AN BILLE UM FHORBAIRT TIONSAIL 2008
INDUSTRIAL DEVELOPMENT BILL 2008

Mar a ritheadh ag Seanad Éireann
As passed by Seanad Éireann

ARRANGEMENT OF SECTIONS

Section
1. Definitions.
2. Transfer of shares to Agency.
3. Amendment of Industrial Development Act 1986.
5. Transfer of property in certain discoveries and inventions to Enterprise Ireland.
6. Short title, collective citation and commencement.

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AN ACT TO PROVIDE FOR THE TRANSFER OF SHARES HELD BY SHANNON FREE AIRPORT DEVELOPMENT COMPANY LIMITED TO ENTERPRISE IRELAND; TO AMEND THE INDUSTRIAL DEVELOPMENT ACT 1986 AND THE INDUSTRIAL DEVELOPMENT ACT 1993; TO PROVIDE FOR THE TRANSFER OF ALL PROPERTY OF THE MINISTER UNDER SECTION 19 OF THE INDUSTRIAL RESEARCH AND STANDARDS ACT 1961 TO ENTERPRISE IRELAND; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

“Act of 2003” means the Industrial Development (Science Foundation Ireland) Act 2003;

“Agency” means Enterprise Ireland established under section 6(1) of the Industrial Development (Enterprise Ireland) Act 1998;

“shareholder” means Shannon Free Airport Development Company Limited;

“Minister” means the Minister for Enterprise, Trade and Employment.

2.—(1) All shares of whatever class in each of the companies specified in the Schedule that, immediately before the commencement of this Act, vested in the shareholder, shall upon such commencement stand vested in the Agency.

(2) The Agency shall, as soon as practicable after the commencement of this Act, notify each of the companies specified in the Schedule of the vesting in the Agency of shares in the company concerned by virtue of subsection (1) and particulars of such vesting shall be entered by that company in any register required to be maintained by the company in respect of the shares.

(3) This section shall apply to each of the companies specified in the Schedule notwithstanding any restriction in its memorandum of
Amendment of Industrial Development Act 1986.

(4) All rights and liabilities of the shareholder arising by virtue of any contract in force immediately before the commencement of this Act and relating to any shares transferred by virtue of this section shall upon such commencement stand transferred to the Agency.

(5) Every right and liability transferred by this section to the Agency may, on and after the commencement of this Act, be sued on, recovered or enforced by or against the Agency in its own name and it shall not be necessary for the Agency to give notice to any person of the transfer of any right or liability by this section.

3.—The Industrial Development Act 1986 is amended—

(a) in section 25 (inserted by section 29 of the Act of 2003), by substituting “€7,500,000” for “€5,000,000” in each place that it occurs,

(b) in subsection (4) (inserted by section 30 of the Act of 2003) of section 28, by substituting “€7,500,000” for “€5,000,000” in each place that it occurs,

(c) in section 29 (inserted by section 31 of the Act of 2003), by substituting “€7,500,000” for “€2,500,000” in each place that it occurs,

(d) in subsection (4) (inserted by section 32 of the Act of 2003) of section 31, by substituting “€7,500,000” for “€5,000,000” in each place that it occurs,

(e) in section 34 (inserted by section 33 of the Act of 2003), by substituting “€15,000,000” for “€10,000,000” in each place that it occurs, and

(f) by the substitution of the following for the Third Schedule:

“THIRD SCHEDULE

DESIGNATED AREAS

The counties of Cavan, Donegal, Galway, Laois, Leitrim, Longford, Louth, Mayo, Monaghan, Offaly, Roscommon, Sligo and Westmeath.”

Amendment of Industrial Development Act 1993.

4.—The Industrial Development Act 1993 is amended—

(a) in subsection (2) of section 11 (inserted by section 35(e) of the Act of 2003), by substituting “€7,000,000,000” for “€3,400,000,000”, and

(b) in section 12 (inserted by section 35(f) of the Act of 2003), by substituting “€7,500,000” for “€5,000,000” in each place that it occurs.

5.—(1) All property vesting in the Minister under section 19 of the Act of 1961 immediately before the commencement of this section shall, upon such commencement, stand vested in Enterprise Ireland.
(2) Any patent in respect of an invention or discovery to which section 19 of the Act of 1961 applies that immediately before the commencement of this section vested in a relevant person shall, upon such commencement, stand transferred to Enterprise Ireland.

(3) Any application for a patent in respect of an invention or discovery to which section 19 of the Act of 1961 applies made by a relevant person, and pending immediately before the commencement of this section, shall be deemed to have been made by Enterprise Ireland.

(4) All rights and liabilities of the Minister arising by virtue of any contract in force immediately before the commencement of this section and relating to any property transferred by virtue of this section shall, upon such commencement, stand transferred to Enterprise Ireland.

(5) All rights and liabilities of a relevant person arising by virtue of any contract in force immediately before the commencement of this section and relating to—

(a) any patent transferred by virtue of this section, or

(b) any application to which subsection (3) applies,

shall, upon such commencement, stand transferred to Enterprise Ireland.

(6) Particulars of the transfer of patents effected by subsection (2) shall be entered by the Controller of Patents, Designs and Trademarks in the Register of Patents as soon as may be after the commencement of this Act.

(7) All acts done, or purporting to have been done, before the commencement of this section, by Enterprise Ireland or a relevant person in respect of—

(a) any patent or other property transferred by this section, or

(b) an application to which subsection (3) applies,

being acts that by reason only of section 19 of the Act of 1961 would (but for this subsection) be invalid, shall be and be deemed always to have been valid and effectual for all purposes.

(8) Every right and liability transferred by this section to Enterprise Ireland may, on and after the commencement of this section, be sued on, recovered or enforced by or against Enterprise Ireland in its own name and it shall not be necessary for Enterprise Ireland to give notice to any person of the transfer of any right or liability by this section.

(9) Enterprise Ireland shall have the power to transfer, assign, licence or otherwise dispose of any or all of the property vesting in, or transferred to, it under this section.

(10) Section 19 (other than subsection (2)) of the Act of 1961 is repealed.

(11) In this section—

“Act of 1961” means the Industrial Research and Standards Act 1961;
“relevant person” means—

(a) Institute for Industrial Research and Standards,

(b) Eolas,

(c) Forfás, or

(d) Forbairt.

6.—(1) This Act may be cited as the Industrial Development Act 2008.

(2) The Industrial Development Acts 1986 to 2006 and this Act may be cited together as the Industrial Development Acts 1986 to 2008.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
SCHEDULE

1. 3D Eagle View International Limited
2. Abbey Mushroom Farm Limited
3. Advanced Manufacturing Control Systems Limited
4. Alpha Displays Limited
5. Altobridge Limited
6. Brandon Products Limited
7. Broadsword Technology (BST) Limited
8. Burrenside Mushrooms Public Limited Company
9. Chipsensors Limited
10. Datamate Global Communications Limited
11. Digitalmentors Limited
12. Fraysen Systems Limited
13. FMC Tech Limited
14. Homenet Communications Limited
15. Internet Control Solutions Limited
16. L.B.E. Limited
17. LIPOW Limited
18. Molloy Furniture Limited
19. M & Q Packaging Limited
20. Nowcasting International Limited
21. Ocean West Limited
22. Pharmaflow Limited
23. Philip Kenny Studio Limited
24. Powervation Limited
25. Pulselearning Limited
26. Romaquip Limited
27. Tango Telecom Limited
28. Taringold Limited
Purpose of the Bill

The Bill is by its long title an Act to provide for the transfer of shares held by Shannon Free Airport Development Company Limited to Enterprise Ireland; to amend the Industrial Development Act 1986 and the Industrial Development Act 1993; to provide for the transfer of all property of the Minister under Section 19 of the Industrial Research and Standards Act 1961 to Enterprise Ireland; and to provide for matters connected therewith.

Main provisions of the Bill

Section 1 of the Bill sets out a number of Definitions relating to specific terms used in the body of the Bill.

Section 2 of the Bill relates to Transfer of shares from the existing Shareholder (Shannon Free Airport Development Company Limited) to the Agency (Enterprise Ireland).

- Following a change in the Shannon Development mandate in 2007, Enterprise Ireland took over Shannon Development’s responsibilities in relation to indigenous industry in the mid-west region. Shannon Development holds shares in 28 client companies and it is now necessary to transfer ownership of this equity to Enterprise Ireland. Enterprise Ireland have been advised that legislation is the only practical means of effecting this transfer, and of substituting Enterprise Ireland for Shannon Development in the various Shareholder Agreements and other documents relating to those shares. Shannon Development are in agreement with this approach.

Section 3 sets out the proposed amendments of the 1986 Act relating to a) limits on grants payable to industry and b) the extension of designated areas set out in the Third Schedule of that Act to cover the entire BMW region.

- The Industrial Development Acts empower the agencies to make a wide range of grants and other incentives to client companies, subject to Government approval where specified thresholds are exceeded.
• These thresholds are kept under review and have been increased on a regular basis in the past (most recently in 2003). A further increase is now warranted to ensure that the Government has to deal with only the more important projects. An increase of 50% is being proposed in most cases.

• The exception is the threshold for R&D grants, which is currently set at 50% of the thresholds applying to other grants (e.g. capital grants, employment grants and training grants). This reflected the position in the past when the type of R&D projects being assisted by the agencies were much smaller than they have become in recent years. R&D grants above the threshold are now quite routine and it is considered appropriate to apply the same threshold as applies to other types of grant. The increases proposed are as follows:

- Employment Grants to Industry — from €5m to €7.5m
- Training Grants to Industry — from €5m to €7.5m
- R&D Grants to Industry — from €2.5m to €7.5m
- Purchase of Shares — from €5m to €7.5m
- Aggregate limit on Investment Aid — from €10m to €15m.

• The 1986 Industrial Development Act provides that the maximum capital grant that can be given to a company outside the “designated areas” is 45% of the cost of the assets. EU State Aid rules permit capital grants in the BMW region of up to 50% of the cost of the assets. The counties of Laois, Louth, Westmeath and Offaly (apart from the townland of Derrinlough) are not “designated areas”, as defined in the 1986 Act, but are in the BMW region. As a consequence, although EU rules would permit capital grants of up to 50% in these counties, national legislation limits the maximum grant to 45%. To remove this anomaly and provide equal treatment for all parts of the BMW region, it is proposed to extend the definition to include those counties in the BMW region that are currently excluded.

Section 4 sets out the proposed amendments to the 1993 Act governing the limit on a) Cumulative Aggregate grants to Industry and b) industrial incentives.

• The Industrial Development Acts contain provision for an overall limit on the aggregate amount of grants paid by the development agencies to companies. (Similar limits are in place for all state agencies). This limit is kept under continuous review and has been increased on several occasions in the past (most recently in 2003). The current limit — €3.4 billion — is likely to be exceeded early in 2009. It is proposed to increase the limit to €7 billion, which broadly reflects planned expenditure on enterprise development under the NDP to 2013.

• The limit on industrial incentives originates from the 1993 Act. This limit is kept under continuous review and has been increased on several occasions in the past (most recently in 2003). A further increase is now warranted to ensure that the Government has to deal with only the more important projects. An increase of 50% is being proposed from €5m to €7.5m.
It is important to note that any increase in aggregate grant limits is purely a technical issue and does not abrogate parliamentary control. The provision of funds to agencies will still be subject to parliamentary control on an annual basis via the estimates process, parliamentary questions, public accounts committee, and submission of annual reports to the Dáil etc.

Section 5 sets out the proposed amendment of Section 19 of the Industrial Research and Standards Act 1961 relating to:

- the transfer from the Minister of property in certain discoveries and inventions to Enterprise Ireland;
- the ratification of past acts by the enterprise agencies in respect of the discoveries and inventions; and
- the provision of powers to Enterprise Ireland, to assign or licence to third parties such as colleges or companies, the discoveries and inventions vested in it under this section.

Prior to 2000, Enterprise Ireland and its predecessor agencies conducted research directly on their own behalf, i.e. research done by an employee of the agency or done on contract for the agency. Ownership of discoveries and inventions emanating from this research vested in the Minister for Enterprise, Trade and Employment pursuant to Section 19 of the Industrial Research and Standards Act 1961. There are a number of cases where patents arising from this research were applied for by the agencies and were granted in the names of the agencies. This was a misunderstanding of the actual legal situation; under Section 19 this Intellectual Property was the property of the Minister and so should have been registered in the name of the Minister, or have been divested of by the Minister, in favour of the Agency. As a consequence the proprietor is incorrectly recorded in the patents register.

The role of the Agencies has changed since 2000 and Enterprise Ireland has now ceased to have any research done directly on its behalf, although there are a number of such patent applications still pending. The current practice is that where a State Agency funds research that leads to the creation of Intellectual Property, this Intellectual Property, under a National Code of Practice, is owned by the responsible research institution, often a University, as opposed to the research funder or the individual researcher.

Although under Section 19 the Minister is the legal owner of these discoveries and inventions, this does not give him/her the right to formally assign the rights in these discoveries and inventions, on a project-by-project basis. To address this issue and enable Enterprise Ireland to exploit the potential value of the discoveries and inventions covered by Section 19, it is proposed to transfer ownership of the discoveries and inventions and associated patents and applications to the agency.

Some of these applications or patents and associated Intellectual Property Rights have already been licensed to Irish companies who are carrying out further research based on the applications or patents. It may create a serious problem for these companies if their title to any new Intellectual Property Rights subsequently developed, is shown to be defective. In some cases the Irish companies have sub-licensed aspects of the Intellectual Property Rights to other companies. In most of these cases the
licensee will have relied on a warranty that the licensor had good title to the Intellectual Property Rights being licensed.

- There is therefore a need to clarify the legal situation in relation to the beneficial ownership of the Intellectual Property resulting from research carried out by Eolas, Forbairt, Forfás and Enterprise Ireland and the Institute for Industrial Research and Standards (IIRS). Secondly, there is a need to retrospectively confirm the title in such Intellectual Property to Enterprise Ireland. To correct this anomaly, the section proposes to provide, in retrospect, validation to acts of the agencies in licensing Intellectual Property Rights to companies and further provide good title to any licenses and sub-licenses issued, relating to discoveries or inventions subject to section 19.

- The section proposes to allow Enterprise Ireland to assign or licence such Intellectual Property Rights, in accordance with existing national policy, to the relevant Irish university or research institute. This will provide researchers in our third level institutes with the means and incentive to commercialise this intellectual property for the benefit of industry and ultimately the Irish economy.

- Any such assignment would be made on a commercial case-by-case basis, if there were an expectation that there might be an opportunity to generate significant income for the Exchequer, Enterprise Ireland would take cognisance of such an eventuality and would not assign the Intellectual Property.

Section 6 sets out the Short Title and commencement date.

Cost to Exchequer

There are no costs to the Exchequer arising from these proposals.

An Roinn Fiontar, Trádála agus Fostaíochta,
Nollaig, 2008