

(Made on the 11th March, 1959.)

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The Control of Borrowing (Bailiwick of Guernsey)
Ordinance, 1959

(No. IV—
1959)

THE STATES, on the representations of the States Board of Administration and under and by virtue of the powers conferred upon them by section one of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946, hereby order:—

PART I

General Extent of Control

1. (1) Subject to the exemptions contained in Part II of this Ordinance, a person shall not, without the consent of the Committee, borrow money in the Bailiwick where the aggregate of the amount of money borrowed and of any other amounts borrowed in the Bailiwick by that person in the previous twelve months (including any period before the coming into force of this Ordinance) exceeds ten thousand pounds.

Borrowing in
the Baili-
wick.

(2) This section shall not apply to—

- (a) borrowing by any person if the borrowing is in the ordinary course of his business and is from a person carrying on a banking undertaking;
- (b) borrowing by any person where the money borrowed is repayable on demand or not more than six months after demand and the loan is wholly unsecured or is secured only by a bill of exchange payable on demand or at a fixed period not exceeding six months after the date of the borrowing or after sight or by a promissory note payable not more than six months after the date of the borrowing;
- (c) acceptance by a person carrying on a banking undertaking of moneys to be placed to the credit of a current or deposit account, whether or not any security is given;

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- (d) borrowing by the personal representative of a deceased person in his capacity as such for the purpose of paying death duties payable by reason of the death of the deceased; and
- (e) borrowing from a department of Her Majesty's Government in the United Kingdom, from the States of Guernsey, from the States of Alderney or from the Chief Pleas of Sark.

(3) For the purposes of the last foregoing subsection a loan in respect of which a guarantee is given is not an unsecured loan.

Making of certain arrangements to be treated as borrowing.

2. (1) In this Ordinance references to the borrowing of money include:—

- (a) references to the making of any arrangement to provide any guarantee or to mortgage or charge any property to secure the payment of any sum which is already due when the arrangement is made or is payable not later than six months after the arrangement is made;
- (b) references to the making of any arrangement by which the price of any property, except the price of goods sold by a person in the ordinary course of his business, is allowed to remain unpaid either for a fixed period or indefinitely but charged on any property;

but do not include references to the making of any other arrangement by which a sum which would otherwise be payable at any date is payable at a later date; and references to loans shall be construed accordingly.

(2) A sum which, at the time of, or by virtue of, the making of any arrangement is payable on demand or on the expiration of a fixed period after demand shall be deemed for the purposes of this section to be payable at the time of the making of the arrangement, or as the case may be, on the expiration

of the fixed period after the making of the arrangement, notwithstanding that no demand has been made.

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3. (1) Subject to the exemptions contained in Part II of this Ordinance, a body corporate shall not, without the consent of the Committee, raise money in the Bailiwick by the issue, whether in the Bailiwick or elsewhere, of any shares in that body corporate.

Raising money by issue of shares.

(2) This section shall not apply to money raised by the issue of shares to the subscribers of a memorandum of association where the total consideration for the issue of all those shares issued to the said subscribers does not exceed five hundred pounds.

4. (1) Subject to the exemptions contained in Part II of this Ordinance, a body corporate shall not, without the consent of the Committee, issue partly paid shares, if either the body corporate is incorporated under any of the laws of the Bailiwick or the shares are, or are to be, registered in the Bailiwick.

Issues of partly paid shares and other issues of shares and other securities.

(2) Subject to the exemptions contained in Part II of this Ordinance, a body corporate incorporated under any of the laws of the Bailiwick shall not, without the consent of the Committee, issue any shares where the whole or any part of the consideration for the issue is the transfer of any property.

(3) Subject to the exemptions contained in Part II of this Ordinance, a body corporate incorporated under any of the laws of the Bailiwick shall not, without the consent of the Committee, issue any shares if the purposes or effects of the transaction consist of or include—

(a) the raising or borrowing of money outside the Bailiwick, unless the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertak-

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ing, and the money is made available in the scheduled territories; or

- (b) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(4) Subject to the exemptions contained in Part II of this Ordinance, a body corporate not incorporated under any of the laws of the Bailiwick shall not, without the consent of the Committee, issue any shares which are, or are to be, registered in the Bailiwick if the purposes or effects of the transaction consist of or include—

- (a) the raising or borrowing of money outside the Bailiwick; or
- (b) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(5) Subject to the exemptions contained in Part II of this Ordinance, a body corporate incorporated under any of the laws of the Bailiwick shall not, without the consent of the Committee, issue any shares where the whole or any part of the consideration for the issue is the discharge of any capital liability in respect of any such borrowing as is mentioned in subsection (2) of section one of this Ordinance.

(6) Subject to the exemptions contained in Part II of this Ordinance, a body corporate incorporated under any of the laws of the Bailiwick shall not, without the consent of the Committee, issue any

redeemable shares if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.

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(7) Subject to the exemptions contained in Part II of this Ordinance, a body corporate shall not, without the consent of the Committee, for any purpose issue any securities, other than shares, if either the body corporate is incorporated under any of the laws of the Bailiwick or the securities are, or are to be, registered in the Bailiwick.

(8) The last foregoing subsection shall not apply to:—

- (a) securities issued by any body corporate for the sole purpose of securing money borrowed by the body corporate in the Bailiwick, if the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking;
- (b) securities issued by a body corporate, being a body corporate incorporated under any of the laws of the Bailiwick, for the sole purpose of securing money borrowed by the body corporate outside the Bailiwick, if the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking, and the money is made available in the scheduled territories; and
- (c) securities issued by any body corporate for the sole purpose of exchanging or substituting new securities for redeemable securities already issued by the body corporate, if such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

5. Subject to the exemptions contained in Part II of this Ordinance, no securities of any government, Government securities.

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other than Her Majesty's Government in the United Kingdom or the States of Guernsey, Alderney or Jersey or the Chief Pleas of Sark, which are, or are to be, registered in the Bailiwick shall be issued for any purpose without the consent of the Committee.

Prospec-
tuses, etc.

6. Subject to the exemptions contained in Part II of this Ordinance, a person shall not, without the consent of the Committee, circulate in the Bailiwick any offer for subscription or sale of—

- (a) any securities of any body corporate not incorporated under any of the laws of the Bailiwick; or
- (b) any securities of any government other than Her Majesty's Government in the United Kingdom or the States of Guernsey, Alderney or Jersey or the Chief Pleas of Sark;

if the offer is a public offer or an offer to existing holders of securities of the body corporate or government in question or to existing holders of securities of any body corporate specified in the offer.

Unit trusts.

7. (1) Subject to the exemptions contained in Part II of this Ordinance, a person shall not, without the consent of the Committee—

- (a) raise money in the Bailiwick for the purposes of a unit trust scheme by the issue of any unit under the scheme; or
- (b) issue any units under a unit trust scheme, if the purposes or effects of the transaction consist of or include the raising of money outside the Bailiwick and either the scheme is governed by any of the laws of the Bailiwick or the units are, or are to be, registered in the Bailiwick:

PROVIDED that this subsection shall not apply to the issue, or to the raising of money by the issue, of any unit or sub-unit under a unit trust scheme if the issue does not cause the total number of issued

units or sub-units to exceed the total number outstanding on the twelfth day of May, nineteen hundred and forty-one, including units or sub-units which at the said date the trustees could be required by the managers of the trust to issue.

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(2) Section six of this Ordinance shall apply in relation to units under a unit trust scheme not governed by any of the laws of the Bailiwick as it applies in relation to securities of a body corporate not incorporated under any of the laws of the Bailiwick.

PART II

General Exemptions

8. (1) Subject to the provisions of this section, the consent of the Committee shall not be required to the carrying out by any such person as is mentioned in any of the provisions of Part I of this Ordinance of any transaction mentioned in that provision if the amount involved in the transaction together with the amount involved in all previous transactions by the same person in the previous twelve months, being transactions which are to be taken into account in accordance with subsection (2) of this section, does not exceed fifty thousand pounds.

Exemptions
where annual
limit not
exceeded.

(2) The previous transactions to be taken into account for the purposes of this section are—

- (a) any borrowing of money in the Bailiwick except such borrowing as is mentioned in subsection (2) of section one of this Ordinance, whether or not the consent of the Committee under this Ordinance was required thereto; and
- (b) any other transaction to which the consent of the Committee under this Ordinance was required or would, apart from the provisions of this Part of this Ordinance, have been required;

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and include transactions effected before the coming into force of this Ordinance to which the preceding provisions of this subsection would have applied if this Ordinance had then been in force:

PROVIDED that—

- (i) where the effect of any of the said previous transactions consisting of the borrowing or raising of money was that any share or loan capital (other than loan capital raised by any such borrowing as is mentioned in subsection (2) of section one of this Ordinance), which was redeemed or repaid contemporaneously with, or not more than three months before, that transaction, was replaced by other share or loan capital, the amount involved in that transaction shall be treated as reduced by the amount so redeemed or repaid; and
 - (ii) where any of the said previous transactions consisted solely of the borrowing or raising of money which, subsequently to that borrowing or raising, was repaid in whole or in part, the amount involved in that transaction shall be treated as reduced by the amount repaid unless the repayment formed part of any other of the said previous transactions and the whole or part of the amount involved in that other transaction has been left out of account by virtue of Proviso (i) of this subsection.
- (3) The Committee may at any time direct that the exemption conferred by this section shall not apply to any person specified in the direction.
 - (4) Any direction given under the last foregoing subsection may be revoked by a subsequent direction of the Committee and any direction given by the Committee under subsection (4) of section eight of the Control of Borrowing (Bailiwick of Guernsey)

Ordinance, 1948, shall have effect as if it had been given under the last foregoing subsection.

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(5) In this section, the expression "the amount involved" means—

- (a) in relation to the borrowing of money, the amount of money to be borrowed;
- (b) in relation to the issue of securities or the raising of money by such an issue, the amount of the money to be raised or the total nominal value of the securities to be issued or the value of any assets to be acquired in return for the securities, whichever is the greatest;
- (c) in relation to the circulation of an offer of securities—
 - (i) in the case of an offer to existing holders of securities registered in the Bailiwick, the total price, under the offer, of the securities offered to such holders;
 - (ii) in any other case, the total price, under the offer, of all the securities offered;
- (d) in relation to an arrangement to provide any guarantee or to mortgage or charge any property to secure the payment of any sum, the amount of that sum;
- (e) in relation to an arrangement by which the price of any property is allowed to remain unpaid, the amount of that price.

(6) Subsection (5) of this section shall apply in relation to units under a unit trust scheme as it applies in relation to securities of a body corporate.

9. Nothing in Part I of this Ordinance applies to any borrowing or raising of money by, or any issue of securities of a society registered under the Industrial and Provident Societies Act, 1893, whose business does not consist wholly or mainly in investing in land or securities.

Industrial
and
Provident
Societies.

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Profit shar-
ing schemes.

10. Nothing in Part I of this Ordinance applies to any issue of shares made in pursuance of a profit sharing scheme whereby a share in the net profits from time to time made by a body corporate falls to be distributed on a pre-determined basis among all the employees of that body corporate who are entitled to participate in the scheme (not being less than three-quarters of the total number of employees of that body corporate) in the form, either wholly or in part, of fully paid shares and such distribution is made in addition to the payment to such employees of wages at rates standard in the industry of which that body corporate forms part.

Exemption
for trans-
actions
sanctioned
by the
Govern-
ments of
Great
Britain,
Northern
Ireland and
Jersey.

11. Where the consent—

- (a) of Her Majesty's Treasury in Great Britain, under any Order made in pursuance of the Borrowing (Control and Guarantees) Act, 1946; or
- (b) of the Ministry of Finance, Northern Ireland, under any Order made in pursuance of the Loans Guarantee and Borrowing Regulation (Northern Ireland) Act, 1946; or
- (c) of the Finance Committee of the States of Jersey under any Order made in pursuance of the Borrowing (Control) (Jersey) Law, 1947;

has been given to the carrying out of any transaction to which the Order so made applies, then, so long as that consent remains in force and provided that any conditions attached to the consent are complied with, the consent of the Committee under this Ordinance shall not be required to the carrying out of that transaction.

PART III

Supplemental

Provisions as
to consent of
Committee.

12. (1) Any consent granted by the Committee under this Ordinance—

- (a) may be either general or special;
- (b) may be revoked by the Committee;
- (c) may be absolute or conditional; and
- (d) may be limited so as to expire at the end of a specified period unless renewed.

(2) Any consent granted by the States Finance Committee or the Committee under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1948, or under that Ordinance as amended, shall have effect as if it had been granted under the corresponding provisions of this Ordinance.

13. (1) In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Definitions.

- “the Committee” means the States Advisory and Finance Committee;
- “issue” includes re-issue;
- “registered”, in relation to any security or unit, includes inscribed;
- “registered in the Bailiwick” means, in relation to securities or units, registered in a register in the Bailiwick, and “register”, in relation to securities or units, includes any book in which securities or units are registered;
- “scheduled territories” has the meaning assigned to it by subsection (3) of section one of the Exchange Control Act, 1947, as extended to the Bailiwick of Guernsey by section one of the Exchange Control (Channel Islands) Order, 1947;
- “security” includes shares, bonds, notes, debentures, debenture stock and rente bonds;
- “share” includes stock and any perpetual debenture or perpetual debenture stock;
- “unit trust scheme” means any arrangements made for the purpose, or having the effect, of

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providing facilities for the participation by persons, as beneficiaries under a trust, in profit or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

“unit” means, in relation to a unit trust, any right or interest (whether described as a unit or as a sub-unit or otherwise) which may be acquired under the scheme, being a right or interest created or issued for the purpose of raising money for the purposes of the scheme or a right or interest created or issued in substitution (whether directly or indirectly) for any right or interest so created or issued.

(2) A person shall be deemed for the purposes of this Ordinance to borrow or raise money in the Bailiwick if the money is made available in the Bailiwick or, in any such case as is mentioned in section two of this Ordinance, if the money would, but for the arrangement in question, have been payable in the Bailiwick and, without prejudice to the preceding provisions of this subsection, a person shall also be deemed for the purposes of this Ordinance to borrow money in the Bailiwick if the money is borrowed on the security of property in the Bailiwick.

(3) References in this Ordinance to any enactment shall be construed as references to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Ordinance.

Application to borrowing under Laws passed prior to registration of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946.

14. This Ordinance applies to the borrowing or raising of money in pursuance of authority conferred by any enactment in force in the Bailiwick before the tenth day of May, nineteen hundred and forty-seven, being the date of registration of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946.

15. The Ordinances set out in the Schedule to this Ordinance are hereby repealed. 1959

Repeals.

16. This Ordinance shall come into force on the twelfth day of March, nineteen hundred and fifty-nine. Commence-
ment.

SCHEDULE Section fifteen

The Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1948.

The Control of Borrowing (Bailiwick of Guernsey) (Amendment of Exemption Provisions) Ordinance, 1949.

The Control of Borrowing (Bailiwick of Guernsey) (Amendment) Ordinance, 1957.
