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*Number 46 of 2019*

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**Industrial Development (Amendment) Act 2019**

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**INDUSTRIAL DEVELOPMENT (AMENDMENT) ACT 2019**

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ACTS REFERRED TO

Companies Act 2014 (No. 38)

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*Number 46 of 2019*

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## **INDUSTRIAL DEVELOPMENT (AMENDMENT) ACT 2019**

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An Act to extend the powers of Enterprise Ireland to make grants, make loans and purchase shares and to provide for other related matters and, for those and other purposes, to amend the Industrial Development Act 1986, the Industrial Development Act 1993, the Industrial Development (Enterprise Ireland) Act 1998 and the Microenterprise Loan Fund Act 2012; to provide for the repeal of Part 3 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019; and to provide for related matters. [22nd December, 2019]

**Be it enacted by the Oireachtas as follows:**

### **Amendment of Industrial Development Act 1986**

1. (1) Section 29 of the Act of 1986 is amended—

(a) in subsection (2)—

(i) in paragraph (a)—

(I) by the substitution of “industrial or non-industrial processes” for “industrial processes”, and

(II) by the substitution of “agricultural or horticultural products” for “agricultural products”,

(ii) by the substitution of the following paragraph for paragraph (b):

“(b) is wholly or mainly sponsored by one or more than one industrial undertaking in the State,”,

and

(iii) by the insertion of the following paragraph after paragraph (b):

“(c) involves the payment of a research grant towards the costs of the project incurred within the State.”,

(b) by the insertion of the following subsection after subsection (2):

- “(2A) (a) Subject to paragraph (b), in respect of a project where part of the approved costs are incurred in the State and part of the approved costs are incurred outside the State, Enterprise Ireland may apply a different grant rate or rates in respect of the approved costs incurred in the State from the rate or rates in respect of the approved costs incurred outside the State.
- (b) In relation to a project referred to in paragraph (a), the aggregate amount of the research grant or grants payable in respect of the approved costs incurred outside the State shall not exceed the amount of the research grant or grants payable in respect of the approved costs incurred in the State.”,
- (c) in subsection (4)—
- (i) by the substitution of the following paragraph for paragraph (a):
- “(a) Subject to paragraph (b), the amount of a research grant shall not exceed €7,500,000.”,
- and
- (ii) by the substitution of the following paragraph for paragraph (b):
- “(b) The amount of a research grant may, with the approval of the Government in a particular case, exceed €7,500,000 by such sum as the Government shall in that case specify.”,
- and
- (d) in subsection (5), by the substitution of “in the case of industrial undertakings,” for “in the case of small industrial undertakings as defined from time to time by the Minister,”.
- (2) The amendments effected by *subsection (1)* shall apply only insofar as they relate to a research grant made or intended to be made by Enterprise Ireland and section 29 of the Act of 1986 shall continue to apply insofar as it relates to a research grant made or intended to be made by the Industrial Development Authority as if the amendments effected by *subsection (1)* had not been made.
- (3) Section 31 of the Act of 1986 is amended by the insertion of the following subsection after subsection (4):
- “(5) This section shall not apply to Enterprise Ireland.”.
- (4) Section 34 of the Act of 1986 is amended—
- (a) by the designation of that section as subsection (1), and
- (b) by the insertion of the following subsection after subsection (1):
- “(2) This section shall not apply to Enterprise Ireland.”.
- (5) In this section, “Act of 1986” means the Industrial Development Act 1986.

**Amendment of Industrial Development Act 1993**

2. The Industrial Development Act 1993 is amended, in subsection (2) (amended by section 4(a) of the Industrial Development Act 2009) of section 11, by the substitution of “€14,000,000,000” for “€7,000,000,000”.

**Amendment of Industrial Development (Enterprise Ireland) Act 1998**

3. The Industrial Development (Enterprise Ireland) Act 1998 is amended by the insertion of the following sections after section 7:

**“Power of Agency to make loans to certain industrial undertakings or bodies corporate**

7A. (1) Where, in the opinion of the Agency, an industrial undertaking satisfies the relevant requirements, the Agency may, subject to such terms and conditions as it may determine, make a loan out of moneys at its disposal to—

- (a) an industrial undertaking, or
- (b) a body corporate owning, controlling or managing, or participating in the ownership, control or management of the undertaking.

(2) The Agency shall not, without the prior permission of the Government, expend more than €7,500,000 in providing a loan or a series of loans to any one industrial undertaking or body corporate under this section. Preference may be given to industrial undertakings or body corporates that are located in the border counties of Louth, Cavan, Donegal, Leitrim, Monaghan and Sligo.

(3) (a) In this section, ‘loan’ means a loan which is not convertible into shares in a body corporate.

(b) In this section and in section 7B, ‘relevant requirements’ means, in relation to an industrial undertaking, the requirements specified in subsections (3) and (4) of section 21 of the Act of 1986.

(c) In this section and in sections 7B and 7C, ‘industrial undertaking’ has the same meaning as it has in section 8.

(4) This section is in addition to, and not in substitution for, any other power of the Agency to lend moneys by or under the Industrial Development Act 1995 or any other enactment.

**Power of Agency to purchase shares etc.**

7B. (1) Subject to this section, where in the opinion of the Agency, an industrial undertaking satisfies the relevant requirements, the Agency may, subject to such terms and conditions as it may determine—

- (a) purchase or take shares or convertible debt instruments, to any extent it considers desirable, in the body corporate owning,

controlling or managing, or participating in the ownership, control or management of such an industrial undertaking, or

- (b) form, or take part with other persons in the formation of, such bodies corporate.
  - (c) preference may be given to industrial undertakings or body corporates that are located in the border counties of Louth, Cavan, Donegal, Leitrim, Monaghan and Sligo.
- (2) The Agency shall not, without the prior approval of the Minister, purchase or take shares or convertible debt instruments under this section if to do so would result in the Agency holding or having the right to hold on conversion of shares or a debt instrument or instruments—
- (a) more than half in nominal value of the equity share capital (within the meaning of section 7(11) of the Companies Act 2014) of a body corporate, or
  - (b) more than half in nominal value of shares carrying voting rights (other than voting rights which arise only in specified circumstances) in a body corporate.
- (3) The Agency shall not, without the prior permission of the Government, expend, in the aggregate, on the purchase or taking of shares or convertible debt instruments in any one body corporate referred to in subsection (1)(a), the higher of—
- (a) €7,500,000, or
  - (b) €7,500,000 in excess of the aggregate amount of such expenditure for which the prior permission of the Government has previously been obtained.
- (4) Where the Agency has already purchased or taken, or is purchasing or taking, shares or convertible debt instruments in a body corporate (in this subsection referred to as the ‘relevant body corporate’) in accordance with subsection (1), the Agency may, without the need to satisfy itself as to further compliance with the relevant requirements and subject to such terms and conditions as it may determine—
- (a) purchase, take or receive further shares or convertible debt instruments in the relevant body corporate or another body corporate in the exercise of pre-emption or other rights in respect of, or arising from, the transfer or holding of shares or convertible debt instruments or the issue of new shares or convertible debt instruments, in the relevant body corporate,
  - (b) purchase, take or receive shares or convertible debt instruments in another body corporate which has common shareholders and directors to the relevant body corporate, where the other body



corporate has been or is being established to hold intellectual property rights or other assets held or created by the relevant body corporate,

- (c) in a case where the Agency is proposing to sell its shares or convertible debt instruments in the relevant body corporate to another body corporate, accept shares or convertible debt instruments in that other body corporate in full or part consideration for the shares or convertible debt instruments in sale, or
- (d) convert its convertible shares or convertible debt instruments in the relevant body corporate or in another body corporate.

(5) In this section—

‘convertible debt instrument’ means a loan note, loan stock or other financial instrument for the provision of loan finance which—

- (a) has been or may be offered or issued by a body corporate to the Agency,
- (b) is convertible into shares in the body corporate, and
- (c) is repayable or redeemable on demand by the Agency or otherwise in accordance with the terms of that convertible debt instrument;

‘convertible shares’ means shares which are convertible into shares of another class in the same body corporate;

‘shares’ includes convertible shares and, where the context so requires, an option or other instrument which confers a right to acquire or subscribe for shares.

#### **Aggregate limit on investment aid**

**7C.** Without the prior permission of the Government, the total amount of money—

- (a) granted or guaranteed to a particular industrial undertaking under sections 21 to 30 of the Act of 1986, or
- (b) expended in that same undertaking or body corporate in the making of a loan under section 7A or the purchase or taking of shares or convertible debt instruments under section 7B,

shall not exceed in the aggregate the higher of—

- (i) €15,000,000, or
- (ii) €15,000,000 in excess of the aggregate amount of such grants, guarantees, investments and other such financial facilities for which the prior permission of the Government has previously been obtained.

**Application of certain provisions of Part III of Act of 1986**

**7D.** Sections 35 to 37 of the Act of 1986 shall apply to sections 7A to 7C as if—

(a) in section 35—

- (i) ‘this Part or sections 7A to 7C of the Act of 1998’ were substituted for ‘this Part’,
- (ii) ‘loan or loan guarantee or subscription for a convertible debt instrument within the meaning of section 7B of the Act of 1998’ were substituted for ‘loan guarantee’,
- (iii) ‘grant, loan, guarantee, subscription or purchase’ were substituted for ‘grant, guarantee or purchase’, and
- (iv) ‘Authority or Enterprise Ireland’ were substituted for ‘Authority’,

(b) in section 36—

- (i) ‘grant or other payment or the exercise of another right’ were substituted for ‘grant or other payment’,
- (ii) ‘this Part or sections 7A to 7C of the Act of 1998,’ were substituted for ‘this Part,’ in the first place that it occurs, and ‘this Part and sections 7A to 7C of the Act of 1998,’ were substituted for ‘this Part,’ in the second place that it occurs, and
- (iii) ‘an industrial undertaking or body corporate, as the case may be,’ were substituted for ‘an industrial undertaking’ in each place that it occurs,

and

(c) in section 37—

- (i) ‘grant, loan, subscription’ were substituted for ‘grant’ in each place that it occurs, and
- (ii) ‘this Part or sections 7A to 7C of the Act of 1998,’ were substituted for ‘this Part,’

and with any other necessary modifications.”.

**Amendment of Microenterprise Loan Fund Act 2012**

**4.** The Microenterprise Loan Fund Act 2012 is amended, in subsection (2) of section 5, by the substitution of “€25 million” for “€15 million”.

**Repeal**

**5.** Part 3 of the Withdrawal of the United Kingdom from the European Union

(Consequential Provisions) Act 2019 is repealed.

**Short title, collective citation and commencement**

6. (1) This Act may be cited as the Industrial Development (Amendment) Act 2019.
- (2) This Act, other than *section 4*, shall be included in the collective citation Industrial Development Acts 1986 to 2019.
- (3) This Act shall come into operation on such day or days as the Minister for Business, Enterprise and Innovation 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 provisions, and for the repeal of different provisions of Part 3 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 effected by *section 5*.