus, or, in case such an approval is sought as regards such an amendment or alteration, that the proposed amendment or alteration, if effected, would not cause the said requirements to cease to be so satisfied as regards the prospectus concerned, and 15

(b) the prospectus contains sufficient particulars of any remuneration, fees or other charges which are to be received, levied or otherwise made, either in respect of the management of, or otherwise in relation to, the relevant designated fund by the person managing the fund, and 20

(c) the prospectus contains a statement that no charges apart from the charges referred to in *paragraph (b)* of this subsection will be levied or otherwise made as regards the establishment, operation or management of such fund, and 25

(d) the prospectus contains a statement giving the following particulars as regards the person having the management of such fund— 30

(i) the name of the person together with sufficient information concerning his relevant experience, and

(ii) in case such person is a body corporate, the names of the directors or the persons comprising the managing authority of the body and also the names of any individual person or persons who, on the establishment of such fund, such body proposes to assign or to appoint to determine how the moneys forming such fund shall be invested or otherwise dealt with, 35

and 40

(e) the prospectus contains the name of the trustee, the auditors and any solicitor or stockbroker and any other adviser acting or to act on a fee basis, appointed or proposed to be appointed in relation to such fund and the name of the bank (or other financial institution) in which it is proposed to keep such fund, and 45

(f) the prospectus contains each of the following statements:

(i) a statement which the Minister is satisfied is appropriate regarding the risks involved in investing in an unquoted company and the limitations on the marketability of its shares, stocks or debentures (for example by reason of such shares, stocks or debentures 50

not being quoted in the official list of any stock exchange),

(ii) a statement that—

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(I) no liability whatsoever shall attach to the Minister,

(II) no right to the relief shall arise by reason only of the Minister's having given an approval under this section,

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(iii) a statement that the person registered as the holder of any shares issued to such fund is, in the first instance, to be registered as a nominee for a particular participant (who need not be named),

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(iv) a statement that no such subscriber shall be entitled to require any particular share or shares so issued to be either realised or transferred into his name before the period of five years beginning on the date on which the share or shares is or are issued to such fund has elapsed,

20

(v) a statement that if a subscriber to such fund gives notice to the person managing such fund of his intention to cease to be such a subscriber or otherwise to participate in such fund, all the shares which are so held on his behalf shall be sold or otherwise disposed of; provided a person who is willing to, and may duly, purchase or otherwise acquire them can be found,

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(vi) a statement which the Minister considers sufficient regarding—

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(I) the voting rights and rights of disposal arising by reason of shares issued to the fund being held by such a nominee, and

(II) the circumstances in which the exercise of such a right of disposal would affect a right to the relief,

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(vii) a statement which the Minister considers to be adequate regarding any agreement or arrangement made or proposed to be made by or on behalf of the trustee of or the person managing the scheme for the transfer of shares paid for with moneys from the fund into the names of participants on the expiration of the period of five years beginning on the date of their issue or for the continued management under the scheme of such shares after such period of five years has expired, or, in case there is no such agreement or arrangement, a statement in that regard which the Minister considers to be adequate and referring to the provisions of *section 6* of this Act,

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(viii) a statement of the proposed maximum size of such fund, the closing date for the receipt of subscriptions to such fund and the circumstances in which such subscriptions will either not be accepted or be returned,

(ix) a statement which the Minister considers adequate

- regarding the nature of the investments it is intended to make through such fund together with any amount which is specified in the relevant scheme as being the maximum or minimum which may be invested through the fund in any individual investment, 5
- (x) a statement which the Minister considers adequate regarding the payment of interest on any moneys in the fund which for the time being are not invested in shares issued to such fund and the payment of dividends on shares so issued, 10
- (xi) a statement that each participant will, as soon as may be, be notified of the shares issued to such fund which are held on his behalf and that, as soon as may be after the whole of such fund has been invested in eligible shares, he will be provided with a statement giving particulars of the nature and number of eligible shares held on his behalf, 15
- (xii) a statement that reports concerning such fund shall be made to participants at intervals stated in the prospectus (being intervals of not more than six months), 20
- (xiii) a statement that the person managing the fund will not knowingly invest moneys forming part of the fund in shares of a company with which any person participating in the fund is for the purposes of section 14 of the Act of 1984 connected, 25
- (xiv) a statement that the provisions of Chapter III of Part I of the Act of 1984 apply to such fund,
- and
- (g) the prospectus contains, in a prominent position, a statement that before subscribing any amount to such fund a prospective participant should consult a stockbroker, bank manager, solicitor, accountant or other professional adviser. 30
- (5) Without prejudice to the generality of *subsection (2)* of this section, the Minister shall not give an approval under this section as regards a document referred to in *paragraph (b)* of *subsection (1)* of this section unless, in his opinion, the document— 35
- (a) makes sufficiently clear the terms and conditions on or subject to which subscriptions to the relevant designated fund will, and will only, be accepted, and 40
- (b) makes it sufficiently clear that any agreement purporting to amend or to exclude or partly exclude the application of any term or condition which by virtue of *section 8* of this Act applies in relation to any such acceptance shall be void. 45
- (6) Where a person issues, publishes or circulates any document which requires the approval of the Minister under this section and such document is so issued, published or circulated without the approval of the Minister, that person shall be guilty of an offence.
- (7) Where an offence under *subsection (6)* of this section is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other officer of the 50

body corporate, the director, manager, secretary or other officer or any person purporting to act in such capacity shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

5 (8) A person guilty of an offence under *subsection (6) or (7)* of this section shall be liable on summary conviction to a fine not exceeding £1,000.

(9) In this section "unquoted company" has the meaning assigned to it by section 11 (1) of the Act of 1984.

10 6.—(1) A trustee of a designated investment fund or a manager acting on his behalf shall not invest in shares of a private company and a private company shall not accept in payment for such shares moneys from the fund unless such trustee or manager on the one hand and the company on the other hand have previously entered
15 into an agreement described in *subsection (2)* of this section and complying with the requirements of *subsection (3)* of this section.

Trustees of designated investment funds required to enter into specified agreement prior to investing moneys of fund in private companies.

(2) The agreement referred to in *subsection (1)* of this section is a written agreement whereby the private company which is a party to the agreement agrees as follows:

20 (a) that when—

(i) shares of the company have been issued, and

(ii) the company is satisfied that a person is a participant in the relevant designated investment fund and that that person is, under the terms and conditions subject
25 to which subscriptions to the fund were accepted, entitled to require the trustee of the fund to have any such shares transferred into the name of the person,

the company will, on an application's being made to it in that behalf either by the trustee of such fund or by, or on behalf of, such person or his personal representative, register such shares in the name of such person, or, where appropriate, his personal representative,

(b) that, for the purpose of enabling such registrations to be effected, the company will take such steps as may be necessary under the Companies Acts, 1963 to 1982, or the Companies (Amendment) Act, 1983, to make such alterations (if any) in its memorandum and articles of association as are required to enable it to effect such registrations in accordance with law.

40 (3) An agreement required to be entered into by *subsection (1)* of this section shall—

(a) specify the number of participants in the relevant designated investment fund,

45 (b) specify the nature of the alterations (if any) in the memorandum and articles of association of the private company which is a party to the agreement which are required to be made if the agreement is to be carried into effect, and

(c) have attached thereto a copy of the resolution, certified by the proper officer of such company, required by *subsection*

(4) of this section to have been passed prior to the making of the agreement.

(4) (a) A private company may not enter into an agreement required to be entered into by *subsection (1)* of this section unless previously— 5

(i) there has been passed, at a general meeting of the company, a special resolution—

(I) referring to and approving of the terms of the agreement, and

(II) making any necessary alterations in the company's memorandum or articles of association or such other provisions, being a matter required to be the subject of or effected by such a resolution, required to enable registrations to be effected in accordance with the agreement, or 15

(ii) in case such a company is so authorised by its articles of association, a resolution so referring and making and giving such an approval and making such necessary alterations (if any) has been signed by all the members of the company (or in the case of members who are bodies corporate by their duly appointed representatives) for the time being entitled to attend and vote on such a resolution at such a general meeting. 20

(b) Notwithstanding anything contained in the *Companies Acts, 1963 to 1985*, or in the articles of association of any company, the following provisions shall apply as regards a resolution passed in compliance with the requirements of *paragraph (a)* of this subsection: 25

(i) the resolution shall not be capable of being amended or revoked, 30

(ii) a provision of the resolution which is an alteration or other provision referred to in *clause (II)* of *subsection (4) (a) (i)* or *subparagraph (ii)* of *subsection (4) (a)* of this section shall not come into operation until after the agreement approved of by the resolution has been entered into, 35

(iii) such a provision shall come into operation if, and only if, its coming into operation is required if registrations are to be effected in accordance with the aforesaid agreement, and 40

(iv) subject to *subparagraphs (ii)* and *(iii)* of this paragraph, such a provision shall come into operation on such day as the directors of the company concerned shall fix. 45

(5) The date of a resolution referred to in *subsection (4) (a) (ii)* of this section shall for the purposes of this section be the latest date on which it was signed by a member of the private company concerned and where such a resolution purports to have been signed on a particular date, then unless the contrary is shown it shall for the purposes of this section be treated as having been signed on that date by the person by whom it purports to have been signed. 50

5 (6) An agreement which is required to be entered into by *subsection (1)* of this section and in relation to which the other requirements of this section have been complied with shall be binding on the private company which is a party thereto, and without prejudice to any other right thereunder the agreement shall, in so far as it provides for the registration by such company of its shares in the name of a participant in the relevant designated investment fund, be enforceable against such company by that participant.

10 (7) Where it appears to the Minister to be necessary or expedient for the purpose of enabling this section to have full effect, the Minister may, in relation to any provision contained in the *Companies Acts, 1963 to 1985*, for that purpose by regulation provide for—

15 (a) its application, with such modification or adaptation as shall be specified in the regulation, to private companies of a class or description so specified, or

(b) its non-application to private companies of such a class or description, or

(c) its amendment otherwise.

20 (8) In this section “private company” means a private company as defined for the purposes of the *Companies Act, 1963*, in section 33 of that Act.

25 7.—(1) If having given an approval under *section 5* of this Act information comes to the knowledge of the Minister which, had it been known to him at the time he was considering whether to give the approval, would have caused him to consider not giving the approval, then if, the period specified in the relevant notification under *subsection (2)* of this section having expired and having considered any representations or objections made under that subsection as regards the matter, the Minister considers that the approval should not have
30 been given, he shall withdraw the approval.

Withdrawal of approval under *section 5*.

35 (2) Where the Minister proposes to withdraw an approval under this section, he shall notify in writing the person to whom the approval was given of his intention and the reasons therefor and the notification shall state that within such period, beginning on the date of the notification, as is specified in the notification (being a period of not less than thirty days) representations and objections as regards the proposed withdrawal may be made to the Minister by or on behalf of such person (which representations and objections are hereby authorised to be made).

40 8.—Subscriptions to a designated investment fund shall, and shall only, be accepted on or subject to the terms and conditions specified in the relevant prospectus pursuant to the requirements of *section 4 (1)* of this Act, and any agreement purporting to amend or to exclude or partly exclude the application of any term or condition which by
45 virtue of this section applies in relation to any such acceptance shall be void.

Subscriptions to designated investment funds to be accepted on and subject to terms and conditions specified in prospectus.

9.—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.

Short title and collective citation.

10.—(1) This Act may be cited as the Designated Investment Funds Act, 1985.

(2) The Companies Acts, 1963 to 1983, and section 6 of this Act may be cited together as the Companies Acts, 1963 to 1985.

19— (1) This Act may be cited as the Department Investment Fund
Act, 1982.
(2) The Commission may, subject to the Act, and subject to the Act,
may be cited together as the Department Investment Fund Act, 1982.

BILL

An Act to make further provision for the
Department Investment Fund, and for
the purposes of the Department Investment
Fund Act, 1982, in relation to the
Department Investment Fund.

Enacted by the Queen's
Privy Council in 1982.

ENACTED BY THE PARLIAMENT OF GREAT
BRITAIN

IN PARLIAMENT ASSEMBLED, THE SEVENTEENTH
DAY OF MAY, ONE THOUSAND EIGHT HUNDRED
AND TWO, THE FOLLOWING BILL WAS PASSED BY
THE HOUSE OF COMMONS WITH THE CONSENT OF
THE HOUSE OF LORDS.

Enacted in Queen's Privy Council

1982

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AN BILLE UM CHISTÍ INFHEISTÍOCHTA
AINMNITHE, 1985

DESIGNATED INVESTMENT FUNDS
BILL, 1985

BILLE

dá ngairtear

Acht do dhéanamh socrú breise maidir le cistí
arna n-ainmniú chun críocha Chaibidil III de
Chuid I den Acht Airgeadais, 1984, ag na
Coimisinéirí Ioncaim.

BILL

entitled

An Act to make further provision regarding funds
designated for the purposes of Chapter III
of Part I of the Finance Act, 1984, by the
Revenue Commissioners.

*An tAire Tionscail, Trádála, Tráchtála agus
Turasóireachta a thíolaic*

*Presented by the Minister for Industry, Trade,
Commerce and Tourism*

*Ritheadh ag Dáil Éireann,
2 Iúil, 1985*

*Passed by Dáil Éireann,
2nd July, 1985*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais,
Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath
2, nó trí aon díoltóir leabhar.

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