

PROJET DE LOI

ENTITLED

The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXVII, p. 132; as amended by the Companies (Guernsey) Law, 1990 (Ordres en Conseil Vol. XXXII, p. 324); the Security Interests (Guernsey) Law, 1993 (No. III of 1993).

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The Law of Property (Miscellaneous Provisions) (Guernsey)

Law, 1979

ARRANGEMENT OF SECTIONS

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2. Assignment of debts and other things in action.
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THE STATES, in pursuance of their Resolution of the twenty-eighth day of March, nineteen hundred and seventy-nine, 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.

[Effect of set-off by agreement.]

1. [(1) It is hereby declared for the removal of doubt that where there is for the time being in force an agreement (whether written or oral and whether express or implied) whereby, in respect of mutual dealings between them, any debt from one party is to be set off against any debt from the other party, the effect of that agreement is, unless the parties have expressly or by implication agreed to a different effect, that the only action which may be taken at any time in relation to what would otherwise be those mutual debts (whether by or at the instance of either party or any third party, and whether by way of enforcement, assignment, arrest, restraint or otherwise) is in respect of the balance (if any) then due after that set off; but –

- (a) in a case where the affairs of one party have been declared in a state of "désastre" at a meeting of his arresting creditors held before a Jurat as Commissioner of the Royal Court, this is subject to

subsection (2) of this section, and

- (b) in ascertaining the balance due as described in this subsection (but only for the purposes of this subsection), if a contingent liability is to be taken into account the contingency is to be treated as having occurred, and if a future liability is to be taken into account it is to be treated as if presently payable.]

(2) Where the Jurat presiding at such a meeting as mentioned in paragraph (a) of subsection (1) of this section has reasonable cause to believe that any such agreement as aforesaid was entered into by the party whose affairs have been declared in a state of "désastre" (hereafter in this subsection referred to as "**the debtor**") less than six months before the date of the meeting, the matter of the agreement shall be referred to the Royal Court sitting as an Ordinary Court (hereafter in this Law referred to as "**the Court**") in such manner as shall be prescribed by rules made by the Royal Court under this section; and where, on such a reference under this subsection, the Court is satisfied that the agreement was entered into as aforesaid and with a view of giving to the other party a preference over the other creditors of the debtor, the Court may make an order directing that the agreement shall be treated as being fraudulent and void as against the other creditors of the debtor.

(3) ...

(4) ...

(5) In this section "**debt**" includes all debts and liabilities, present or future, certain or contingent, but does not include demands in the nature of unliquidated damages arising otherwise than by reason of contract or breach of

trust.

NOTES

In section 1,

the marginal note thereto, and subsection (1), were substituted by the Security Interests (Guernsey) Law, 1993, respectively section 9(a) and section 9(b), with effect from 26th May, 1993;

subsection (3) and subsection (4) were repealed by the Companies (Guernsey) Law, 1990, section 36, Schedule 2, with effect from 1st March, 1991.

The following cases have referred to this Law:

Shaham v. Lloyds TSB Offshore Treasury Limited and Fooks (as Administratrix of the Estate of Ron) 2007–08 GLR 297;

Flightlease Holdings (Guernsey) Limited v. Flightlease (Ireland) Limited 2009–10 GLR 38.

Assignment of debts and other things in action.

2. (1) Without prejudice to the provisions of the Bills of Exchange (Guernsey) Law, 1958^a, it is hereby declared for the removal of doubt that, subject to subsection (2), subsection (3) and subsection (4) of this section, any absolute assignment of any debt or other thing in action (with or without a proviso or condition for re-assignment) shall be effectual in law to pass and transfer –

(a) the legal right to such debt or other thing in action,

(b) all legal remedies for the same, and

(c) the power to give a good discharge for the same

^a Ordres en Conseil Vol. XVII, p. 384.

without the concurrence of the assignor,

and, in the case of the assignment as aforesaid of any debt or other thing in action to which the next following subsection applies, such transfer shall be so effectual as from the date on which the notice required under that subsection is served in accordance with that subsection.

(2) The provisions of subsection (1) of this section shall not apply to the assignment of any debt or other thing in action (not being an obligation under a bond or other instrument and transferable by the delivery or indorsement of such bond or other instrument, as the case may be) unless –

- (a) the assignment is by writing under the hand of the assignor or any person authorised in writing by the assignor to act on his behalf, and
- (b) express notice in writing of the assignment has been served on the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or other thing in action.

(3) The foregoing provisions of this section shall not apply to the transfer of shares in a body corporate which are not transferable by delivery.

(4) If the debtor, trustee or other person liable in respect of any debt or other thing in action to which subsection (2) of this section applies has notice –

- (a) that the assignment is disputed by the assignor or any person claiming under him, or

- (b) of any other opposing or conflicting claims to the debt or other thing in action,

he may institute proceedings before the Court against the person making the claim to see the Court make such order as it thinks fit as to the payment of the debt or other thing in action; and in that event the Court may make such an order.

(5) The notice required to be served on any person under paragraph (b) of subsection (2) of this section –

- (a) may be served on any person by delivering it to him, by leaving it at his proper address or by sending it by post at that address,
- (b) in the case of any body corporate, may be served on the secretary of that body corporate, and
- (c) in the case of a partnership, may be served on a partner or the person having the control or management of the partnership business.

(6) For the purposes of the last foregoing subsection, the proper address of any person on whom such notice as mentioned in that subsection is to be served shall be his last known address, except that –

- (a) in the case of a body corporate or the secretary of a body corporate, it shall be the address of the registered office or principal office of that body corporate,

- (b) in the case of a partnership or of a person having the control or management of the partnership business, it shall be the principal office of the partnership.

(7) If the person to be served with such notice has specified an address in Guernsey other than his proper address, within the meaning of the last foregoing subsection, as the one at which he or someone on his behalf will accept a notice of the same description, that address shall also be treated for the purposes of subsection (5) of this section as his proper address.

[(8) Sections 1(8) and 13 of the Security Interests (Guernsey) Law, 1993 apply in place of subsections (4) to (7) of this section if the debtor, trustee or other person liable has written notice that the assignment is pursuant to a security agreement under that Law.]

NOTES

In section 2, subsection (8) was inserted by the Security Interests (Guernsey) Law, 1993, section 15, Schedule 2, with effect from 26th May, 1993.

The following case has referred to section 2:

Shaham v. Lloyds TSB Offshore Treasury Limited and Fooks (as Administratrix of the Estate of Ron) 2007–08 GLR 297.

Enforcement of proviso or condition for re-assignment of a debt or other thing in action.

3. (1) The assignor of a debt or other thing in action which has been assigned subject to a proviso or condition for re-assignment made in writing may institute proceedings before the Court against the assignee to see the Court make an order under this subsection vesting the debt or other thing in action in the assignor

absolutely –

- (a) where the assignor claims that the assignee is liable to re-assign to him the debt or other thing in action in accordance with the terms of such proviso or condition for re-assignment, at any time, or
- (b) where the assignor does not make any such claim and the debt or other thing in action has been arrested by Her Majesty's Sheriff as an asset of the assignee, at any time before the sale of the debt or other thing in action by Her Majesty's Sheriff and upon payment or the tender of payment by the assignor to the assignee of any sum due from the assignor to the assignee under and in accordance with such assignment at the time of the institution of those proceedings, or
- (c) where the assignor does not make any such claim as referred to in paragraph (a) of this subsection and the affairs of the assignee (being a body corporate which is insolvent) are being wound-up, within the fourteen days next following the commencement of the winding up and upon payment or the tender of payment by the assignor to the assignee of any sum due from the assignor to the assignee under and in accordance with such assignment at the time of the institution of those proceedings,

and in the event of such proceedings being instituted under and in accordance with this subsection the Court may, if it thinks fit, make an order vesting the whole or

any part of the debt or other thing in action in the assignor absolutely so that the same shall, as respects the execution of any judgment against the estate of the assignee and as respects the winding-up of the affairs of the assignee and otherwise, be treated as an asset of the assignor.

(2) The Court may –

- (a) instead of making any order under the last foregoing subsection vesting the whole of a debt or other thing in action in the assignor, make an order as to damages against the assignee,
- (b) in addition to making any such order vesting part of a debt or other thing in action in the assignor, make such an order as to damages.

(3) Where, in any action for breach of a proviso or condition for re-assignment as aforesaid, damages have been awarded against the assignee to which a debt or other thing in action had been assigned, then in any proceedings "en désastre" against the assignee or in any winding-up of the affairs of the assignee (being a body corporate which is insolvent), the amount of the damages so awarded against the assignee shall be paid in full in priority to all other debts, other than a debt secured by way of a bond consented to by the assignee or by way of a judgment, registered in the "Livres des Obligations" kept at the Greffe.

(4) Where the Court makes an order under subsection (1) of this section vesting in the assignor any shares in any body corporate incorporated under

the Companies (Guernsey) Laws, 1908 to [1990]^b, the provisions of those Laws relating to the transfer of shares shall apply in all respects as if the shares had been transferred by the assignee to the assignor, on the date on which the order of the Court was made, in the manner and form prescribed by the Articles of Association of the body corporate in pursuance of those provisions.

[(5) Section 6 of the Security Interests (Guernsey) Law, 1993 applies in place of this section if the proviso or condition for reassignment arises under an agreement creating a security interest under that Law.]

NOTES

In section 3,

the date in square brackets in subsection (4) was substituted by the Companies (Guernsey) Law, 1990, section 36, Schedule 2, with effect from 1st March, 1991;

subsection (5) was inserted by the Security Interests (Guernsey) Law, 1993, section 15, Schedule 2, with effect from 26th May, 1993.

The Companies (Guernsey) Law, 1908 has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

^b Ordres en Conseil Vol. IV, p. 178; Vol. X, p. 298; Vol. XVII, p. 444; Vol. XX, p. 17 and Vol. XXIV, p. 14.

Interpretation.

4. (1) In this Law, except where the context otherwise requires, **"thing in action"** means any personal right of property which may be claimed or enforced by action and not by taking physical possession.

(2) For the purposes of this Law, the winding-up of a body corporate shall be deemed to have commenced –

[(a) in the case of the voluntary winding-up thereof, at the time of the passing of the special resolution requiring the company to be wound-up voluntarily,]

(b) in the case of the winding-up thereof by the Court, at the time of the presentation to the Court of the [application] for the winding-up.

(3) Except where the context otherwise requires, any reference in this Law to an enactment shall be construed as including a reference to that enactment as amended, extended, repealed or replaced by or under any other enactment.

NOTE

In section 4, paragraph (a) of subsection (2) and the word in square brackets in paragraph (b) thereof were substituted by the Companies (Guernsey) Law, 1990, section 36, Schedule 2, with effect from 1st March, 1991.

Citation.

5. This Law may be cited as the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979.

NOTE

The Law received Royal Sanction on 26th July, 1979 and was registered on the Records of the Island of Guernsey on 21st August, 1979.
