

**DRAFT ARBITRATION (AMENDMENT) (JERSEY) LAW 199**

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**Lodged au Greffe on 22nd June 1999  
by the Finance and Economics Committee**

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**STATES OF JERSEY**

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## Report

The Arbitration (Jersey) Law 1998 was debated and passed by the States in October 1997. One purpose of the Law was to enable Jersey to give effect to the New York Convention of 1958. This Law is yet to be brought into force in the Island. It is based upon the United Kingdom Arbitration Act 1950, which until very recently was the Law in the United Kingdom.

In November 1997 we received notification from the Department of Trade and Industry in the United Kingdom that a difficulty had been identified in the United Kingdom Arbitration Act 1996 (which replaced the 1950 Act) concerning the differences of treatment between domestic and non-domestic arbitration agreements.

The difficulties were already present in the United Kingdom 1950 Act but had not been recognized.

The United Kingdom is putting an amendment to their 1996 Act to Parliament so that the provisions referred to above are repealed, never having been brought into force. The differences in treatment between domestic and non-domestic arbitration agreements appeared to be a contravention of Article 6 of the Treaty of Rome.

The Home Office was concerned that the similar provisions in the Arbitration (Jersey) Law 1998 would also contravene part of the Act of Accession, and thus be in breach of European Union Law. It therefore sanctioned the Law on the understanding that Jersey would amend the relevant Articles to conform to European Union Law, before bringing them into force. The Law has therefore not been brought into force.

The attached Amendment has the effect of bringing the Law into line with European Law. If the States sanction this Amendment and this is followed by Privy Council assent, then the Law as amended may be brought into force.

### Explanatory Note

This draft Law, if enacted, will amend the Arbitration (Jersey) Law 1998 in the following ways -

- (a) Articles 5 and 6 of the principal Law provide for the stay of legal proceedings in a court of law, pending arbitration, on the application of a party who proves that the dispute is subject to an arbitration agreement.

In the case of a domestic arbitration agreement, the court has a discretion to stay the legal proceedings, but in the case of a foreign arbitration agreement it must do so.

The effect of *Articles 1* and *2* of this amending Law is to provide that, in every case, the court must stay the legal proceedings if any party to the arbitration agreement asks it to do so.

- (b) Article 24 of the principal Law relates to exclusion agreements. These are agreements between parties to an arbitration to restrict recourse to the Royal Court on points of law or judicial review, or where a dispute involves a question of fraud.

Under that Article, an exclusion agreement has no effect in relation to a domestic arbitration agreement unless the exclusion agreement is made after the commencement of the arbitration. There is no such restriction in the case of a foreign arbitration agreement.

Article 3 of this amending Law removes the restriction in respect of domestic arbitration agreements.

Article 24 also distinguishes between foreign and domestic exclusion agreements governing the powers of the Royal Court to grant relief in cases of fraud. In the case of foreign arbitration agreements, the court may only exercise its powers under Article 28(2) of the principal Law (setting aside an arbitration agreement, and giving leave to revoke the authority of an arbitrator or umpire) to the extent that the exclusion agreement provides for this to be done. In the case of a domestic arbitration agreement, these powers of the court are not limited by the exclusion agreement.

*Article 3* of this amending Law removes this restriction on the court's powers in respect of a foreign arbitration agreement.

- (c) *Article 4* provides that the provisions of this Law will come into force on such day or days as the States may by Act appoint.

**ARBITRATION (AMENDMENT) (JERSEY) LAW 199**

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**A LAW** to amend the Arbitration (Jersey) Law 1998, sanctioned by Order of Her Majesty in Council of the

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*(Registered on the      day of      199 )*

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**STATES OF JERSEY**

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The      day of      199

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

**ARTICLE 1**

Article 5 of the Arbitration (Jersey) Law 1998<sup>1</sup> (hereinafter referred to as “the principal Law”) shall be repealed.

**ARTICLE 2**

Article 6 of the principal Law<sup>1</sup> shall be amended -

- (a) by deleting the words “to which this Article applies” in paragraph (1);
- (b) by repealing paragraph (2);
- (c) by repealing paragraph (3).

<sup>1</sup> Volume 1998, page 449.

ARTICLE 3

Article 24 of the principal Law<sup>2</sup> shall be amended -

- (a) by repealing paragraph (4);
- (b) by repealing paragraph (6);
- (c) by repealing paragraph (7).

ARTICLE 4

(1) This Law may be cited as the Arbitration (Amendment) (Jersey) Law 199 .

(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 purposes or different provisions of the Law.

<sup>2</sup> Volume 1998, page 463.