1962. No. 187 **[C]**

CONTROL OF BORROWING

ORDER, DATED 23RD OCTOBER, 1962, MADE BY THE MINISTRY OF FINANCE UNDER SECTION 2 OF THE LOANS GUARANTEE AND BORROWING REGULATION ACT (NORTHERN IRELAND), 1946.

The Ministry of Finance (hereinafter referred to as "the Ministry") in the exercise of the powers conferred upon it by section two of the Loans Guarantee and Borrowing Regulation Act (Northern Ireland), 1946(a), and of all other powers enabling it in that behalf hereby makes the following Order:—

PART I

GENERAL EXTENT OF CONTROL

Borrowing in Northern Ireland

1.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry, borrow money in Northern Ireland where the aggregate of the amount of money borrowed and of any other amounts borrowed in Northern Ireland by that person in the previous twelve months (including any period before the coming into force of this Order) exceeds ten thousand pounds.

(2) This Article shall not apply to:—

(*a*) borrowing by any person, other than a local authority, if the borrowing is in the ordinary course of his business and is from a person carrying on a banking undertaking;

(*b*) borrowing by any person, other than a local authority, where the money borrowed is repayable on demand or not more than six months after demand and the loan is wholly unsecured or is secured only by a bill of exchange payable on demand or at a fixed period not exceeding six months after the date of the borrowing or after sight or by a promissory note payable not more than six months after the date of the borrowing;

(*c*) borrowing by a local authority for the sole purpose of defraying expenditure (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues receivable by them in respect of the period of account in which that expenditure is chargeable, so long as—

(i) the expenditure is not capital expenditure; and

(ii) the money is repayable not later than one month after the termination of that period of account; and

(iii) the amount outstanding at any one time does not exceed one half of the total revenues received or receivable in respect of that period of account;

(*d*) acceptance by a person carrying on a banking undertaking or a member of the London Discount Houses Committee of moneys to be placed to the credit of a current or deposit account, whether or not any security is given;

(a) 1946. c. 18.

(*e*) borrowing by the personal representative of a deceased person in his capacity as such for the purpose of paying death duties payable by reason of the death of the deceased;

(*f*) borrowing from a department of Her Majesty's Government in the United Kingdom, or a department of the Government of Northern Ireland.

For the purposes of this paragraph a loan in respect of which a guarantee is given is not an unsecured loan.

Making of certain arrangements to be treated as borrowing

2.—(1) In this Order references to the borrowing of money include:—

(*a*) references to the making of any arrangement to provide any guarantee or to mortgage or charge any property to secure the payment of any sum which is already due when the arrangement is made or is payable not later than six months after the arrangement is made; and

(*b*) references to the making of any arrangement by which the price of any property except the price of goods sold by a person in the ordinary course of his business is allowed to remain unpaid either for a fixed period or indefinitely but charged on any property;

but do not include references to the making of any other arrangement by which a sum which would otherwise be payable at any date is payable at a later date; and references to loans shall be construed accordingly.

(2) 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 this Article 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.

Raising money by issue of shares

3.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, raise money in Northern Ireland by the issue, whether in Northern Ireland or elsewhere, of any shares in that body corporate.

(2) This Article shall not apply to money raised by the issue of shares to the subscribers of a memorandum of association where the total consideration for the issue of all those shares issued to the said subscribers does not exceed five hundred pounds.

(3) This Article shall not apply to money raised by the issue by a private company of shares to the vendors or the nominees of the vendors of any undertaking sold to the company if—

(*a*) the shares are all fully paid; and

(*b*) the money raised is cash forming part of the assets of the undertaking or cash which has been paid to the vendors as or as part of the purchase price of the undertaking.

Issues of partly paid shares and other issues of shares and other securities

4.—(1) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, issue partly paid shares, if either the body corporate is incorporated under the law of Northern Ireland or the shares are or are to be registered in Northern Ireland.

(2) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares where the whole or any part of the consideration for the issue is the transfer of any property, unless the property consists of, or forms part of, the assets of an undertaking which is being sold to the body corporate, being a private company.

(3) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares if the purposes or effects of the transaction consist of or include—

(*a*) the raising or borrowing of money outside Northern Ireland, unless the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking, and the money is made available in the scheduled territories; or

(*b*) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(4) Subject to the exemptions contained in Part II of this Order, a body corporate not incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares which are or are to be registered in Northern Ireland if the purposes or effects of the transaction consist of or include—

(*a*) the raising or borrowing of money outside Northern Ireland; or

(*b*) the exchanging or substituting of new securities for redeemable securities already issued by the body corporate, unless such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

(5) Subject to the exemptions contained in Part II of this Order, a body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any shares where the whole or any part of the consideration for the issue is the discharge of any capital liability in respect of any such borrowing as is mentioned in paragraph (2) of Article 1 of this Order.

(6) A body corporate incorporated under the law of Northern Ireland shall not, without the consent of the Ministry, issue any redeemable shares if the purposes or effects of the transaction consist of or include the capitalisation of profits or reserves.

(7) Subject to the exemptions contained in Part II of this Order, a body corporate shall not, without the consent of the Ministry, for any purpose issue any securities, other than shares, if either the body corporate is incorporated under the law of Northern Ireland or the securities are, or are to be, registered in Northern Ireland.

(8) The last foregoing paragraph shall not apply to—

(*a*) securities issued by any body corporate for the sole purpose of securing money borrowed by the body corporate in Northern Ireland, if the borrowing is in the ordinary course of its business and is from a person carrying on a banking undertaking;

(*b*) securities issued by a body corporate, being a body corporate incorporated under the law of Northern Ireland, for the sole purpose of

securing money borrowed by the body corporate outside Northern Ireland, if the borrowing is in the ordinary course of business and is from a person carrying on a banking undertaking, and the money is made available in the scheduled territories; and

(*c*) securities issued by any body corporate for the sole purpose of exchanging or substituting new securities for redeemable securities already issued by the body corporate, if such new securities are not redeemable or are redeemable not earlier than the earliest date on which the securities already issued are redeemable.

Government securities

5. Subject to the exemptions contained in Part II of this Order, no securities of any government other than Her Majesty's Government in the United Kingdom or the Government of Northern Ireland which are or are to be registered in Northern Ireland shall be issued for any purpose without the consent of the Ministry.

Prospectuses, etc.

6. Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry, circulate in Northern Ireland any offer for subscription or sale of—

(*a*) any securities of any body corporate not incorporated under the law of Northern Ireland or under the law of England or Scotland; or

(*b*) any securities of any government other than Her Majesty's Government in the United Kingdom, or the Government of Northern Ireland;

if the offer is a public offer or an offer to existing holders of securities of the body corporate or government in question or to existing holders of securities of any body corporate specified in the offer.

Unit trusts

7.—(1) Subject to the exemptions contained in Part II of this Order, a person shall not, without the consent of the Ministry—

(*a*) raise money in Northern Ireland for the purposes of a unit trust scheme by the issue of any unit under the scheme; or

(*b*) issue any units under a unit trust scheme if the purposes or effects of the transaction consist of or include the raising of money outside Northern Ireland, and either the scheme is governed by the law of Northern Ireland or the units are, or are to be, registered in Northern Ireland:

Provided that this paragraph shall not apply to the issue, or to the raising of money by the issue, of any unit or sub-unit under a unit trust scheme if the issue does not cause the total number of issued units or sub-units to exceed the total number outstanding on the twelfth day of May, nineteen hundred and forty-one, including units or sub-units which at the said date the trustees could be required by the managers of the trust to issue.

(2) Article 6 of this Order shall apply in relation to units under a unit trust scheme not governed by the law of Northern Ireland as it applies in relation to securities of a body corporate not incorporated under the law of Northern Ireland.