



Jersey

CONTROL OF BORROWING (JERSEY) LAW 1947

Official Consolidated Version

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CONTROL OF BORROWING (JERSEY) LAW 1947

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Jersey

CONTROL OF BORROWING (JERSEY) LAW 1947¹

A LAW to provide for the regulation of the borrowing and raising of money, the issue of securities, the admission of members of bodies corporate and the continuance on Jersey of bodies incorporated abroad, the circulation of offers of securities for subscription, sale or exchange, the creation of partnership interests and the registration of limited liability partnerships and for purposes connected with the matters aforesaid²

Commencement [[see endnotes](#)]

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 –

“Commission” means the Jersey Financial Services Commission established by the [Financial Services Commission \(Jersey\) Law 1998](#);

“issue” includes re-issue;

“limited liability partnership” means a limited liability partnership registered under the [Limited Liability Partnerships \(Jersey\) Law 2017](#);

“limited partnership” and “partnership agreement” have the meanings respectively given to them by the [Limited Partnerships \(Jersey\) Law 1994](#);

“Minister” means the Minister for External Relations;

“register”, in relation to securities, includes a register of issued bearer securities and also includes any book in which securities are registered;

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

“registered in Jersey” means, in relation to securities, registered in a register in Jersey;

“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” 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;

“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.³

(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.

(2A) In this Law –

- (a) any reference to a limited partnership within the meaning of the [Limited Partnerships \(Jersey\) Law 1994](#) includes a reference to a separate limited partnership established in accordance with the [Separate Limited Partnerships \(Jersey\) Law 2011](#); and
- (b) the reference in Article 2(10)(b) to the [Limited Partnerships \(Jersey\) Law 1994](#) in respect of a limited partnership includes a reference to the [Separate Limited Partnerships \(Jersey\) Law 2011](#) in respect of a separate limited partnership.⁴

(2B) In this Law –

- (a) any reference to a limited partnership within the meaning of the [Limited Partnerships \(Jersey\) Law 1994](#) includes a reference to an incorporated limited partnership established in accordance with the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#); and
- (b) the reference in Article 2(10)(b) to the [Limited Partnerships \(Jersey\) Law 1994](#) in respect of a limited partnership includes a reference to the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#) in respect of an incorporated limited partnership.⁵

(3) A person shall be deemed for the purpose of this Law to borrow or raise money in Jersey if the money is made available in Jersey, or, in any such case as is mentioned in paragraph (2), if the money would, but for the arrangement in question, have been payable in Jersey, 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 Jersey if the money is borrowed on the security of property in Jersey.

(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 6 months, or such longer or shorter period as may, on the recommendation of the Commission, be prescribed by Order of the Minister, after the arrangement is made, shall be deemed for the purposes of paragraphs (2) and (3) to be an arrangement by which that sum is payable at a date later than it would otherwise have been payable.⁶

- (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 paragraphs (2), (3) and (4) 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.
- (6) For the purposes of this Law, the registration of a limited liability partnership under the [Limited Liability Partnerships \(Jersey\) Law 2017](#) shall be deemed to be the creation of a partnership interest for the purposes of the limited liability partnership.⁷

2 Control of borrowing, etc.

- (1) The Minister may, on the recommendation of the Commission, make Orders for regulating, subject to such exemptions as may be specified in the Orders, all or any of the following transactions and acts, that is to say –
 - (a) the borrowing of money in Jersey where –
 - (i) the payment is secured by the creation of a simple conventional hypothec on real property in Jersey, 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 12 months, exceeds £10,000;
 - (b) the raising of money in Jersey by the issue, whether in Jersey 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 Jersey, or the shares, debentures or other securities are or are to be registered in Jersey, or
 - (ii) by any Government, other than Her 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 Jersey;
 - (d) the admission of any person to membership, otherwise than by reason of the issue or transfer of shares, of a body incorporated in Jersey;
 - (e) the issue to a body incorporated outside Jersey of a certificate of continuance under Article 127O of the [Companies \(Jersey\) Law 1991](#);
 - (f) the circulation in Jersey 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 Jersey, or
 - (ii) any securities of any Government other than Her Majesty's Government in the United Kingdom or the States of any of the Channel Islands;

Provided that sub-paragraph (a) shall not apply to the borrowing of money by any person in the ordinary course of his or her business from a person carrying on a banking undertaking.⁸

- (2) An Order made under paragraph (1) for regulating, subject as therein mentioned, all or any of the transactions therein mentioned may –
- (a) make provision for the grant of a consent by the Commission for a transaction either unconditionally or subject to such conditions as to the Commission seem appropriate either generally or in any particular case;
 - (b) make provision for the variation of conditions attached to a consent and the attachment of new conditions;
 - (c) prescribe conditions applicable to –
 - (i) all consents,
 - (ii) certain classes of consents,
 - (iii) all consents granted to certain persons or classes of persons,
 - (iv) all consents granted in respect of certain transactions, or
 - (v) all consents granted in respect of transactions with certain persons or classes of persons;
 - (d) make provision for consents –
 - (i) to be revoked by the Commission,
 - (ii) to be limited so as to expire at the end of a specified period unless renewed;
 - (e) make provision requiring the payment of fees published by the Commission in accordance with Article 15(5) of the [Financial Services Commission \(Jersey\) Law 1998](#).⁹
- (3) Where an Order made under paragraph (1) makes provision for the Commission to grant a consent for a transaction either unconditionally or subject to conditions, vary conditions attached to a consent, attach new conditions to a consent or revoke or refuse to grant a consent, the Commission, in the discharge of those functions, shall have regard to the need to protect the integrity of Jersey in commercial and financial matters and the best economic interests of Jersey and, in relation to the creation of a partnership interest for the purposes of a limited liability partnership, the Commission shall also have regard to the size of the limited liability partnership and to the status of the applicant or the holder of the consent, as the case may be.¹⁰
- (4) Where a condition attached to a consent is varied or a new condition is attached to a consent, or a consent is revoked, such variation or such new condition, or such revocation, as the case may be, shall not take effect before the expiration of –
- (a) a period of 3 months from the date on which notice in writing of the decision of the Commission to make such variation or attach such new condition or revoke such consent is given to the holder of the consent; or
 - (b) the date on which an appeal (if any) is determined or abandoned,
- whichever is later (but it may take effect earlier at the request of the holder of the consent).¹¹
- (5) Where the Commission refuses the grant of a consent, or attaches any condition to the grant of a consent, or varies any such condition, or attaches a new condition, or revokes a consent, the applicant or the holder of the consent, as the case may be, may by notice in writing require the Commission to furnish to him or her within 30 days a statement in writing of its reasons for that decision.¹²

- (6) Nothing in paragraph (4) or (5) derogates from or otherwise affects a condition prescribed under paragraph (2)(c).¹³
- (7) A notice given under paragraph (5) more than 30 days after the notification of the decision of the Commission was given shall have no effect.¹⁴
- (8) Any person aggrieved by such decision of the Commission may appeal to the Inferior Number of the Royal Court, either in term or in vacation within 90 days after the notification of the decision of the Commission was given, on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case, and the decision of the Inferior Number of the Royal Court shall be final and without further appeal, but without prejudice to the right of the Inferior Number to refer the matter to the Superior Number of the Royal Court.¹⁵
- (9) 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 Jersey were a reference to units issued under a scheme governed, or not governed, by the law of Jersey.
- (10) The provisions of this Article shall apply in relation to a partnership interest under a limited partnership or a limited liability partnership 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 the creation of a partnership interest for the purposes of the partnership; and
 - (b) any reference to shares in a body corporate incorporated, or not incorporated, under the law of Jersey were a reference to a partnership interest created under a limited partnership established, or not established, in accordance with the [Limited Partnerships \(Jersey\) Law 1994](#) or under a limited liability partnership registered, or not registered, in accordance with the [Limited Liability Partnerships \(Jersey\) Law 2017](#).¹⁶
- (11) The provisions of the Schedule 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.

3 Limitation of liability¹⁷

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
 - (a) the States;
 - (b) the Minister and any person who is, or is acting as, an officer servant or agent in an administration of the States for which the Minister is assigned responsibility, or performing any duty or exercising any power on behalf of the Minister; and

- (c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or performing any duty or exercising any power on behalf of the Commission.

4 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, at any time thereafter, 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.¹⁸
- (2) The Greffier of the States shall cause every Order made under this Article to be printed and shall cause to be published in 2 newspapers circulating in Jersey, one being a publication in French and the other a publication in English, 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.

5 Citation

This Law may be cited as the Control of Borrowing (Jersey) Law 1947¹⁹.

SCHEDULE²⁰**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 5 years or to a fine or to both such imprisonment and a fine.
2.
 - (1) The Commission may give any person directions requiring him or her, 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 or her possession or control which the Commission 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 or her, the person 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 or her in that capacity.
 - (2) The Commission may give to any person directions requiring him or her, 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 or her 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 or her notwithstanding that they may tend to incriminate him or her.

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 or her in that capacity.
 - (3) If the Bailiff is satisfied by information on oath given by an officer of the Commission or with the authority of the Commission that there is reasonable ground for suspecting that there are at any premises any documents which a person ought to have produced under sub-paragraph (2) but has failed or refused to produce, the Bailiff 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 the person by or under this paragraph;

- (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 persons exercising any powers conferred on them by or under this paragraph,

shall be liable to imprisonment for a term not exceeding 5 years or to a fine or both such imprisonment and a fine.

- (5) Any person who makes default in complying with a condition –

- (a) imposed on the person by the Commission pursuant to a power in that behalf in any Order made under this Law; or
- (b) prescribed by any such Order,

shall be liable to imprisonment for a term not exceeding 5 years or to a fine or to both such imprisonment and a fine.

- (6) Any person who continues to make default in complying with a condition referred to in sub-paragraph (5) after being convicted of that default shall be liable to a fine for each day on which the default so continues or to imprisonment for a term not exceeding 5 years or to both a fine and such imprisonment.

3.

- (1) Any person who knowingly or recklessly provides the Commission or any other person entitled to information under this Law (or under an Order made under this Law) with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided –

- (a) in purported compliance with a requirement imposed under this Law (or under an Order made under this Law); or
- (b) otherwise than as mentioned in clause (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission for the purpose of carrying out its functions under this Law (or under an Order made under this Law).

- (2) Any person who knowingly or recklessly provides the Commission or any other person with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application for consent under an Order made under this Law.

- (3) A person who is guilty of an offence against this Article shall be liable to imprisonment for a term not exceeding 5 years or a fine, or both.

4.

- (1) Where an offence under this Law (or under an Order made under this Law) committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, subparagraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

5.

- (1) Any person who aids, abets, counsels or procures the commission of an offence under this Law (or under an Order made under this Law) shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (2) Nothing in this paragraph affects the operation of paragraph 4(1) or (2).

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Borrowing (Control) (Jersey) Law 1947	L.5/1947	7 June 1947	
Borrowing (Control) (Amendment) (Jersey) Law 1961	L.14/1961	13 May 1961	
Borrowing (Control) (Amendment No. 2) (Jersey) Law 1986	L.7/1986	2 May 1986	
Limited Partnerships (Jersey) Law 1994	L.22/1994	1 January 1995 (R&O.8766)	
Borrowing (Control) (Amendment No. 3) (Jersey) Law 1996	L.28/1996	13 September 1996	
Limited Liability Partnerships (Jersey) Law 1997	L.3/1997	9 September 1998 (R&O.9233)	
Financial Services Commission (Jersey) Law 1998	L.11/1998	1 July 1998 (R&O.9238)	
Borrowing (Control) (Amendment No. 4) (Jersey) Law 1998	L.22/1998	13 November 1998	P.152/1998
Criminal Procedure (Prescription of Offences) (Jersey) Law 1999	L.23/1999	23 July 1999	P.34/1999
Borrowing (Control) (Amendment No. 5) (Jersey) Law 2000	L.20/2000	20 October 2000 (R&O.87/2000)	P.4/2000
Subordinate Legislation (Amendment No. 2) (Jersey) Law 2001	L.2/2001	23 February 2001	P.205/2000
Companies (Amendment No. 6) (Jersey) Law 2002	L.9/2002	1 September 2002 (R&O.67/2002)	P.84/2001
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003	P.122/2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	R&O.44/2005	9 December 2005	P.58/2005
Financial Services Commission (Amendment No. 4) (Jersey) Law 2007	L.33/2007	24 January 2008	P.35/2007
Separate Limited Partnerships (Jersey) Law 2011	L.6/2011	20 April 2011 (R&O.42/2011)	P.46/2010
Incorporated Limited Partnerships (Jersey) Law 2011	L.5/2011	26 May 2011 (R&O.67/2011)	P.45/2010

Legislation	Year and No	Commencement	°Projet No (where applicable)
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	R&O.107/2013	19 July 2013	P.75/2013
Limited Liability Partnerships (Jersey) Law 2017	L.2/2017	1 August 2018 (R&O.74/2018)	P.95/2016
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to External Relations) Order 2019	R&O.40/2019	31 May 2019	

°Projets available at www.statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
2(1)	2(1)
(ca)	(d)
(cb)	(e)
(d)	(f)
2(1A)	2(2)
2(1AA)	2(3)
2(1B)	2(4)
2(1C)	2(5)
2(1D)	2(6)
2(1E)	2(7)
2(1F)	2(8)
2(2)	2(9)
2(2A)	2(10)
2(3)	2(11)
2A	3
3	4
4	repealed by L.11/1998
SCHEDULE Paragraph	SCHEDULE Paragraph
2(6)	inserted by L.7/1986 , repealed by L.20/2000
2(7)	2(6)
2A	3
3(1)	repealed by L.23/1999
3(2)	4(1)
3(3)	4(2)
4	5

Table of Endnote References

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- ¹ *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- ² *Long Title* *amended by L.3/1997, L.9/2002*
- ³ *Article 1(1)* *amended by L.7/1986, L.22/1994, L.3/1997, L.11/1998 (definition “Commission” inserted, whereby numerous references to the Commission throughout the Law were also made), R&O.107/2013, L.2/2017, R&O.40/2019*
- ⁴ *Article 1(2A)* *inserted by L.6/2011*
- ⁵ *Article 1(2B)* *inserted by L.5/2011*
paragraph number revised using law revision powers
- ⁶ *Article 1(4)* *amended by L.11/1998*
- ⁷ *Article 1(6)* *inserted by L.3/1997, amended by L.2/2017*
- ⁸ *Article 2(1)* *amended by L.14/1961, L.11/1998, L.9/2002*
- ⁹ *Article 2(2)* *inserted by L.7/1986, amended by L.28/1996, L.11/1998, L.33/2007*
Article 8 of the Financial Services Commission (Amendment No. 4) (Jersey) Law 2007, which came into force on 2nd November 2007, states-
“8 Initial publication of fees
(1) *The Commission must, before [24th January 2008], publish fees for the purpose of the Laws specified in the Schedule to this Law. (NOTE: the Schedule includes this Law)*
(2) *The fees so published –*
(a) *shall be the same fees as those prescribed under those Laws; and*
(b) *shall have effect when this Law comes fully into force.*
(3) *On this Law coming fully into force, the fees published under this Article shall be taken to have been published under Article 15(5) of the [Financial Services Commission (Jersey) Law 1998].*
(4) *In this Article –*
“Commission” means the Jersey Financial Services Commission established by the principal Law;
“published”, in respect of fees published in accordance with this Article, means published in a manner likely to bring them to the attention of those affected by the fees.”
- ¹⁰ *Article 2(3)* *inserted by L.28/1996, amended by L.3/1997, L.22/1998 (which also deals with the interim period between the respective commencements of L.3/1997 and L.22/1998)*
- ¹¹ *Article 2(4)* *inserted by L.7/1986*
- ¹² *Article 2(5)* *inserted by L.7/1986*
- ¹³ *Article 2(6)* *inserted by L.7/1986*
- ¹⁴ *Article 2(7)* *inserted by L.7/1986*
- ¹⁵ *Article 2(8)* *inserted by L.7/1986*
- ¹⁶ *Article 2(10)* *inserted by L.22/1994, amended by L.3/1997, L.2/2017*
- ¹⁷ *Article 3* *substituted by L.11/1998*
- ¹⁸ *Article 4(1)* *amended by L.2/2001*

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- ¹⁹ *Short title revised; originally enacted as Borrowing (Control) (Jersey) Law 1947*
- ²⁰ *Schedule amended by L.7/1986, L.28/1996, L.20/2000*