

ORDER IN COUNCIL

VII
1986

ratifying a Projet de Loi

ENTITLED

The Arbitration (Amendment) (Guernsey) Law, 1986

(Registered on the Records of the Island of Guernsey
on the 6th day of May, 1986.)



1986.

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of May, 1986 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 26th March 1986 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Arbitration (Amendment) (Guernsey) Law 1986", the Court, after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 26th day of March 1986

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Jersey and Guernsey dated the 19th day of March 1986 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 12th day of June 1985, the States of Deliberation at a meeting held on the 25th day of September 1985 approved a Bill or “Projet de Loi” entitled “The Arbitration (Amendment) (Guernsey) Law, 1986”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto.

2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Arbitration (Amendment) (Guernsey) Law, 1986”, and to order that the same shall have force of

law in the Islands of Guernsey, Herm and Jethou.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Arbitration (Amendment) (Guernsey) Law, 1986

THE STATES, in pursuance of their Resolution of the 12th day of June, 1985, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

1. The Arbitration (Guernsey) Law, 1982(a), is hereby amended as follows:—

Amend-
ments to
Law of 1982.

- (a) in the Arrangement of Sections thereto immediately after the entry relating to section 20 there is inserted the following additional entry—

“20A. Exclusion agreements affecting rights under sections 19 and 20.”;

- (b) in section 19 thereof—

- (i) paragraph (b) of subsection (3) is repealed and the following paragraph is substituted therefor—

“(b) subject to section 20A of this Law, with the leave of the Court.”;

(a) No. X of 1982.

- (ii) paragraph (b) of subsection (5) is repealed and the following paragraph is substituted therefor—

“(b) subject to section 20A of this Law, with the leave of the Court;”;

- (c) in section 20(1) thereof immediately after the word “Subject” the words “to section 20A of this Law and” are inserted;
- (d) immediately after section 20 thereof there is inserted the following additional section numbered “20A”—

“Exclusion
agree-
ments
affecting
rights
under
sections 19
and 20.

20A. (1) Subject to the following provisions of this section—

- (a) the Court shall not, under section 19(3)(b) of this Law, grant leave to appeal with respect to a question of law arising out of an award; and
- (b) the Court shall not, under section 19(5)(b) of this Law, grant leave to make an application with respect to an award; and
- (c) no application may be made under section 20(1)(a) of this Law with respect to a question of law;

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an "exclusion agreement") which excludes the right of appeal under section 19 of this Law in relation to that award or, in a case falling within paragraph (c) of this subsection in relation to an award to which the determination of the question of law is material.

(2) If the parties to an exclusion agreement subsequently enter into an agreement in writing to revoke the exclusion agreement the provisions of subsection (1) of this section shall cease to apply to the reference or references in question until such time as a further exclusion agreement is entered into by the parties.

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after

the coming into force of the Arbitration (Amendment) (Guernsey) Law, 1986, and whether or not it forms part of an arbitration agreement.

(4) In any case where—

- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration; and
- (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud; and
- (c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute;

then, except in so far as the exclusion agreement otherwise provides, the Court shall not exercise its powers under section 24(2) of this Law (to take steps necessary to enable the question to be determined by the Court) in relation to that dispute.

(5) Except as provided by subsection (1) of this section, sections 19 and 20 of this Law shall have effect notwithstanding anything in any agreement purporting—

- (a) to prohibit or restrict access to the Court;
or
- (b) to restrict the jurisdiction of the Court;
or
- (c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a statutory arbitration, that is to say, such an arbitration as is referred to in subsection (1) of section 30 of this Law.

(7) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after

the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(8) In this section, the expression "domestic arbitration agreement" has the same meaning as in subsection (3) of section 5 of this Law, save that the said subsection (3) shall have effect as if for the words therein "is a party at the time the proceedings are commenced" there were substituted the words "is a party at the time the arbitration agreement is entered into".

Citation. 2. This Law may be cited as the Arbitration (Amendment) (Guernsey) Law, 1986.

Collective 3. This Law and the Arbitration (Guernsey) Law, title. 1982, may be cited together as the Arbitration (Guernsey) Laws, 1982 and 1986.

D. J. ROBILLIARD,
Her Majesty's Deputy Greffier.