

## **BORROWING (CONTROL) (BAILIWICK OF GUERNSEY) LAW, 1946 AS AMENDED**

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**The Commission would be grateful if any errors of transcription could be brought to its attention.**

**May 2004**

# PROJET DE LOI

ENTITLED

## BORROWING (CONTROL) (BAILIWICK OF GUERNSEY) LAW, 1946

**THE STATES** have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Certain transactions to be regulated by Ordinance**

1. (1) The Royal Court may by Ordinance provide for regulating, subject to such exemptions as may be specified in the Ordinance, all or any of the following transactions, that is to say -
  - (a) the borrowing of money in the Bailiwick of Guernsey where the aggregate of the amount of money borrowed under the transaction and of any other amounts so borrowed by the same person in the previous twelve months (including any period before the passing of this law) exceeds ten thousand pounds;
  - (b) the raising of money in the Bailiwick of Guernsey by the issue, whether in that Bailiwick or elsewhere, by any body corporate, of any shares in that body corporate;
  - (c) the issue for any purposes -
    - (i) by any body corporate of any shares in or debentures or other securities of that body corporate, if either the body corporate is incorporated under the law of any part of the Bailiwick of Guernsey or the shares, debentures or other securities are or are to be registered in any part of that Bailiwick; or
    - (ii) by any Government, other than His Majesty's Government in the United Kingdom, or the States of Guernsey, the States of Alderney, or the Chief Pleas of Sark, of any securities of that Government which are to be registered in any part of the Bailiwick of Guernsey;
  - (d) the circulation in any part of the Bailiwick of Guernsey of any offer for subscription, sale or exchange of -
    - (i) any shares in or debentures or other securities of any body corporate not incorporated under the law of any part of the Bailiwick of Guernsey; or

- (ii) any securities of any Government, other than His Majesty's Government in the United Kingdom or the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
- e) the registration and business of limited partnerships;

PROVIDED that paragraph (a) of this subsection shall not apply to the borrowing of money by any person in the ordinary course of his business from a person carrying on a banking undertaking.

- (2) The provisions of this Section shall apply in relation to units under a unit trust scheme as they apply in relation to shares in a body corporate, but as if -
  - (a) any reference to the issue of shares in a body corporate by that body corporate were a reference to an issue of units for the purposes of the scheme; and
  - (b) any reference to shares in a body corporate incorporated, or not incorporated, under the law of any part of the Bailiwick of Guernsey were a reference to units issued under a scheme governed, or not governed, by the law of any part of the Bailiwick of Guernsey.
- (3) The provisions of the Schedule to this law shall have effect in relation to Ordinances made under this Section but the rights of the persons concerned in any transaction shall not be affected by the fact that the transaction was in contravention of any such Ordinances.

### **Definitions, etc**

- 2. (1) In this law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:-

“Issue” includes reissue:

“registered”, in relation to any security, includes inscribed;

“registered in any part of the Bailiwick of Guernsey” means in relation to securities, registered in a register in the Bailiwick of Guernsey, and “a register”, in relation to securities, includes any book in which securities are registered;

“security” includes shares, bonds, notes, debentures, debenture stock and units under a unit trust scheme;

“share” includes stock and any perpetual debenture or perpetual debenture stock;

“unit trust scheme” means any arrangement 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 scheme, any right or interest, (described whether as a 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) Any reference in this law to the borrowing of money -
  - (a) includes a reference to the making of any arrangement by which a sum which would otherwise be payable at any date is payable at a later date, and includes in particular the making of any arrangement by which the whole or any part of the price of any property is allowed to remain unpaid either for a fixed period or indefinitely, but
  - (b) does not include a reference to the acceptance by a person carrying on a banking undertaking of moneys to be placed to the credit of a current or deposit account.
- (3) Any person shall be deemed for the purposes of this law to borrow or raise money in the Bailiwick of Guernsey if the money is made available in any part of that Bailiwick, or, in any such case as is mentioned in subsection (2) of this section, if the money would, but for the arrangement in question, have been payable in any part of the Bailiwick of Guernsey, and without prejudice to the preceding provisions of this subsection, a person shall also be deemed for the purpose of this law to borrow money in the Bailiwick of Guernsey if the money is borrowed on the security of property in any part of that Bailiwick.
- (4) An arrangement to provide any guarantee, or to mortgage or charge any property, to secure the repayment of any sum borrowed before the arrangement is made, being a sum which is already due when the arrangement is made or which is payable not later than six months, or such longer or shorter period as may be prescribed by Ordinance, after the arrangement is made, shall be deemed for the purposes of the two last preceding subsections to be an arrangement by which that sum is payable at a date later than it would otherwise have been payable.
- (5) 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 the three last preceding subsections 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.

## SCHEDULE

### PROVISIONS AS TO ENFORCEMENT AND PENALTIES

1. Any person who contravenes any provision of any Ordinance made under this Law shall be liable -
  - (a) on summary conviction to imprisonment for not more than three months or to a fine not exceeding five hundred pounds\* or to both such imprisonment and such fine; or
  - (b) on conviction on indictment to imprisonment for not more than two years or to a fine not exceeding whichever is the highest of the following amounts -
    - (i) five hundred pounds;\* or
    - (ii) the amount of any money borrowed or raised by the transaction in question; or
    - (iii) the nominal or market value, whichever is the greater, of any securities to the issue, sale or other disposal of which (whether actual or projected) the transaction in question relates.

or to both such imprisonment and such fine.

2. (1) The States Treasurer may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to him, or to any person designated in the directions as a person authorised to require it, any information in his possession or control which may be required for the purpose of securing compliance with, or detecting evasion of, any Ordinance made under this Law:

Provided that if a person required to give any information under this paragraph objects to the giving thereof on the ground that it might tend to incriminate him, he shall not be bound to give that information.

Nothing in this sub-paragraph shall be taken to require any person who is acting as counsel, solicitor, advocate or scrivain for any person to disclose any privileged communication made to him in that capacity.

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\* The fine now equates with level 4 on the Uniform Scale. See the Uniform Scale of Fines Law, 1989

- (2) The States Treasurer may give to any person directions requiring him, within such time and in such manner as may be specified in the directions, to produce such books, accounts or other documents (hereinafter referred to as “documents”) in his possession or control as may be required for the purpose of securing compliance with, or detecting evasion of, any Ordinance made under this Law, and any documents produced by a person in compliance with any such requirements may be given in evidence against him notwithstanding that they may tend to incriminate him.

Nothing in this sub-paragraph shall be taken to require any person who has acted as counsel, solicitor, advocate or scrivain for any person to disclose any privileged communication made to him in that capacity.

- (3) If the Bailiff is satisfied by information on oath given by or with the authority of the States Treasurer that there is reasonable ground for suspecting that there are at any premises any documents which a person ought to have produced under the last preceding sub-paragraph but has failed or refused to produce, he may grant a search warrant authorising any officer of police, together with any other persons named in the warrant and any other officers of police, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) at any time within one month of the date of the warrant, and to search the premises and take possession of any documents appearing to be such documents as aforesaid or to take in relation thereto any other steps which may appear necessary for preserving them and preventing interference therewith.

In sub-paragraph (3) of this paragraph the expression “Bailiff” includes a Deputy Bailiff, a Lieutenant Bailiff or a Juge Délégué, as the case may be and, as regards the Island of Alderney, the Judge of Alderney.

- (4) Any person who -
- (a) fails or refuses to comply with any requirement to furnish information or produce documents imposed on him by or under this paragraph: or
  - (b) with intent to evade the provisions of this paragraph or of any Ordinance made under this Law destroys, mutilates, defaces, secretes or removes any documents: or
  - (c) obstructs any person exercising any powers conferred on him by or under this paragraph,

shall be liable on summary conviction to imprisonment for not more than three months or to a fine not exceeding one hundred pounds\* or to both such imprisonment and such fine.

3. Where an offence under this Law has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.
4. Any fine recovered under this Law shall be paid as to one-half thereof to His Majesty and as to the other half to the States of Guernsey.

Provided, however, that where an offence arises in the Island of Alderney or in the Island of Sark the States shall, upon recovery of such fines as may be imposed, be deemed to have recovered one-half of that fine on behalf of the Island where that offence arose.

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\* The fine now equates with level 2 on the Uniform Scale. See the Uniform Scale of Fines Law, 1989