



New arbitration law for Guernsey

November 2016

The Privy Council has recently approved the Arbitration (Guernsey) Law 2016 which should come into force on 12 December 2016. The reforms are welcome given that Guernsey's previous Arbitration law was based upon old English legislation that has long since been superseded.

The new law incorporates a range of provisions designed to modernise the framework for arbitration in Guernsey. Notably, these include:

- **Flexibility.** A range of measures are designed to enhance the flexibility of the arbitration framework and give a significant measure of control to the parties themselves. These range from agreeing bespoke remedies for arbitral awards, procedural and evidential matters and even determining that the dispute should be determined on broad fairness principles, rather than strictly in accordance with the parties' legal rights.
- **Efficiency.** Along with the broad scope for parties to determine their own procedure, the law contemplates specific procedural mechanisms directed towards improving the efficiency of the arbitration process. Such measures include provision for cost capping and security for costs, provisional (or interim) orders, and procedural directions.
- **Consumer protection.** The new law provides protection for consumers against being forced to bring their complaints against businesses in arbitration and shutting out access to the Court system. Arbitration clauses in consumer agreements will not be binding against the consumer, subject to either obtaining their specific written agreement to be bound in respect of that dispute, or the Court determining that it would not be detrimental to the consumer for the dispute to be determined in arbitration.

With international commercial arbitration being 'big business' in recognised arbitration centres such as London and Singapore, the new law represents a real opportunity for Guernsey, with its already enviable reputation for market leading financial and legal resources, to compete in that market.

Additionally, it is hoped that the law will encourage more local disputes in Guernsey to be determined by way of arbitration taking some pressure off the Royal Court's ever increasing workload.

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