

DRAFT BORROWING (CONTROL) (AMENDMENT No. 5) (JERSEY) LAW 200-

**Lodged au Greffe on 8th February 2000
by the Finance and Economics Committee**



STATES OF JERSEY

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Report

It had become apparent that there were certain deficiencies in some of the Laws administered by the Jersey Financial Services Commission concerning the provision of information to the Commission.

These deficiencies had largely been corrected in the latest financial regulatory legislation, and it was found that changes had to be made to earlier legislation to achieve consistency.

It was found that five Laws required change to cover the gaps in the legislation and achieve consistency across all regulatory Laws administered by the Commission.

The areas subject to the draft amendments mainly concern improving the provisions relating to the creation of criminal offences where persons either at the application stage for a licence or later whilst dealing with the Commission within its functions, provide it with misleading information either knowingly or recklessly or through negligence. The provision of false information was already an offence under these laws.

The officers, such as directors, of an applicant which is a legal entity are also criminally liable if they consent or connive to the offence. Persons who aid and abet such an offence are also liable to be punished as the principal may be.

The opportunity is taken to make several other insubstantial amendments to the laws.

This Report also relates to Projets P.5/2000, P.6/2000, P.7/2000 and P.8/2000.

Explanatory Note

The object of the amendments contained in this draft Law is to introduce in the Borrowing (Control) (Jersey) Law 1947 standard provisions dealing with -

- (a) the giving of false or misleading information to the Jersey Financial Services Commission;
- (b) the responsibility of members of limited liability partnerships and officers of bodies corporate for offences under that Law committed by those partnerships or bodies;
- (c) the maximum term of imprisonment for offences; and
- (d) aiding and abetting the commission of offences.

The provisions referred to at (a), (b) and (c) above replace provisions that already exist in different form.

BORROWING (CONTROL) (AMENDMENT No. 5) (JERSEY) LAW 200-

A LAW to amend further the Borrowing (Control) (Jersey) Law 1947, sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

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

ARTICLE 1

In the Schedule to the Borrowing (Control) (Jersey) Law 1947, as amended^[1] -

- (a) for the words “not exceeding two years” wherever occurring in paragraph 1 and sub-paragraphs (4), (5) and (7) of paragraph 2 there shall be substituted the words “not exceeding five years”;
- (b) sub-paragraph (6) of paragraph 2^[2] shall be deleted;
- (c) after paragraph 2² there shall be inserted the following paragraph -

“2A.-(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) of this sub-paragraph 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 five years or a fine, or both.”;

- (d) for sub-paragraph (2) of paragraph 3^[3] there shall be substituted the following sub-paragraphs -

“(2) 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.

(3) Where the affairs of a body corporate are managed by its members, sub-paragraph (2) of this paragraph shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”;

(e) after paragraph 3^[4] there shall be inserted the following paragraph -

“4.-(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 sub-paragraph (2) or (3) of paragraph 3.”.

ARTICLE 2

(1) This Law may be cited as the Borrowing (Control) (Amendment No. 5) (Jersey) Law 200-.

(2) This Law shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions or different purposes of this Law.

^[1] Tome VII, pages 390 and 391, Volume 1986-1987, page 60, Volume 1996-1997, page 288, Volume 1998, page 255 and Volume 1999, page 418.

^[2] Tome VII, page 391 and Volume 1986-1987, page 60.

^[3] Tome VII, page 392.

^[4] Tome VII, page 392.