



Jersey

**BANKRUPTCY (NETTING,
CONTRACTUAL SUBORDINATION AND
NON-PETITION PROVISIONS)
(JERSEY) LAW 2005**

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BANKRUPTCY (NETTING, CONTRACTUAL SUBORDINATION AND NON-PETITION PROVISIONS) (JERSEY) LAW 2005

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Jersey

BANKRUPTCY (NETTING, CONTRACTUAL SUBORDINATION AND NON-PETITION PROVISIONS) (JERSEY) LAW 2005

A LAW relating to the enforcement of netting, contractual subordination and non-petition provisions of agreements.

Commencement [[see endnotes](#)]

1 Interpretation

In this Law –

“agreement” includes –

- (a) an agreement between more than 2 parties;
- (b) a series of inter-related agreements between the same parties (whether pursuant to a master netting agreement or otherwise); and
- (c) an agreement made between parties whether or not acting through multiple branches and whether operated through a clearing house system or otherwise;

“bankruptcy” includes any procedure analogous to bankruptcy or any similar procedure under any applicable law;

“close-out netting provision”, in respect of an agreement, means so much of the agreement as relates to –

- (a) there ceasing to be any time allowed for the performance of an obligation specified in the agreement on the occurrence of an event specified in the agreement (including its automatic termination);
- (b) an obligation of the agreement to pay a specified amount but not immediately becoming an obligation to pay an amount determined pursuant to the agreement; or
- (c) any combination of the matters mentioned in paragraphs (a) and (b),

whether through the operation of netting or otherwise;

“contractual subordination”, in respect of an agreement, means the subordination or other deferral of all or any part of the claim of a party to the agreement against a debtor of that party to the claim of any other creditor of the debtor;

“contractual subordination provision”, in respect of an agreement, means so much of the agreement as relates to contractual subordination;

“netting”, in respect of an agreement, means the conversion, into one net claim or one net obligation, of all claims and obligations arising under the agreement to the effect that only that net claim can be demanded or that net obligation is owed;

“non-petition provision”, in respect of an agreement, means so much of the agreement –

- (a) that relates to a party to the agreement not taking any action to have a person declared bankrupt; or
- (b) that limits the circumstances under which a party to the agreement may take any action to have a person declared bankrupt;

“obligation” means an obligation of any type, including an obligation to deliver property;

“set-off provision”, in respect of an agreement, means so much of the agreement, other than a close-out netting provision in the agreement, as relates to the netting of amounts due from one party to the agreement to any other party to it.

2 Close-out netting, set-off and contractual subordination provisions to be enforceable

- (1) Despite any enactment or rule of law to the contrary –
 - (a) a close-out netting provision of an agreement;
 - (b) a set-off provision of an agreement; or
 - (c) a contractual subordination provision of an agreement,is enforceable in accordance with its terms.
- (2) A provision mentioned in paragraph (1) remains enforceable despite –
 - (a) the bankruptcy of a party to the agreement or of any other person; and
 - (b) the lack of any mutuality of obligation between a party to the agreement and any other person.
- (3) Accordingly, any person dealing with the affairs of the bankrupt party or person shall, when dealing with the property of that party or person, give effect to any relevant provision of the type mentioned in paragraph (1).
- (4) The provision shall be enforceable against –
 - (a) the parties to the agreement;
 - (b) any guarantor or any person providing security for a party to the agreement; and

- (c) any creditor of a party to the agreement.
- (5) Where this Article applies, any authority or mandate to implement a provision mentioned in paragraph (1), or Article 4(2) or (3) is not revoked by the bankruptcy of the person who gave the authority or mandate or of any other person.

3 Non-petition provisions to be enforceable

- (1) A non-petition provision of an agreement is enforceable in accordance with its terms.
- (2) A provision mentioned in paragraph (1) remains enforceable despite –
 - (a) the bankruptcy of a party to the agreement or of any other person; and
 - (b) the lack of any mutuality of obligation between a party to the agreement and any other person.
- (3) Accordingly, the Royal Court shall refuse to grant any application which, if granted, would be inconsistent with the provision.
- (4) A reference in this Law to a provision mentioned in paragraph (1) shall be taken to include –
 - (a) any provision ancillary to the provision; and
 - (b) any provision necessary to implement the provision in accordance with the other provisions of the agreement.

4 Other provisions enforceable despite bankruptcy

- (1) Where an agreement contains a provision of a type mentioned in Article 2(1) any further provision of the agreement of the type mentioned in paragraph (2) or paragraph (3) is enforceable and remains enforceable despite –
 - (a) the bankruptcy of a party to the agreement or of any other person; and
 - (b) the lack of any mutuality of obligation between a party to the agreement and any other person.
- (2) The further provisions mentioned in paragraph (1) are provisions by which the parties to the agreement agree –
 - (a) on a system or mechanism to be used to convert a non-financial obligation into a monetary obligation of an equivalent value;
 - (b) on a system or mechanism to be used to value a non-financial obligation for netting purposes;
 - (c) on the rate of exchange or the method to be used to establish a rate of exchange to be applied for netting purposes when the sums to be netted are in different currencies;
 - (d) on the method to be used to establish the currency in which payment of a net sum is to be effected; or

- (e) that certain transactions or other dealings or a type or class of transactions or dealings carried out pursuant to the agreement are to be treated as a single transaction or dealing for netting purposes.
- (3) The further provisions mentioned in paragraph (1) also include –
 - (a) provisions ancillary to those mentioned in paragraph (2); and
 - (b) provisions necessary for a close-out netting provision, set-off provision or contractual subordination provision to be implemented in accordance with the other provisions of the agreement.

5 Fraud and misrepresentation

- (1) This Article applies –
 - (a) to a netting, contractual subordination or non-petition provision of an agreement; and
 - (b) a provision mentioned in Article 4(2) and (3).
- (2) Nothing in this Law –
 - (a) affects the application of any enactment or rule of law that renders a provision to which this Article applies unenforceable, in a particular case, on the grounds of fraud or misrepresentation; or
 - (b) affects the enforceability of a provision of an agreement that provides that a provision to which this Article applies shall be void in the event of fraud or misrepresentation.

6 Law to prevail in respect of bodies corporate established outside Jersey

- (1) This Article applies to –
 - (a) a close-out netting provision;
 - (b) a contractual subordination provision;
 - (c) a non-petition provision;
 - (d) a set-off provision; and
 - (e) a provision of the type mentioned in Article 4(2) and (3),
contained in an agreement where one of the parties to the agreement is a branch in Jersey of a body corporate established outside Jersey.
- (2) The provision shall be valid and enforceable in accordance with this Law despite any other enactment or rule of law that may be applicable to the body corporate, including the law of the jurisdiction under which it is established.

7 Citation

This Law may be cited as the Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005	L.19/2005	12 August 2005

Table of Renumbered Provisions

Original	Current
7(1)	7
7(2)	Spent, omitted

Table of Endnote References

There are currently no endnote references