

# ORDRE EN CONSEIL

VI  
1947

Ratifiant un Projet de Loi

INTITULÉ

## **Borrowing (Control) (Bailiwick of Guernsey) Law, 1946.**

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(Enregistré sur les Records de l'Ile de Guernsey le  
10 Mai 1947.)

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# ORDRE EN CONSEIL



A LA COUR ROYALE DE L'ÎLE DE GUERNESEY

*Le dix mai mil neuf cent quarante-sept par devant  
Ambrose James Sherwill, écuyer, C.B.E., M.C.,  
Baillif; presents: Osmond Priaulx Gallienne,  
écuyer, Ernest de Garis, écuyer, O.B.E., James  
Frederick Carey, écuyer, Messire Abraham  
James Lainé K.C.I.E., Arthur Falla, Pierre de  
Putron, Quartier Le Pelley, Walter John Sarre,  
écuyers, Richard Henry Johns, écuyer, O.B.E.,  
et William Robert Freake Clark, écuyer, Jurés.*

Monsieur le Baillif ayant ce jour communiqué à la Cour un Ordre de Sa Majesté en Conseil en date du 23 avril, 1947, ratifiant un Projet de Loi intitulé "Borrowing (Control) (Bailiwick of Guernsey) Law, 1946", la Cour, après avoir eu lecture du dit Ordre en Conseil, ouïes les conclusions du Procureur du Roi, a ordonné que le dit Ordre en Conseil sera enregistré sur les Records de cette Île et qu'un extrait des Registres de ce présent Acte, avec un exemplaire du dit Ordre en Conseil, seront expédiés par le Greffier du Roi à Monsieur le Juge d'Aureigny et à Monsieur le Sénéchal de Sercq afin d'être enregistrés sur les Records des dites Îles, duquel Ordre en Conseil la teneur suit:—

# At the Court of Saint James,

The 23rd day of April, 1947.

## Present,

HIS ROYAL HIGHNESS THE DUKE OF GLOUCESTER  
VISCOUNT LASCELLES

LORD PRIVY SEAL

EARL OF LISTOWEL

MR. GREENWOOD

LORD COOPER

MR. PALING

LORD MONCRIEFF

SIR FREDERIC WROTTESELEY

WHEREAS His Majesty, in pursuance of the Regency Acts, 1937 and 1943, was pleased, by Letters Patent dated the 24th day of January, 1947, to delegate and grant unto His Royal Highness The Duke of Gloucester, K.G., K.T., K.P., G.M.B., G.C.M.G., G.C.V.O., Her Royal Highness The Princess Royal, G.C.V.O., G.B.E., C.I., and Viscount Lascelles, or any two of them, as Counsellors of State, full power and authority during the period of His Majesty's absence from the United Kingdom to summon and hold on His Majesty's behalf His Privy Council and to signify thereat His Majesty's approval of any matter or thing to which His Majesty's approval in Council is required:

AND WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 3rd day of April, 1947, in the words following, viz:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

' 1. That on the 23rd day of November, 1946, the Royal Court adopted a Bill or "Projet de Loi" entitled "Borrowing (Control) (Bailiwick of Guernsey) Law, 1946," and requested the Bailiff to submit the same to the States of Deliberation for approval: 2. That at an adjourned sitting of the States held on the 13th day of December, 1946, the said Bill or "Projet de Loi" was duly considered by the States, when a resolution was passed approving the same and authorising the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto: 3. That the Judge of the Island of Alderney, as respects that Island, the States of that Island not being constituted at the present time, concurs in the terms of the said Bill: 4. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "Borrowing (Control) (Bailiwick of Guernsey) Law, 1946." and to order and direct that the same shall have force of Law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

NOW, THEREFORE, His Royal Highness The Duke of Gloucester and Viscount Lascelles, being authorized thereto by the said Letters Patent, have

taken the said Report into consideration, and do hereby, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf approve of and ratify the said *Projet de Loi*, and order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of the Island of Guernsey.

And do hereby further direct that this Order, and the said *Projet de Loi* (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

And the Lieutenant Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*E. C. E. Leadbitter.*

Projet de Loi referred to in the foregoing  
Order in Council.

## 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.

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:

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.

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 Supervisor 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 scrivener for any person to disclose any privileged communication made to him in that capacity.

(2) The States Supervisor 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 ecrivain 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 Supervisor 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-paragraphs (1) (2) and (3) of this paragraph the expression "States Supervisor" means the States Supervisor in Guernsey and includes the States Assistant Supervisor; and 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.

PETER J. MAUGER,

Greffier du Roi.