

Certification in respect of an issue of eligible shares where aggregate of amounts raised by a company exceeds £250,000. FA84 s13B; FA96 s20; FA97 s146(1) and Sch9 par13(3) 492.—(1) (a) In this section, “relevant certificate” means a certificate from an authority (within the meaning of this section) given to a company in relation to a relevant issue, certifying, on the basis of a business plan of the company and any other information which the company supplies to the authority or which the authority may reasonably request the company to furnish to it, that, having regard to the amount of money raised or to be raised by the relevant issue, the authority is satisfied that—

(i) the purpose or purposes specified in section 489 (1)(c)(i) for which the money raised or to be raised is intended to be used has or have the potential to create a reasonable level of additional sustainable employment in the company, or

(ii) the money raised or to be raised is necessary to secure the survival of the company and maintain a reasonable level of sustainable employment.

(b) In considering whether to give a relevant certificate to a company, an authority shall have regard only to such guidelines for that purpose as may from time to time be agreed—

(i) with the consent of the Minister for Finance, between the certifying agency and the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for Enterprise, Trade and Employment or the Minister for the Marine and Natural Resources or the Minister for Tourism, Sport and Recreation (as may be appropriate in the circumstances), or

(ii) between the certifying Minister and the Minister for Finance,

and those guidelines may, without prejudice to the generality of the foregoing, include provision—

(I) for the submission to the authority by the company concerned, in relation to its business plan, of an annual progress report in a form to be specified by the authority,

(II) to ensure that money raised through a relevant issue is used by a company or its qualifying subsidiary only for one or more of the purposes specified in section 489 (1)(c)(i) and for no other purposes,

(III) that the issue of the certificate does not represent any form of approval by the authority of the commercial viability of the qualifying trading operations carried on or to be carried on by the company concerned, and

(IV) for regarding as null and void from its date of issue a relevant certificate where the company concerned fails to comply with its business plan or any modification of that plan which may be agreed between it and the authority.

(2) In this section, “combined certificate” means a certificate given by an authority to a company which comprises—

- (a) (i) a certificate referred to in section 489 (2)(c),
- (ii) an approval of a development and marketing plan referred to section 495 (6)(a),
- (iii) (I) an approval of a development and marketing plan referred to in section 495 (4)(a), and
- (II) a certificate referred to in section 496 (7),

or

- (iv) a certificate referred to in section 496 (8),

and

- (b) a relevant certificate.

(3) In this section, “authority” means—

(a) in respect of qualifying trading operations referred to in subparagraph (i), (ii), (vi) or (x) of section 496 (2)(a), Forbairt, the Industrial Development Agency (Ireland), the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta (as may be appropriate); but, for the purposes of qualifying trading operations referred to in subparagraph (i) of section 496 (2)(a), “authority” shall mean Bord Iascaigh Mhara in the case of those qualifying trading operations in respect of which Bord Iascaigh Mhara administers a scheme of assistance to grant aid,

(b) in respect of qualifying trading operations referred to in subparagraph (vii), (viii) or (xi) of section 496 (2)(a), the Minister for Agriculture and Food,

(c) in respect of qualifying trading operations referred to in subparagraph (xii) of section 496 (2)(a), the Minister for Arts, Heritage, Gaeltacht and the Islands,

(d) in respect of qualifying trading operations referred to in subparagraph (xiii) of section 496 (2)(a), Bord Fáilte Éireann, and

(e) in respect of qualifying trading operations referred to in subparagraph (xiv) of section 496 (2)(a), An Bord Tráchtála.

(4) An authority shall not issue a combined certificate unless and until all necessary conditions have been satisfied for the issue of—

(a) in the first instance (as may be appropriate)—

(i) the certificate referred to in subparagraph (i) or (iv), as the case may be, of subsection (2)(a),

(ii) the approval referred to in subsection (2)(a)(ii), or

(iii) the approval and certificate referred to in subsection (2)(a)(iii),

and

(b) only thereafter, the relevant certificate.

(5) (a) Subject to this section, where on or after the 23rd day of January, 1996, a company raises any amount through the issue of eligible shares (in this section referred to as “the relevant issue”) for the purpose of qualifying trading operations other than those operations referred to in section 496 (2)(a)(ix), relief shall not be given in respect of the excess of the amount over the amount determined by the formula set out in the Table to this subsection unless the company produces to the Revenue Commissioners a relevant certificate or a combined certificate.

(b) Where the company referred to in paragraph (a) is associated with one or more other companies within the meaning of section 491, then, A in the formula set out in the Table to this subsection shall include the aggregate of the amounts raised through the issue of eligible shares at any time before or on the date of the relevant issue (other than the amount raised through the relevant issue) by all the companies so associated (including that company).

TABLE

£250,000 – A

where A is the lesser of—

(i) £250,000, or

(ii) an amount equal to the aggregate of all amounts raised by the company through the issue of eligible shares before or on the date of the relevant issue (other than the amount raised through the relevant issue).

(6) Subsections (5) and (6) of section 491 shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.