

**This text of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946 as amended (the principal law) and the Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959 as amended has been prepared by Commission staff for internal use as an alternative to the series of Laws and Ordinances (including the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) made from 1959 to 2003, and is made available generally for the convenience of advocates and others. It is therefore not authoritative and no responsibility is taken for its accuracy. In any case of doubt reference should be made to the authoritative texts of the Law, Ordinances and any enactments amending them. These may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey.**

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

## **CONTROL OF BORROWING**

**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

**THE CONTROL OF BORROWING (BAILIWICK OF GUERNSEY)  
ORDINANCE, 1959 AS AMENDED**

**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 Policy Council, 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 fifty 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 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.

### **Raising money by issue of Shares**

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

### **Issues of partly paid Shares and other issues of Shares and other securities**

- 4. (1) Subject to the exemptions contained in Part II of this Ordinance, a body corporate shall not, without the consent of the Policy Council, 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 Policy Council, 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 Policy Council, 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 undertaking; 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 Policy Council, 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 Policy Council, 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 Policy Council, issue any redeemable shares if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.
  
- (7) Subject to the exemptions contained in Part II of this Ordinance, a body corporate shall not, without the consent of the Policy Council, 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

- (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.

### **Government Securities**

- 5. Subject to the exemptions contained in Part II of this Ordinance, no 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, which are, or are to be, registered in the Bailiwick shall be issued for any purpose without the consent of the Policy Council.

### **Prospectuses etc**

- 6. (1) Subject to the exemptions contained in Part II of this Ordinance, a person shall not, without the consent of the Policy Council, circulate in the Bailiwick any offer for subscription or sale of -
  - (a) any securities of any body corporate not incorporated under any enactment for the time being in force in any part 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.

- (2) Notwithstanding the provisions of the last preceding subsection, a person may, without the consent of the Policy Council, circulate in the Bailiwick any offer for subscription or sale of any securities of any body corporate incorporated under the law for the time being in force in Great Britain if a public offer in the same terms and of the same class of securities of that body corporate -
  - (a) is being circulated for the time being in Great Britain, or
  - (b) has been circulated, at any time during the twelve months immediately preceding the commencement of any period during which the offer is circulated in the Bailiwick for subscription or sale as aforesaid, in Great Britain,

in accordance with the provisions of the Companies Act 1985 and the Financial Services Act 1986.

## **Unit trusts**

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

- (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.

## **Limited Partnerships**

- 7A. (1) A limited partnership shall not be registered and shall not continue to be registered under the provisions of section 8 of the Limited Partnerships (Guernsey) Law, 1995 except under the authority of and in accordance with the conditions of the written consent in that behalf of the Policy Council.
- (2) The provisions of section 7 of this Ordinance (other than the proviso to subsection (1) thereof) shall apply in relation to a limited partnership as they apply in relation to a unit trust scheme; and consequently any reference in that section to a unit trust scheme or to a unit under a unit trust scheme shall (except in the said proviso) be deemed to include a reference to a limited partnership or (as the case may be) to a partnership interest or share in a limited partnership.
- (3) The exemptions conferred by the provisions of Part II of this Ordinance shall not apply in relation to a limited partnership.

## PART II

### General Exemptions

#### Exemptions where annual limit not exceeded

8. (1) Subject to the provisions of this section, the consent of the Policy Council 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 other than a transaction which consists of the raising of money by the issue of shares to the founder members of a body corporate 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 five hundred thousand pounds.
- (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 Policy Council under this Ordinance was required thereto; and
  - (b) any other transaction to which the consent of the Policy Council 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 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 Policy Council 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 Policy Council and any direction given by the Policy Council 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.
- (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.

#### **Controlled collective investment schemes**

- 8A. (1) The consent of the Policy Council shall not be required;
  - (a) under section 6 of this Ordinance, for the circulation of an offer for subscription or sale of any securities of a body corporate or units under a unit trust scheme; or
  - (b) under any other provision of Part I of this Ordinance, for the carrying out by any such person as is mentioned in that provision of any transaction mentioned in that provision,

if that body corporate, unit trust scheme or person, as the case may be, is an authorised collective investment scheme or a collective investment scheme which is authorised under the law of a designated country or territory.

- (2) In this section the expressions “authorised collective investment scheme”, “collective investment scheme” and “designated country or territory” have the meanings assigned to them by the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

### **Industrial and Provident Societies**

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 1965 whose business does not consist wholly or mainly in investing in land or securities.

### **Profit sharing 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 transactions sanctioned by the Governments 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 Policy Council under this Ordinance shall not be required to the carrying out of that transaction.

## PART III

### SUPPLEMENTAL

#### Provisions as to consent of Policy Council

12. (1) Any consent granted by the Policy Council under this Ordinance -
- (a) may be either general or special;
  - (b) may be revoked by the Policy Council;
  - (c) may be absolute or conditional; and
  - (d) may be limited so as to expire at the end of a specified period unless renewed.
- (1A) Any conditions subject to which any such consent as is mentioned in subsection (1) was granted may be amended, and further conditions in respect of any such consent may be imposed, from time to time by the Policy Council.
- (2) Any consent granted by 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.
- (3) The Policy Council may, subject to the provisions of subsection (4), issue and publish guidance concerning the policies to be followed -
- (a) in relation to the granting and refusal of consents under this Ordinance and the imposing of conditions and limitations in respect of such consents; and
  - (b) otherwise in relation to the administration of this Ordinance;
- and it shall be the duty of the Policy Council to take any such guidance into account when carrying out its functions under this Ordinance.
- (4) Where the Policy Council has delegated any function under this Ordinance to another person, the power conferred by subsection (3) to issue and publish guidance concerning the policies to be followed in relation to the exercise of that function shall be exercisable not by the Policy Council but by that other person; and it shall be the duty of that other person to take any such guidance into account when carrying out that function.
- (5) Guidance issued and published under this section –
- (a) may make different provision for different cases or classes of case;
  - (b) may contain consequential, incidental, supplementary and transitional provisions; and



- (c) may be amended or replaced by subsequent guidance issued and published under this section.
- (6) In this section and in section 12A the expression a “person” includes a body.

### **Fees**

- 12A. (1) The Policy Council may, subject to the provisions of subsection (2), and after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark, by regulation prescribe fees payable to the Policy Council in respect of the exercise of its functions under this Ordinance.
- (2) Where the Policy Council has delegated any function under this Ordinance to another person, that person (and not the Policy Council) may by regulation, after consultation with the Policy Council, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark, prescribe the fees payable to him in respect of the exercise of that function.
- (3) Regulations under this section -
- (a) may prescribe different fees in respect of different cases or classes of case;
  - (b) may contain consequential, incidental, supplementary and transitional provisions; and
  - (c) may be amended or repealed by subsequent regulations under this section.

### **Definitions**

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 -
- “the Policy Council” means the States Policy Council;
- “enactment” includes any enactment of the Parliament of the United Kingdom;
- “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 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) Reference 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.

[Sections 14, 15 and 16 deal with pre-1947 transactions, repeals and commencement].