

Jersey Law 5/1947

BORROWING (CONTROL) (JERSEY) LAW, 1947.

A LAW to provide for the regulation of the borrowing and raising of money, the issue of securities, and the circulation of offers of securities for subscription, sale or exchange, and for purposes connected with the matters aforesaid sanctioned by Order of His Majesty in Council of the

21st day of MAY, 1947.

(Registered on the 7th day of June, 1947).

STATES OF JERSEY.

The 6th day of February, 1947.

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law: -

ARTICLE 1

INTERPRETATION

(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 re-issue;

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

“registered in the Island” means, in relation to securities registered in a register in the Island, 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) A person shall be deemed for the purpose of this Law to borrow or raise money in the Island if the money is made available in the Island, or, in any such case as is mentioned in paragraph (2) of this

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Article, if the money would, but for the arrangement in question, have been payable in the Island, and, without prejudice to the preceding provisions of this paragraph, a person shall also be deemed for the purposes of this law to borrow money in the Island if the money is borrowed on the security of property in the Island.

(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 order of the Finance Committee, after the arrangement is made, shall be deemed for the purposes of the two last preceding paragraphs 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 paragraphs 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.

ARTICLE 2

CONTROL OF BORROWING, ETC

(1) The Finance Committee may make orders for regulating, subject to such exemptions as may be specified in the orders, all or any of the following transactions, that is to say -

[(a) the borrowing of money in the Island where -

- (i) the payment is secured by the creation of a simple conventional hypothec on real property in the Island; or

- (ii) the aggregate of the amount of money borrowed under the transaction, and of any other amounts so borrowed (including amounts borrowed under transactions to which the foregoing clause refers) by the same person in the previous twelve months, exceeds ten thousand pounds;]¹
- (b) the raising of money in the Island by the issue, whether in the Island 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 the Island, or the shares, debentures or other securities are or are to be registered in the Island; or
 - (ii) by any Government, other than His Majesty's Government in the United Kingdom or the States of any of the Channel Islands, of any securities of that Government which are or are to be registered in the Island;
- (d) the circulation in the Island 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 the Island; or
 - (ii) any securities of any Government other than His Majesty's Government in the United Kingdom or the States of any of the Channel Islands:

¹ Sub-paragraph substituted by Borrowing (Control) (Amendment) (Jersey) Law, 1961 (Volume 1961–1962, page 91).

Provided that sub-paragraph (a) of this Article 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 Article 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 the Island were a reference to units issued under a scheme governed, or not governed, by the Law of the Island.

(3) The provisions of the Schedule to this Law (which relate to enforcement and penalties) shall have effect in relation to orders made under this Article, 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 orders.

ARTICLE 3

PROVISIONS AS TO ORDERS

- (1) Every order made under this Law -
 - (a) shall come into force on the date prescribed thereby;
 - (b) may be amended or revoked by a subsequent order;
 - (c) shall remain in force until revoked; and
 - (d) shall be laid before the States as soon as may be after it is made, and if the States, within the period of twenty-one days beginning with the day on which any such order is laid before them, resolve that it be annulled, it shall cease

to have effect, but without prejudice to anything previously done thereunder or to the making of any new order.

(2) The Greffier of the States shall cause every order made under this Article to be printed and shall cause to be published in two newspapers circulating in the Island, one being a publication in French and the other a publication in English,² a notice stating that the order has been made, the date of the coming into force thereof and the place at which printed copies thereof may be purchased.

ARTICLE 4

EXPENSES

Any expenses incurred by the Finance Committee in the administration of this Law shall be paid out of the General Revenues of the States.

ARTICLE 5

SHORT TITLE

This Law may be cited as the Borrowing (Control) (Jersey) Law, 1947.

² See Official Publications (Jersey) Law, 1960 (Volume 1957–1960, page 571).

*SCHEDULE***PROVISIONS AS TO ENFORCEMENT AND PENALTIES**

1. Any person who contravenes any provision of any order made under this Law shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding whichever is the highest of the following amounts -

- (a) five hundred pounds sterling; or
- (b) the amount of any money borrowed or raised by the transaction in question; or
- (c) 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 Finance Committee may give any person directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to it, or to any person designated in the directions as a person authorized to require it, any information in his possession or control which the Finance Committee or the person so authorized, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, any order 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 paragraph shall be taken to require any person who has acted as advocate or solicitor for any person to disclose any privileged communication made to him in that capacity.

(2) The Finance Committee 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 order made under this Law or by any person designated in the directions as a person authorized to require them 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 paragraph shall be deemed to require any person who has acted as advocate or solicitor 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 an officer of the Finance Committee or with the authority of the Finance Committee 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 issue a warrant authorizing any person or class of persons named in the warrant to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) at any time within one month from the date of the warrant, and to search the premises and take possession of any documents appearing to be such documents as aforesaid or take in relation thereto any other steps which may appear necessary for preserving them and preventing interference therewith.

(4) Any person who -

- (a) fails or refuses to comply with any requirements 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 any order 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 to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds sterling or to both such imprisonment and such fine.

3.-(1) Any proceedings which may be taken against any person under this Law may be taken at any time not later than twelve months from the date of the commission of the alleged offence or within three months from the date on which evidence sufficient in the opinion of the Finance Committee to justify the proceedings comes to the knowledge of the Finance Committee, or, where the person in question was outside the Island at that date, within twelve months from the date on which he first lands in the Island thereafter, whichever of the said periods last expires.

For the purpose of this sub-paragraph, a certificate of the Treasurer of the States as to the date on which such evidence as aforesaid came to the knowledge of the Finance Committee shall be conclusive evidence thereof.

(2) Where any 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, 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.