

STATES OF JERSEY

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DRAFT PUBLIC FINANCES (TRANSITIONAL PROVISIONS) (No. 2) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 27th September 2005
by the Finance and Economics Committee**

STATES GREFFE



Jersey

DRAFT PUBLIC FINANCES (TRANSITIONAL PROVISIONS) (No. 2) (JERSEY) REGULATIONS 200

REPORT

The Public Finances (Jersey) Law 2005 (the “Finance Law”) has been approved by the U.K. Privy Council and registered in the Royal Court and is expected to come into force on the introduction of Ministerial Government.

The Finance Law states that further details on various items will be detailed in Regulations to be presented to the States by the Minister for Treasury and Resources. Obviously this role does not exist until Ministerial Government is implemented but it is necessary for Transitional Regulations to be in place for the commencement of the Public Finances (Jersey) Law 2005 and these Regulations are therefore submitted for States approval by the Finance and Economics Committee.

These Draft Regulations provide both greater detail on the areas where authority has been delegated to the Minister for Treasury and Resources and / or to the Treasurer of the States and the Comptroller and Auditor General.

Investments

The Finance Law provides for the investment of States funds (including money in the consolidated fund, any special fund, the strategic reserve fund and the currency fund but excludes funds covered by other enactments or trust deeds). The Regulations provide the framework to ensure that these States investments are managed, controlled and accounted for in line with a States investment strategy prepared and approved by the Minister for Treasury and Resources and presented to the States.

The Treasurer of the States is made responsible for ensuring that money is invested, managed controlled and accounted for in accordance with the investment strategy.

Borrowing

In accordance with the 2005 Finance Law all major borrowing by the States must be debated and approved by the States Assembly.

The Law dictates that the maximum sum to be borrowed by the States must not exceed more than the previous year’s States income derived from taxation. This is lower than the limit under the 1967 Law, however, the Finance and Economics Committee believes that this is a prudent and workable limit.

The Regulations recognise the diverse nature of States business and the fact that times and financial markets and vehicles for funding expenditure have changed. The Regulations on borrowing delegate authority to the Minister for Treasury and Resources and to the Treasurer (if the Minister so agrees) to approve minor borrowing, within preset sums and for purposes purely to enable the States administration to work efficiently and effectively. In summary the Regulations enable the Minister to borrow on behalf of the States –

- to meet short-term cash flow requirements;
- for a States Trading Operation where tangible savings or income are sufficient to meet the cost of borrowing for an asset approved by the States;
- where there are sound financial management reasons to use the borrowing route – financial limits are set and the Minister may only borrow up to £1 million in respect of any one transaction (but not more than £3 million in total in one financial year) and where the total outstanding for such loans does not exceed £20 million. The sums borrowed under this authority must be repayable in less than 10 years;
or

- for a particular class, type or series of borrowing for which States approval has already been given.

The Minister is obligated to report any additional borrowing to the States at six monthly intervals.

Lending

As with borrowing the Finance Law dictates that all major States lending needs to be approved by the States and that total lending must not exceed more than 15% of the estimated income from taxation from the previous year.

These Regulations delegate authority to the Minister for Treasury and Resources, and if she/he agrees to the Treasurer, to approve –

- minor transactions to assist in the smooth running of States financial administration. The Regulations set financial limits within which the Minister may operate; and
- specific loans where the States have previously given a general approval for a class, type or series of loans (for example loans to parishes for housing projects).

The Regulations place an obligation on the Minister to report to the States at six monthly intervals details of any loans made under his/her delegated powers.

Comptroller and Auditor General

The States have already agreed the appointment to the post of Comptroller and Auditor General. The Law gives the post holder wide powers of access to records and information and the draft Regulations, once brought into effect will enable the Comptroller and Auditor General to authorise other suitably qualified and experienced persons to carry out certain powers and functions vested in them.

Trust Assets

The 1967 Finance Law made no reference to this area of administration which deals with “property” in a legacy or bequest in favour of the States or in trust for the States. Trust money does not form part of the States consolidated fund.

The Regulations allocate responsibility for this area to the Treasurer to administer and invest funds in accordance with the terms of the Trust. They also allow the Treasurer to delegate this responsibility to other officers or persons. The Regulations also make it clear that other provisions of the 2005 Finance Law will apply to money held in trust assets wherever it is appropriate to do so.

States Trading Operations

The Law specifies that financial controls to be observed by a States trading operation will be dealt with via an Order to be issued by the Minister. These Transitional Provisions in the main deal with the uses for the States trading operation’s trading fund which are similar to those uses defined in the 1967 Finance Law.

Conclusion

The Committee is pleased to present these Regulations which build upon the strong financial base already approved by the States in the Public Finances (Jersey) Law 2005 and represent best practice in the areas highlighted. The Committee commends the Regulations to the States.

Financial and manpower statement

There are no financial or manpower implications for the States arising from these Draft Regulations.

Explanatory Note

These Regulations put in place temporary subsidiary legislation that is required as soon as the Public Finances (Jersey) Law 2005 comes fully into effect.

In the normal course of events the necessary permanent subsidiary legislation would have been made by the Committee or, as the case may be, by the States before the Law was brought into effect but this is not possible in this instance since the required subsidiary legislation can only be made by, or on the motion of, the Minister for Treasury and Resources.

The provisions of the Regulations will continue in effect until other provisions are made by the States or the Minister, as the case may be.

Chapter 1

Regulation 1 - defines certain terms used in the Regulations.

Chapter 2

Regulation 2 - provides for the application of Chapter 2 - investment of States' money.

Regulation 3 - requires the Minister to develop and keep under review an investment strategy for States' money, which has to be presented to the States (*Regulation 4*). It then allows the Minister and the Treasurer to invest States' money to the extent and in the manner set out in the strategy presented to the States. They may invest by using investment managers.

Regulation 5 - requires the Treasurer to ensure that money of the States is invested and managed in accordance with the investment strategy or the last review of the strategy presented to the States.

Regulation 6 - requires the Treasurer to appoint such investment managers and other qualified persons as may be necessary to ensure compliance with Regulation 5.

Chapter 3

Regulation 7 - provides for the effective period for the provisions of Chapter 3 - borrowing by and on behalf of the States.

Regulation 8 - prescribes transactions by the States that do not amount to borrowing for the purposes of the new Law.

Regulation 9 - authorizes the Minister to make certain borrowings in the name of, and on behalf of the States.

Regulation 10 - allows the Minister to delegate his or her power to borrow on behalf of the States to the Treasurer.

Chapter 4

Regulation 11 - provides for the effective period for the provisions of Chapter 4 - lending by and on behalf of the States.

Regulation 12 - prescribes transactions by the States that do not amount to lending for the purposes of the new Law.

Regulation 13 - authorizes the Minister to lend certain money of the States.

Regulation 14 - allows the Minister to delegate his or her power to lend money of the States to the Treasurer.

Chapter 5

Regulation 15 - sets out the power the person holding the office of Comptroller and Auditor General has to delegate his or her powers.

Chapter 6

Regulation 16 - provides for the effective period for the provisions of Chapter 6 - administration of money forming part of trust funds.

Regulation 17 - provides that the Treasurer shall be generally responsible for trust money held by the States.

Regulation 18 - prescribes the bank accounts that may be used for trust money.

Regulation 19 - applies certain provisions of the 2005 Law to trust money.

Regulation 20 - allows administration costs to be charged to trust money.

Chapter 7

Regulation 21 - provides for the effective period for the provisions of Chapter 7 - financial administration of States trading operations.

Regulation 22 - provides for the expenditure that may be made by a States trading operation from its trading fund.

Regulation 23 - provides for what money may be paid into the trading fund of a States trading operation.

Regulation 24 - provides for interest in respect of a States trading operation's trading fund.

Regulation 25 - provides for borrowing, lending, guarantees and indemnities in respect of a States trading operation.

Regulation 26 - requires a States trading operation to provide an annual financial statement.

Chapter 8

Regulation 27 - provides for the citation and commencement of the Regulations.



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Regulation

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 71 of the Public Finances (Jersey) Law 2005^[1] have made the following Regulations –

Chapter 1 – General interpretation

1 Interpretation

In these Regulations –

“1967 Law” means the Public Finances (Administration) (Jersey) Law 1967,^[2]

“2005 Law” means the Public Finances (Jersey) Law 2005.

Chapter 2 – Investment of money owned or controlled by the States

2 Application of Chapter 2

- (1) This Chapter shall have effect when Article 6 of the 2005 Law comes into force and may be amended by Regulations made by the States in accordance with paragraph (2) of that Article.
- (2) This Chapter applies to money to which Article 6 of the 2005 Law applies.
- (3) It does not apply to money which by virtue of the 2005 Law or any other enactment is to be invested in any other manner prescribed by or by virtue of that Law or enactment.

3 Minister to develop and to invest in accordance with investment strategy

- (1) The Minister must develop and keep under review an investment strategy for money to which this Chapter applies.
- (2) Where the Minister considers it appropriate to do so the Minister must seek the advice of persons who are appropriately qualified and have the necessary experience to provide the required investment advice.
- (3) The investment strategy and any review of it must, in particular, have regard to –
 - (a) the desirability of diversification in the management of the money to which this Chapter applies; and
 - (b) the level of the funds to be invested.

4 Minister to present investment strategy and any review of it to the States

- (1) As soon as practical after the Minister has prepared the investment strategy, or any review of it, the Minister must present it to the States.
- (2) The Minister and the Treasurer may invest money to which this Chapter applies –
 - (a) to the extent and in the manner set out in the investment strategy presented to the States; but
 - (b) where that strategy has been reviewed, to the extent and in the manner set out in the last review of the strategy presented to the States.
- (3) The Minister and the Treasurer –
 - (a) where the investment strategy so requires, must invest money to which this Chapter applies through the use of investment managers; and
 - (b) in any other case, may do so through the use of investment managers.

5 Treasurer to ensure compliance with investment strategy

The Treasurer must ensure –

- (a) that money to which this Chapter applies is invested in accordance with Regulation 4; and
- (b) that any investments so made are properly managed, controlled and accounted for in accordance with the investment strategy or review of it, mentioned in Regulation 4(2).

6 Treasurer to appoint investment managers and other qualified persons

- (1) To comply with Regulation 5, the Treasurer –
 - (a) must appoint any investment managers required by virtue of the investment strategy; and
 - (b) may appoint such other suitably qualified and experienced investment managers, custodians, agents, investment advisers and other persons as the Treasurer considers necessary or convenient to enable the Treasurer to comply with Regulation 5.
- (2) Before appointing an investment manager the Treasurer must satisfy himself or herself that any person proposed to be appointed is suitably qualified and has the necessary experience to make investment decisions on behalf of the States and to offer investment advice to the States.
- (3) Persons appointed in accordance with this Regulation are to be appointed on such terms as the Treasurer determines are best suited to ensure that he or she is able to comply with Regulation 5.

Chapter 3 – Borrowing by or on behalf of the States

7 Application of Chapter 3

This Chapter shall have effect when Article 22 of the 2005 Law comes into force and may be amended by Regulations made by the States in accordance with paragraph (1) of that Article.

8 Transactions that are not borrowing

- (1) The following transactions, or classes or types of transactions do not amount to borrowing by the States for the purposes of the 2005 Law, namely –
 - (a) the purchase by or on behalf of the States of goods or services on credit terms of not more than 90 days;

- (b) the issue by the States of Jersey currency;
 - (c) a transaction undertaken by or on behalf of the States where the use of an asset is secured and the ownership, risk and responsibility does not pass to the States or to a States funded body.
- (2) A temporary transfer of money from one fund that is capable of being audited by the Comptroller and Auditor General under the 2005 Law to another such fund solely to meet the cash flow requirements of the second fund does not amount to borrowing by the States.

9 Minister's authority to borrow money in the name of and on behalf of the States

- (1) The Minister may, in the name of and on behalf of the States –
- (a) arrange a bank overdraft;
 - (b) arrange a bank overdraft facility; or
 - (c) arrange a temporary loan to the States,
- in anticipation of or required to meet a cash deficiency in respect of an expenditure approval or any other financial commitment approved by the States or by the Minister under this Regulation or by the Treasurer by delegation under Regulation 10.
- (2) The Minister may not exercise his or her power under paragraph (1) if the total amount borrowed by the States under that paragraph at that time would exceed an amount equal to 25% of the estimated income of the States derived from taxation during the previous financial year.
- (3) The Minister may, if requested to do so by the minister with responsibility for a States trading operation, in the name of and on behalf of the States, borrow money where –
- (a) the amount borrowed is to be used by the States trading operation;
 - (b) the Minister is satisfied that the assets to be purchased or created by the use of the borrowed amount will produce income from external sources or from tangible financial savings sufficient to repay that amount and the interest on it over the period of the borrowing; and
 - (c) any necessary approval by the States of the assets to be purchased or created by the use of the borrowed amount has been given.
- (4) In addition to the borrowing that the Minister may undertake on behalf of the States by virtue of paragraphs (1) and (3), the Minister may, in any financial year, in the name of and on behalf of the States borrow up to £1 million in respect of any one transaction where–
- (a) the total amount borrowed in that financial year by virtue of this paragraph does not exceed £3 million;
 - (b) the amount borrowed by virtue of this paragraph and still outstanding at any one time does not exceed £20 million; and
 - (c) any amount borrowed by virtue of this paragraph is repayable within 10 years.
- (5) In addition to the borrowing permitted by or mentioned in paragraph (4), the Minister may, in the name of and on behalf of the States, borrow money that forms part of a class, type or series of borrowings for which the States have given their general approval.
- (6) The Minister may use –
- (a) any asset of the States; and
 - (b) the future revenues of the States,
- to secure any borrowing in accordance with this Regulation.
- (7) For the purpose of this Regulation –
- (a) borrowing by the States shall be taken to include the giving of a guarantee in the name of the States and the provision of an indemnity in the name of the States; and
 - (b) the liability of the States in respect of any such guarantee or indemnity shall be taken as an

amount borrowed by the States.

- (8) The Minister must, at periods of no longer than 6 months, report to the States details of any additional borrowing under this Regulation since the last such report.

10 Power of Minister to delegate functions – borrowing

- (1) The Minister may delegate to the Treasurer, wholly or partly, a function vested in the Minister by Regulation 9.
- (2) Such a delegation shall not prevent the Minister exercising the function personally.

Chapter 4 – Lending by or on behalf of the States

11 Application of Chapter 4

This Chapter shall have effect when Article 23 of the 2005 Law comes into force and may be amended by Regulations made by the States in accordance with paragraph (3) or paragraph (5) of that Article.

12 Transactions that are not lending

- (1) The sale or provision of goods or services by or on behalf of the States on terms that provided for them to be paid for not more than 90 days from the date of their sale or provision does not amount to lending by the States for the purposes of the 2005 Law.
- (2) A temporary transfer of money from one fund that is capable of being audited by the Comptroller and Auditor General under the 2005 Law to another such fund solely to meet the cash flow requirements of the second fund does not amount to lending by the States.

13 Minister's authority to lend money in the name of and on behalf of the States

- (1) The Minister may, in any financial year, in the name of and on behalf of the States, lend up to £500,000 in respect of any one transaction where –
 - (a) the total amount lent in that financial year by virtue of this paragraph does not exceed £3 million;
 - (b) the amount lent by virtue of this paragraph and still outstanding at any one time does not exceed £10 million; and
 - (c) any amount lent by virtue of this paragraph is repayable within 20 years.
- (2) Except as otherwise provided by paragraph (1), a loan made under that paragraph may be made on such terms, conditions and at such rate of interest (if any), and may be secured in such manner (if any) as the Minister may determine.
- (3) In addition to the money permitted to be lent under paragraph (1), the Minister may, in the name of and on behalf of the States, make a specific loan that forms part of a class, type or series of loans for which the States have given their general approval.
- (4) The Minister must, at periods of no longer than 6 months, report to the States details of any additional lending under this Regulation since the last such report.

14 Power of Minister to delegate functions – lending

- (1) The Minister may delegate to the Treasurer, wholly or partly, a function vested in the Minister by Regulation 13.
- (2) Such a delegation shall not prevent the Minister exercising the function personally.

Chapter 5 – Comptroller and Auditor General

15 Comptroller and Auditor General may authorize others to carry out functions

- (1) This Regulation shall have effect when Article 51 of the 2005 Law comes into force and may be amended by Regulations made by the States in accordance with that Article.
- (2) The Comptroller and Auditor General may authorize a person to carry out a function vested in the Comptroller and Auditor General by or under the 2005 Law.
- (3) The Comptroller and Auditor General shall not do so unless he or she is satisfied that the person has the required qualifications and necessary experience to be able to carry out the function in a satisfactory manner.
- (4) An authorization given under paragraph (2)–
 - (a) may be given subject to such terms, conditions and other limitations as the Comptroller and Auditor General considers appropriate;
 - (b) does not affect the ability of the Comptroller and Auditor General to carry out any function; and
 - (c) may be revoked by the Comptroller and Auditor General at any time.
- (5) Where a function of the office of Comptroller and Auditor General is carried out in accordance with an authorization given under paragraph (2)–
 - (a) the person carrying out the function has the same powers as the Comptroller and Auditor General has to carry out the function; and
 - (b) the effect shall be the same as if the function had been carried out by the Comptroller and Auditor General.

Chapter 6 – Administration of money forming part of trust assets

16 Application of Chapter 6

This Chapter shall have effect when Article 67 of the 2005 Law comes into force and may be amended by Regulations made by the States in accordance with paragraph (3) of that Article.

17 Treasurer to be generally responsible for money forming part of trust assets

- (1) Except as otherwise provided by this Chapter, money forming part of trust assets shall be managed, handled and accounted for by the Treasurer.
- (2) The Treasurer may –
 - (a) authorize the accounting officer of a States funded body to administer and account for any specified money forming part of any trust assets; or
 - (b) authorize any other suitably qualified person to manage, handle and account for any specified money forming part of any trust assets.
- (3) The Treasurer shall not give any authorization under paragraph (2)(a) except with the approval of any minister assigned responsibility for the States funded body.
- (4) The Treasurer shall not give any authorization under paragraph (2)(b) except with the approval of the Minister.
- (5) An authorization given under paragraph (2)–
 - (a) may be given subject to such terms, conditions and other limitations as the Treasurer considers

appropriate; and

(b) may be revoked by the Treasurer at any time.

18 Trust assets bank accounts

Unless the trust under which the money is held provides otherwise, any bank account used to manage, handle or account for money forming part of trust assets shall be kept with a bank approved for the purpose by the Minister.

19 Application of the Law to trust assets

(1) Where money forming part of trust assets is managed, handled or accounted for by –

- (a) the Treasurer;
- (b) an accounting officer; or
- (c) by virtue of Regulation 17(2)(b), any other person,

the Treasurer, the accounting officer or that person shall have the same personal accountability, with the necessary amendments, in respect of the money as an accounting officer of a States funded body has in respect of the financial management of the resources of the body.

(2) In particular the Treasurer, accounting officer or person shall ensure that the money is used for the purpose intended.

(3) Where paragraph (1) applies –

- (a) the internal auditor may carry out an internal audit of the transactions and internal controls and systems of the Treasurer, accounting officer or person in respect of the money forming part of trust assets as if the Treasurer, accounting officer or person were a States funded body;
- (b) the Comptroller and Auditor General shall have the same functions in respect of the Treasurer, accounting officer or person as the Comptroller and Auditor General would have if the Treasurer, accounting officer or person were a States funded body; and
- (c) Part 7 of the Law (which relates to offences) shall apply in respect of the money as if it were money being managed, handled and accounted for by a States funded body.

20 Administration costs may be charged

(1) Where money forming part of trust assets is managed, handled or accounted for by –

- (a) the Treasurer;
- (b) an accounting officer; or
- (c) by virtue of Regulation 17(2)(b), any other person,

the Treasurer, the accounting officer or that person may deduct from the money such amount (if any) by way of administration costs as the Minister may agree.

(2) The Minister shall not give approval under paragraph (1) that is contrary to any trust subject to which the money is held.

Chapter 7 – Financial administration of States trading operations

21 Application of Chapter 7

This Chapter shall have effect when Article 26 of the 2005 Law comes into force and may be amended an Order made by the Minister in accordance with paragraph (3) of that Article.

22 Expenditure from trading fund of States trading operation

- (1) Money standing to the credit of the trading fund of a States trading operation may, in particular, be used –
 - (a) for a capital project of the trading operation approved by the States as part of an annual business plan;
 - (b) in the early repayment of a loan made to the States trading operation; and
 - (c) for any other purpose approved by the States.
- (2) Money standing to the credit of the trading fund of a States trading operation may also be used, with the approval of the Minister, for a capital project of the trading operation if –
 - (a) the amount approved by the States for the project as part of an annual business plan has proved to be insufficient; or
 - (b) the project arises from a contingency that could not have been reasonably foreseen at the time the estimates of the States trading operation were submitted to the Minister in accordance with Article 8 of the 2005 Law for inclusion as part of an annual business plan.
- (3) Money standing to the credit of the trading fund of a States trading operation may also be used, with the approval of the Minister, for a purpose other than one approved as part of an annual business plan if expenditure for the purpose is necessary or expedient to advance the business of the trading operation.
- (4) The Minister must, at periods of no longer than 6 months, report to the States details of any approval given under paragraph (2) or paragraph (3) since the last such report.

23 Payments into a trading fund of States trading operation

- (1) At the end of a financial year there shall be placed to the credit of the trading fund of a States trading operation an amount equal to any amount earned by the trading operation during that year that is in excess of the total of –
 - (a) the expenditure of the trading operation; and
 - (b) the contribution to be made to the States in respect of that year as agreed between the Minister and the minister with responsibility for the States trading operation, being an amount that is not less than the minimum contribution that the trading operation is required to make to the States as approved by the States as part of the annual business plan for the year.
- (2) There shall be placed to the credit of the trading fund of a States trading operation such other amounts as the Minister may from time to time direct.

24 Interest in respect of a trading fund of a States trading operation

- (1) At the end of any period of a financial year, as determined by the Treasurer, there shall be placed to the credit of the trading fund of a States trading operation interest on the money from time to time standing to the credit of the fund during that period.
- (2) The interest shall be calculated at the rate for the time being specified in financial directions.
- (3) Should the expenditure of a States trading operation at any time exceed the funds available to it at that time there shall be debited from its trading fund interest on the excess at the rate for the time being specified in financial directions.

25 Borrowing, lending, guarantees and indemnities in the name of the States by a States trading operation

- (1) Money shall not be borrowed in the name of the States by a States trading operation except in accordance with Regulation 9(3).
- (2) Money shall not be lent in the name of the States by a States trading operation except with and in accordance with the approval of the States or the Minister.
- (3) A guarantee or indemnity shall not be given in the name of the States by a States trading operation except with and in accordance with the approval of the States or the Minister.
- (4) The Minister may delegate to the Treasurer, wholly or partly, the function vested in the Minister by paragraph (2) or paragraph (3).
- (5) Such a delegation shall not prevent the Minister exercising the function personally.
- (6) The Minister must, at periods of no longer than 6 months, report to the States details of any approval given by the Minister or the Treasurer under this Regulation since the last such report.

26 States trading operations to provide an annual financial statement

- (1) An annual financial statement in respect of the accounts, assets, liabilities and operations of a States trading operation for each financial year must be prepared and supplied to the Treasurer in sufficient time to enable the Treasurer to prepare an annual financial statement in respect of the accounts of the States before the end of the period of 3 months mentioned in Article 32(1) of the 2005 Law or any extension of that period by virtue of paragraph (6) of that Article.
- (2) The Minister may, in addition, require that a financial statement in respect of the accounts and operations of a States trading operation be prepared and supplied in respect of any other period.
- (3) Unless the Minister directs otherwise, a statement mentioned in paragraph (1) or paragraph (2) must be prepared in accordance with the standards applicable to the annual financial statement of the States by virtue of Article 32(2) of the 2005 Law.

Chapter 8 - Citation and commencement

27 Citation and commencement

- (1) These regulations may be cited as the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 200-.
- (2) They shall come into force on the seventh day after they are made.

[1] L.14/2005.

[2] Chapter 24.900.