


The President and Members of the
Finance and Economics Committee

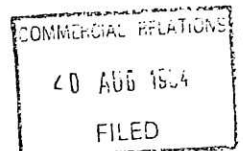

Commercial Relations Officer

15th August, 1984

CONTROL OF BORROWING (JERSEY) ORDER 1958 (THE ORDER)

BORROWING (CONTROL) (JERSEY) LAW 1947 (THE LAW)

1. The problems surrounding the above legislation were last discussed by the Committee during 1982 and gave rise to three decisions:-
 - (i) with regard to the use made of the Order to authorise and monitor public collective investment schemes to proceed with the enactment of a new statute. A brief has been approved by the Committee to proceed with the enactment of a new statute and the law is currently being drafted.
 - (ii) with regard to the use made of the Order to obtain disclosure of ownership and purposes of proposed new Jersey incorporated companies, to hold a meeting of representatives of all professional firms and institutions engaged in company formation and administration in order to encourage greater selectivity in corporate business, greater regard for the long term reputation of Jersey and increased compliance with the spirit of the controls exercised by the Committee under the legislation despite known loopholes in its effect. This meeting was duly held in November 1982.
 - (iii) with regard to one of the loopholes mentioned in (ii) above to include in the Company Law Reform proposals registration requirements for non-Jersey companies operating in or from Jersey.
2. At that time alteration of the terms of the Order itself was secondary and there were other legislative matters with a higher priority. Of recent times however the desirability of such alteration has become much clearer. In particular:-
 - (a) The Order seeks to control all borrowing on the Island other than from banks and other than those transactions falling within general exemption clauses. Quite a number of consents are issued on behalf of the Committee in this regard but there would not seem now to be any reason why such controls



should not be completely repealed as they have been in the United Kingdom together with the general exemptions applicable to them.

- (b) Apart from the general raising of money in the Island by any company, the Order seeks to control the issue of shares by a Jersey incorporated company or by a non-Jersey company whose shares are registered in the Island in certain specified circumstances e.g. if the shares are to be issued partly paid, if the shares are issued in exchange for the transfer of property etc. It would seem desirable to simplify this aspect of the Order by requiring consent to be obtained where such shares are issued for any purpose including the raising of money inside or outside the Island even from banks.

- (c) Again, apart from the general raising of money in the Island by any company, the Order seeks to control the issue of debentures or other loan securities for any purpose by a Jersey incorporated company or by a non-Jersey company where the securities are registered in the Island. This is subject to certain exemptions, two of which could with advantage be simplified. First the exemption granted where the debentures or loan securities are issued in substitution for redeemable securities should be removed. Secondly, the exemption granted where the debentures or loan securities are issued for the purpose of securing monies borrowed from a bank whether within or outside the Island should be adjusted so that it would no longer be a requirement (in connection with bank borrowings outside the Island) that the money be made available in the scheduled territories for the transaction to be exempt.

- (d) The article which provides that consent is needed by a non-Jersey company (or a non-Jersey unit trust) for the circulation in the Island of an offer for subscription or sale of securities should be extended to cover an offer for exchange of securities e.g. take-over offers. However, this article should be made the subject of new general exemptions. The present exemptions relate principally to prospectus circulation where United Kingdom or Guernsey Control of Borrowing consents have been granted. As mentioned above the United Kingdom Control of Borrowing Order is now virtually unused. The present position therefore is that in most cases where prospectuses are published in national daily papers, there is a breach of the Jersey Control of Borrowing legislation. This should be rectified. It is suggested that consent should always be required where it was intended to circulate in the Island an offer of securities in a non-Jersey company or unit trust where the company or trust had a material connection with the Island. Where no material connection was present consent should still be required but four

exempt classes could be prescribed - [i] Guernsey Control of Borrowing consent given, [ii] United Kingdom Companies Acts 1948 - 1983 complied with, [iii] United Kingdom Prevention of Fraud (Investments) Act 1958 complied with (this includes in particular U.K. authorised unit trusts), [iv] offer not public or only to persons whose business is buying and selling securities. //

- (e) As mentioned in paragraph 2(a) above the general exemption applicable to transactions where the annual limit of £50,000 is not exceeded should be repealed along with the articles which control individual borrowing and corporate borrowing not involving the issue of securities. The repeal of the general exemption would clear up a significant area of doubt with regard to applications for consent leading to incorporation of new Jersey companies because no exemptions to the need to obtain such consent would then exist. The repeal would also remove a loophole in the Committee's control of public share offers in non-Jersey investment schemes where the subscription monies are or are to be sent to Jersey.
- (f) A significant area of doubt would also be removed if the Articles under which consent is required to the raising of money in the Island by the issue of shares in a body corporate or units in a unit trust made it clear that money is raised in the Island (only) when it is made available in the Island. *see Law Art 113*
- (g) The exemption given to share issues to employees in connection with profit sharing schemes should be repealed for the sake of simplicity.
- (h) As a consequence of (a) to (g) above certain definitions in the Order would need to be repealed or adjusted.
3. The above outlines the areas of alteration envisaged but it will be useful for the Committee to see at a glance what will remain:-

- (a) A need for consent to the raising of money in the Island by any body corporate by the issue, whether in the Island or elsewhere of any shares in that body corporate. At present this is the only piece of legislation under which for instance a non-Jersey open-ended company receiving subscriptions in Jersey from the public can be controlled or that activity stopped.
- (b) A need for consent to the issue anywhere of shares in a body corporate incorporated in the Island or, not being incorporated in the Island, whose shares are or are to be registered in the Island. All share issues by Jersey companies

would therefore need consent and the present company vetting procedures could be maintained with a greater degree of certainty and simplicity.

- (c) A need for consent to the issue of securities other than shares (e.g. debentures) in a body corporate incorporated in the Island, or, not being incorporated in the Island, whose securities other than shares are or are to be registered in the Island, unless the issue is to secure money borrowed by the body corporate from a bank.
 - (d) A need for consent to the issue of securities of any Government (other than the United Kingdom, Jersey or Guernsey) where the securities are or are to be registered in the Island.
 - (e) A need for consent to a prospectus issued by a non-Jersey body corporate or non-Jersey unit trust or a Government other than the United Kingdom, Jersey or Guernsey as outlined in and subject to the exemptions set out in paragraph 2(d) above.
 - (f) A need for consent to the raising of money in the Island by a unit trust by the issue of units in the unit trust. At present this is the only piece of legislation under which for instance a unit trust not established under the law of the Island receiving subscriptions in Jersey from the public can be controlled or the activity stopped.
 - (g) A need for consent to the issue anywhere of units in a unit trust scheme if the scheme is governed by the law of Jersey or if the units are or are to be registered in the Island.
4. The above proposals would represent a very considerable improvement in the legislation, would marginally reduce the work of the Commercial Relations Department and of many legal firms and would render the Order more certain in its operation in the context of Jersey company vetting procedures and the approval of unit trust and open-ended company investment schemes. It would also render no longer illegal many activities which are carried on without consent in the field of prospectus circulation and identify much more clearly when such prospectus consents would be needed. These alterations would be valuable during the period whilst the new Collective Investment Schemes legislation is being drafted and also in the absence of any prospectus provisions in Jersey's company and other legislation.
5. The Committee is asked to approve the above items in principle and to request the Law Draftsman to proceed with the alterations on the basis of the attached brief. Examination of the brief will show that the amount of law drafting work should not be too significant. If the Committee were in agreement it is considered that it would be

desirable, once the full legal draft has been prepared, for The Jersey Lawyers Accountants and Bankers Joint Committee, the Jersey Fund Managers Association and the Jersey Association of Stock Exchange Members to be notified of the Committee's intentions to make the Order, some weeks in advance of it being made.



CONTROL OF BORROWING (JERSEY) ORDER 1958

PROPOSED ALTERATIONS

- | | |
|-----------------|--|
| Article 1 | Delete |
| Article 2 | Delete |
| Article 3(1) | Delete "Subject to the exemptions contained in Part II of this Order" |
| Article 4(1) | Delete |
| Article 4(2) | Delete |
| Article 4(3) | Delete "Subject to the exemptions contained in Part II of this Order".
Substitute "for any purposes" for the words commencing "if the purposes or effects of the transaction consist of or include...." to the end of Article 4(3). |
| Article 4(4) | Delete "Subject to the exemptions contained in Part II of this Order".
Substitute "for any purposes" for the words commencing "if the purposes or effects of the transaction consist of or include" to the end of Article 4(4). |
| Article 4(5) | Delete |
| Article 4(6) | Delete "Subject to the exemptions contained in Part II of this Order". |
| Article 4(7)(a) | Delete "in the Island". |
| Article 4(7)(b) | Delete |
| Article 4(7)(c) | Delete |
| Article 5 | Delete "Subject to the exemptions contained in Part II of this Order". |
| Article 6 | Renumber as Article 6(1).
Substitute "Subject to the exemptions contained in Part II of this Order" with "Subject to the remaining provisions of this Article"
Insert the words "or exchange" after the words "offer for subscription or sale"
Insert a new paragraph (c) after sub-paragraph (b) "any units under a unit trust scheme not governed by the law of the Island".
Delete the remainder of Article 6(1).
Insert a new Article 6(2) to provide "Notwithstanding the provisions of Article 6(1) a person may without the consent of the Committee circulate in the Island any offer for |

subscription, sale or exchange of any securities of any body corporate not incorporated under the law of the Island if

- [a] the body corporate does not have a relevant connection with the Island; and
- [b] the offer is not an offer to the public; or
- [c] the consent of the Finance and Advisory Committee of the States of Guernsey made in pursuance of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1947 has been given to the raising of money in that Bailiwick by the issue of such securities so long as that consent remains in force and provided that any conditions attached to the consent are complied with and that a public offer in the same terms and of the same securities is being circulated for the time being in Guernsey or
- [d] the offer document is being circulated for the time being in the United Kingdom and complies with the relevant provisions of the Companies Acts 1948-1983 and of the Prevention of Fraud (Investments) Act 1958 of the United Kingdom.

Insert a new Article 6(3) to provide

"Notwithstanding the provisions of Article 6(1) a person may, without the consent of the Committee, circulate in the Island any offer for subscription, sale or exchange of any securities of any government, other than Her Majesty's Government in the United Kingdom or the States of Jersey or Guernsey if the offer is not an offer to the public"

Insert a new Article 6(4) to provide

"Notwithstanding the provisions of Article 6(1) a person may, without the consent of the Committee, circulate in the Island any offer for subscription, sale or exchange of any units under a unit trust scheme not governed by the law of the Island if

- [a] the unit trust scheme does not have a relevant connection with the Island; and
- [b] the offer is not an offer to the public; or
- [c] the consent of the Finance and Advisory Committee of the States of Guernsey made in pursuance of the Borrowing (Control) (Bailiwick of Guernsey) Law, 1947 has been given to the raising of money in

that Bailiwick by the issue of such units so long as that consent remains in force and provided that any conditions attached to the consent are complied with and that a public offer in the same terms and of the same securities is being circulated for the time being in Guernsey;

- or
- [d] the offer document is being circulated for the time being in the United Kingdom and complies with the provisions of the Prevention of Fraud (Investments) Act 1958 of the United Kingdom."

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BY [redacted]
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C.I. [redacted] 27/9/84
1(3)

Insert a new Article 6(5) to provide

"For the purposes of this Article an offer of securities to any person whose ordinary business it is to buy or sell securities, whether as principal or agent, shall be deemed not to be an offer to the public."

Insert a new Article 6(6) to provide

"For the purposes of this Article a relevant connection with the Island shall be deemed to exist

- [a] in the case of a body corporate where the body corporate;
- and

- [b] in the case of a unit trust scheme where any of the bodies corporate undertaking or to be appointed to undertake the function of manager, administrator, distributor or trustee of the scheme

- (i) is managed, controlled or administered in the Island; or
- (ii) has at the time of circulation of the offer for subscription, sale or exchange a board of directors which includes one resident in the Island out of every three directors; or
- (iii) has entered into or is about to enter into a contract with a person resident in the Island, material to the offer for subscription or sale; or
- (iv) directly or indirectly carries on a business in or from within the Island which is material to the offer for subscription or sale."

Article 7(1)

Delete "Subject to the exemptions contained in Part II of this Order."

Article 7(1)(b)

Substitute "for any purpose if" for the words

"if the purposes or effects of the transaction consist of or include the raising of money outside the Island and"

Article 7(2)	Delete
Article 8	Delete
Article 9	Delete
Article 10	Delete
Article 11	No change
Article 12(1)	Delete the definition of "the scheduled territories"
Article 12(2)	Delete "borrow or" and the words commencing "or, in any such cases as mentioned in Article 2 of this Order..." to the end of Article 12(2). Insert "only" before the words "if the money is made available in the Island"
Article 13	There may be minor consequential drafting amendments to this Article.
Article 14	There may be minor consequential drafting amendments to this Article.
Article 15	There may be minor consequential drafting amendments to this Article. An effective date will need to be inserted.

55/1191

[REDACTED],
Chairman
The Jersey Lawyers Accountants & Bankers
Joint Committee,
13, Broad Street
JERSEY.

[REDACTED]
19th October, 1984

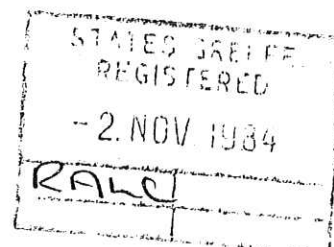
[REDACTED]
CONTROL OF BORROWING (JERSEY) ORDER, 1958

At its meetings on 22nd August 1984 and 5th September 1984 the Finance and Economics Committee decided in principle to amend the above Order mainly -

- [a] to remove certain controls on the borrowing of money;
- [b] to simplify the provisions of the Order relative to the issue of securities by Jersey company or by a non-Jersey company where such securities are registered in Jersey; and
- [c] to alter for the purpose of clarification the provisions controlling the circulation in Jersey of offers for subscription sale or exchange of securities of non-Jersey companies and unit trusts.

A draft of the proposed amending Order is attached and I shall be pleased to receive any comments which your Committee may have on the document and its provisions. It is intended that the Finance and Economics Committee be asked to make the Order at its meeting on 28th November with a view to the effective date being 1st December 1984. It would therefore be very much appreciated if I could have any observations by Tuesday 20th November.

I apologise for the urgency but I hope that your Committee will appreciate that the amendments are all designed to simplify the interpretation of the existing Order which has caused such difficulty in the past and that it is desirable that the Order be made by the same Committee which sanctioned it in principle.



I am writing in similar terms to the Jersey Fund Managers Association and the Jersey Association of Stock Exchange Members but not to the three constituent bodies represented on your Committee.

If you or your colleagues would wish to have discussions with me at any stage please do not hesitate to contact me.

Yours sincerely,

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Borrowing Control (Jersey) Law, 1947.

**CONTROL OF BORROWING (AMENDMENT No. 2)
(JERSEY) ORDER, 1984.**

THE FINANCE AND ECONOMICS COMMITTEE, in pursuance of Articles 2 and 3 of the Borrowing Control (Jersey) Law, 1947, as amended, hereby orders as follows:-

1. In the Control of Borrowing (Jersey) Order, 1958, as amended (hereinafter referred to as "the principal Order") Articles 1 and 2 and Part II shall be deleted.

2. In the principal Order, in -

(a) Article 3;

(b) paragraph (6) of Article 4; and

(c) paragraph (1) of Article 7

for the words "Subject to the exemptions contained in Part II of this Order, a" there shall be substituted the word "A".

3. In Article 3 of the principal Order after paragraph (1) there shall be inserted the following paragraph -

"(2) For the purposes of this Article a body corporate raises money in the Island only if the money is made available in the Island."

4. In Article 4 of the principal Order -

- (a) paragraphs (1), (2) and (5) shall be deleted;
- (b) for paragraph (3) there shall be substituted the following paragraph -

"(3) A body corporate incorporated under the law of the Island shall not, without the consent of the Committee, for any purpose issue any shares.";

- (c) for paragraph (4) there shall be substituted the following paragraph -

"(4) A body corporate not incorporated under the law of the Island shall not, without the consent of the Committee, for any purpose issue any shares which are or are to be registered in the Island.";

- (d) in paragraph (7) -

- (i) in sub-paragraph (a) the words "in the Island" shall be deleted; and
- (ii) sub-paragraphs (b) and (c) shall be deleted.

5. In Article 5 of the principal Order, for the words "Subject to the exemptions contained in Part II of this Order, no" there shall be substituted the word "No".

6. In the principal Order, for Article 6 there shall be substituted the following Article -

"6.-(1) A person shall not, without the consent of the Committee, circulate in the Island any offer for subscription, sale or exchange of any securities of any government, other than Her Majesty's Government in the United Kingdom or the States of any of the Channel Islands, unless for the purposes of this Article such offer does not constitute an offer to the public.

(2) A person shall not, without the consent of the Committee, circulate in the Island any offer for subscription, sale or exchange of any securities of any body corporate not incorporated under the law of the Island unless -

(a) such body corporate does not have a connexion with the Island which for the purposes of this Article is a relevant connexion; and

(b) such offer -

(i) does not for the purposes of this Article constitute an offer to the public; or

- (ii) is for the purposes of this Article valid in the United Kingdom or in the Bailiwick of Guernsey.

(3) A person shall not, without the consent of the Committee, circulate in the Island any offer for subscription, sale or exchange of any units under a unit trust scheme not governed by the law of the Island unless -

- (a) such unit trust scheme does not have a connexion with the Island which for the purposes of this Article is a relevant connexion; and

- (b) such offer -

- (i) does not for the purposes of this Article constitute an offer to the public; or

- (ii) is for the purposes of this Article valid in the United Kingdom or in the Bailiwick of Guernsey.

- (4) For the purposes of this Article -

- (a) an offer for subscription, sale or exchange of securities or units constitutes an offer to

the public where the offer is not addressed exclusively to a restricted circle of persons; and

(b) an offer shall not be considered to be addressed exclusively to a restricted circle of persons unless -

(i) the offer is addressed to an identifiable category of persons to whom it is directly communicated by the offeror or his appointed agent; and

(ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer; and

(iii) the number of persons in the Island to whom the offer is so communicated does not exceed fifty.

(5) For the purposes of this Article an offer is valid in the United Kingdom if an identical offer is for the time being being circulated in the United Kingdom without contravening the Prevention of Fraud (Investments) Act, 1958 (6 & 7 Eliz. 2c. 45) or the Companies Acts as defined in the Companies Act 1981 (1981 c.62).

(6) For the purposes of this Article an offer is valid in the Bailiwick of Guernsey if -

- (a) the consent of the Finance and Advisory Committee of the States of Guernsey to the raising of money by the issue of such securities or units has been granted under the Borrowing (Control) (Bailiwick of Guernsey) Law, 1947 and is in force; and
- (b) any conditions attached to such consent are complied with; and
- (c) an identical offer is for the time being being circulated in the Bailiwick of Guernsey.

(7) Where any circumstances mentioned or referred to in paragraph (8) or (9) of this Article exist such shall be deemed to amount to a connexion with the Island which for the purposes of this Article is a relevant connexion.

(8) In the case of any offer for subscription, sale or exchange of securities of any body corporate not incorporated under the law of the Island the circumstances to which paragraph (7) of this Article has reference are as follows -

- (a) the management or administration of such body corporate is wholly or partly carried on in the Island;
- (b) control of such body corporate is exercised in or from within the Island;
- (c) at the time of such offer one or more of every three members of the board of directors of such body corporate is resident in the Island;
- (d) such body corporate has entered into, or is about to enter into, an agreement with a person resident in the Island material to such offer;
- (e) a business material to such offer is carried on directly or indirectly by such body corporate in or from within the Island;
- (f) such offer is an offer for exchange of securities of such body corporate for securities of a body corporate incorporated under the law of the Island;
- (g) such offer is an offer for exchange of securities of such body corporate for units of unit trust scheme if either the scheme is

governed by the law of the Island or the units are or are to be registered in the Island.

(9) In the case of any offer for subscription, sale or exchange of units of a unit trust scheme not governed by the law of the Island the circumstances to which paragraph (7) of this Article has reference are as follows -

- (a) any person appointed or to be appointed as manager, administrator, distributor or trustee of such scheme is a body corporate and any of the circumstances referred to in sub-paragraphs (a), (b), (c), (d) or (e) of paragraph (8) apply;
- (b) such an offer is an offer for exchange of units of such scheme for securities of a body corporate incorporated under the law of the Island;
- (c) such an offer is an offer for exchange of units of such scheme for units of a unit trust scheme if either the scheme is governed by the law of the Island or the units are or are to be registered in the Island."

7. In Article 7 of the principal Order -

- (a) for sub-paragraph (b) of paragraph (1) there shall be substituted the following sub-paragraph -

"(b) for any purpose issue any units under a unit trust scheme if either the scheme is governed by the law of the Island or the units are or are to be registered in the Island;

- (b) for paragraph (2) there shall be substituted the following paragraph -

"(2) For the purposes of this Article a person raises money in the Island only if the money is made available in the Island."

8. In Article 12 of the principal Order -

- (a) in paragraph (1) -

(i) the definition of "the scheduled territories" shall be deleted; and

(ii) in the definition of "security" after the words "debenture stock" there shall be inserted the words "but does not include units under a unit trust scheme"; and

(b) paragraph (2) shall be deleted.

9. This Order may be cited as the Control of Borrowing (Amendment No. 2) (Jersey) Order, 1984 and shall come into operation on the 1st day of December, 1984.

By Order of the Finance and Economics Committee,

, 1984.

Explanatory Note.

The purpose of this Order is to amend the Control of Borrowing (Jersey) Order, 1958 mainly -

- (a) to remove controls on borrowing money;
- (b) to simplify controls over the issue of shares by a Jersey company or by a non Jersey company whose shares are registered in Jersey; and
- (c) to amend the provisions controlling the circulation in Jersey of an offer for subscription, sale or exchange of securities or units.

The Order was made on and comes into operation on 1st December, 1984.

Commercial
Relations Department

CYRIL LE MARQUAND HOUSE

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The Parade, St. Helier, Jersey.
Telephone: (0534) 79111 Ext..... Telex: 4192390. STATES



[REDACTED]
Assistant Law Draftsman
States Greffe
Royal Square
JERSEY.

Your Ref :

Our Ref: [REDACTED]

Date 26th November 1984

Dear [REDACTED]

DRAFT CONTROL OF BORROWING (AMENDMENT No.2)
(JERSEY) ORDER, 1984

Further to the above draft numbered 304/84, I have now had responses from the three professional associations on the Island to whom an earlier draft was submitted. These have given rise to a number of queries and lead me now to request you to make certain alterations to the above draft.

- [1] Article 4(3) of the existing Order which related to the issue of shares by Jersey incorporated companies in certain circumstances has been deleted by the draft and replaced by a paragraph requiring a consent for all issues of shares by a Jersey company. The wide terms of the proposed new paragraph effectively cover circumstances set out in Article 3 insofar as Article 3 relates to Jersey companies (and Article 3 related to both Jersey and non-Jersey companies at present). Rather than having this duplication we now feel that Article 3 should be reduced in its scope and relate only to non-Jersey companies. ✓
- [2] The effect of Article 3, as amended, (namely the deletion of the qualification "subject to the exemption contained in part ii of this Order" and indeed the deletion of the exemption contained in part ii itself) will mean that any company wherever incorporated will require the consent of the Committee for the issue of any shares in that company if the consideration for the sale is, for instance, paid into a Jersey bank account. The effect of this would be to bring into the control of the Committee the incorporation, for the purposes of subsequent administration in the Island, of Panamanian or Liberian companies over which hitherto the Finance and Economics Committee has not had control. I would therefore wish that a further sub-paragraph be inserted in Article 3 effectively bringing into that Article the £50,000 exemption limit previously contained in part ii. My suggested wording (so that you may understand broadly what I am aiming to achieve) would be as follows:- ✓

"This Article shall not apply to money
raised by the issue of shares in a body

Commercial Relations Officer, [REDACTED]

over.....

26th November, 1984

corporate not incorporated under the law of the Island where the total consideration for the issue of all such shares of that body corporate does not exceed £50,000."

I realise that this will bring into control certain such companies but I feel this is acceptable on the grounds that in virtually all cases such consent would strictly have been required under the present Order.

[3] Moving on to the proposed new Article 6(6) relating to the validity of offers in Guernsey it has been suggested that it may be more correct to say that consents in Guernsey are granted under the subordinate legislation made pursuant to the Borrowing (Control) (Bailiwick of Guernsey) Law 1947 rather than under the law itself. It might be helpful therefore to add after the reference "1947" the words "or under any subordinate legislation made pursuant thereto". ✓

[4] It has also been suggested that the proposed new Article 6(7) be re-drafted so that the last three lines read as follows:-

"shall be deemed to be a relevant connection for the purposes of this Article".

It was thought that this would be easier to read and meant the same thing. No. cce 6(2) ✓

[5] The point has been made to me that Article 6(7) and (8) are unclear in that they do not make it quite certain that the paragraphs set out the only circumstances in which there is a relevant connection with the Island. I shall be grateful if you will kindly tighten the position in that regard. ✓

[6] In Article 8 the reference to Article 12 should, it has been suggested, be a reference to Article 13. The reason for this suggestion is, I believe, that there have been a number of reprints etc., of the Order in the past and numbering has been altered. I am not too certain how one deals with this problem. ✓

[7] We have discussed before the fact that the effect of the change in the definition of "security" contained in the proposed Article 8(ii) is that the definition as contained in the Order will be different from the definition of security contained in the 1947 Law. I know that there are reasons for this but am wondering whether it would be possible to keep the same definition in the Order as in the Law and make certain other amendments to the Order so that the position becomes satisfactory from a drafting point of view. I shall be grateful if you will kindly look into this. No.

over.....

26th November, 1984

[8] Turning back now to the proposed new Article 6(1) it has been pointed out that there may be merit in widening this Article to give exemption to Prospectus circulation by other governments seeking to obtain sterling funds from U.K. and Jersey resident investors. I therefore feel that we should include exemptions in this Article broadly by adding the word "unless" to the Article and then repeating the words in Article 6(2)(b)(ii). The intention would be then to pick up for the purposes of interpretation of that addition the provisions of Article 6(6). However this would not of itself be sufficient without making a minor amendment to Article 6(5) because such Prospectus Offerings in the United Kingdom are controlled there under the provisions of the Borrowing (Control and Guarantees) Act 1946 and Orders made thereunder. I suggest therefore the addition of words to Article 6(5) to the effect that an offer would be valid in the United Kingdom if an identical offer is for the time being circulated in the United Kingdom without contravening the Prevention of Fraud Investments Act 1958, the Companies Acts or the Borrowing Control legislation. ✓ (4) ✓

[9] A problem has arisen with regard to Article 6(6)(c). This is that, whilst in the past it was virtually certain that, if an offer of securities in a Guernsey company was being circulated in Jersey, the offer would also be being circulated in Guernsey. However Guernsey have just enacted a law called the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance 1984 under which the Administrator of Income Tax there is able to exempt certain companies from taxation in Guernsey, even though they are resident for tax purposes in Guernsey, provided that the company does not have any Guernsey resident shareholders. We would not wish to interfere with this in any way and it would be my wish that an offer would be considered to be valid in the Bailiwick of Guernsey under our new Control of Borrowing Order even though an identical offer was not for the time being being circulated in the Bailiwick of Guernsey provided that the offer related to an exempted company or trust which was eligible for exemption from taxation in Guernsey under the provisions of the above Ordinance. In a recent Prospectus published in the Financial Times of November 22nd 1984, the following statement was included:-

"It is intended that the Fund will be resident in Guernsey. The Administrator of Income Tax in Guernsey has confirmed that, on the basis of the proposed operations of the Fund as described in this Prospectus, the Fund will be eligible for exemption from taxation in Guernsey under the provisions of the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance 1984. The Fund will seek such exemption which will be granted on payment of an initial fee of £1,300 and, thereafter, an annual fee of £1,300."

[REDACTED]

26th November, 1984

I shall therefore be grateful if you will kindly draft
an amendment to Article 6(6)(c) accordingly. ✓

Many thanks for your kind attention to these matters. If
any problems should occur during my absence on holiday no doubt
[REDACTED] assist you.

Yours sincerely,

[REDACTED]

[REDACTED]

Dictated by [REDACTED]
but signed in his absence.

STATES GREFFE
REGISTERED
28.NOV.1984

RIALC

Commercial Relations Department

CYRIL LE MARQUAND HOUSE

P.O. Box No. 267,
The Parade, St. Helier, Jersey.
Telephone: (0534) 79111 Ext..... Telex: 4192390. STATES



[REDACTED]
Assistant Law Draftsman
States Greffe
Royal Square
JERSEY.

Your Ref :

Our Ref: [REDACTED]

Date 29th November, 1984

Dear [REDACTED]

CONTROL OF BORROWING (AMENDMENT No.2) (JERSEY) ORDER 1984

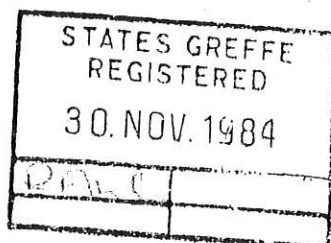
In [REDACTED] absence on leave, I have received confirmation from HM Treasury that the proposed amendment will not cause any problems with the interaction of COBO in the United Kingdom. They have, however, pointed out that Article 6(5) of the Order refers to the United Kingdom, and to achieve consistency they suggest that reference should be made to "the equivalent provisions in Northern Ireland" where applicable in relation to the statutes.

They are also interested in the definition of non-public offer in Article 6(4), especially with regard to the limit on the number of persons of 50, and have asked whether the definition is one specifically constructed for the purpose or whether it has been drawn from a precedent which could be identified. Are you able to be of any assistance to me in this regard.

Regards.

Yours sincerely,

[REDACTED]
Assistant Commercial Relations Officer



Commercial Relations Officer, [REDACTED]