

**Control of Borrowing (Bailiwick of Guernsey)**  
**Ordinance, 1948.**  
**(1st May, 1948).**

THE COURT, on the representations of the States Board of Administration, and having heard the Law Officers of the Crown thereon, under and by virtue of the provisions of Section 1 of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946, hereby orders:—

**PART I.**

*General Extent of Control.*

Borrowing  
in the  
Bailiwick.

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.

(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;

- (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 His Majesty's Government in the United Kingdom, from the States of Guernsey, from the States of Alderney or from the Chief Pleas of Sark.

For the purposes of this Section a loan in respect of which a guarantee is given is not an unsecured loan.

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

- (a) references to the making of any arrangement by which any money borrowed or any money due under a security (other than money representing interest or dividends), which would otherwise be payable at any date is payable at a later date except where the money is payable by instalments and the arrangement is for the postponement of the payment of any instalment, other than the last instalment, to a date not later than that fixed for the payment of the last instalment; and
- (b) references to the making of any arrangement by which the price of any property except
  - (i) the price of goods sold by a person in the ordinary course of his business; and
  - (ii) the price of any undertaking under the sale thereof to a "Société en Commandite" is allowed to remain unpaid either for a fixed period or indefinitely but charged on the 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.

Postpone-  
ment of  
repayment  
of  
principal  
moneys  
and of  
payment of  
price of  
certain  
property to  
be treated  
as  
borrowing

(2) An arrangement to give 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 shall be deemed for the purposes of this Section to be an arrangement by which that sum is payable at a date later than that on which it would otherwise be payable.

(3) 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.

Raising  
money by  
issue of  
shares

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.

(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.

(3) This Section shall not apply to money raised by the issue by a "Société en Commandite" of shares to the vendors or the nominees of the vendors of any undertaking sold to the "Société" if

- (a) the shares are all fully paid; and
- (b) the money raised is cash forming part of the assets of the undertaking or cash which has been paid to the vendors as, or as part of, the purchase price of the undertaking.

Issues of  
partly paid  
shares and  
other  
issues of  
securities

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.

(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 securities where the whole or any part of the consideration for the issue is the issue or transfer of securities of another body corporate, unless one or other of the bodies corporate in question is to be wound up.

(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 securities if the purposes or effects of the transaction consist of or include—

- (a) the capitalisation of profits or reserves; or
- (b) the raising or borrowing of money outside the Bailiwick; or
- (c) the exchanging or substituting of new securities for redeemable securities already issued.

(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 securities 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.

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

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, sale or exchange 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 His 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 issue of any unit under the scheme; or
- (b) issue any units under a unit trust scheme if the purposes or effects of 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 sub-section 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, 1941, including units or sub-units which at the said date the trustees could be required by the managers of the trust to issue.

(2) Section 6 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 taken into account in accordance with sub-section (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 sub-section (2) of Section 1 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, and include transactions effected before the coming into force of this Ordinance to which the preceding provisions of this sub-section 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 a capital liability (other than a capital liability in respect of any such borrowing as is mentioned in sub-section (2) of Section 1 of this Ordinance) discharged contemporaneously with, or not more than three months before, that transaction was replaced by another capital liability, the amount involved in that transaction

shall be treated as reduced by the amount so discharged;

- (ii) where any of the said previous transactions consisted of an arrangement for postponing the repayment of money borrowed or raised, not being an arrangement to which sub-section (2) of Section 2 of this Ordinance applies, the amount involved in that transaction shall be left out of account;
- (iii) where any of the said previous transactions consisted solely of the borrowing of money which, subsequent to that borrowing, 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 sub-section.

(3)\*

(4) The Committee may at any time direct that the exemption conferred by this Section shall not apply to any person specified in the direction.

Any direction given under this sub-section may be revoked by a subsequent direction of the Committee.

(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 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—

\* Deleted by The Control of Borrowing (Bailiwick of Guernsey) (Amendment of Exemption Provisions) Ordinance, 1949.

- (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 for the postponement of payment of any money, the amount the payment of which is to be postponed.

The references in paragraph (c) of this sub-section to the price of securities include, in the case of an offer of securities for exchange, reference to the total value of the securities so offered.

(6) Sub-section (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 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.

10. Where the consent—

- (a) of His 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 Regulations (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;

Profit sharing schemes

Exemption for transactions sanctioned by the Governments of Great Britain, Northern Ireland and Jersey

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

11. 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.

Definitions

12. (1) In this Ordinance, unless the context otherwise requires—

“the Committee” means the States 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;

“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 providing facilities for the participation by persons, as beneficiaries under a trust, in profits 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 2 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 sub-section, 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.

13. 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, 1947, being the date of registration of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946.

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