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Collas Crill contributes to Unilateral Option Clauses Survey 2024

DECEMBER 2024

Collas Crill has contributed to the Clifford Chance Unilateral Option Clauses Survey 2024.

Guernsey Managing Partner Gareth Bell and Professional Support Lawyer Jack Crisp authored the Guernsey response, while Partner Simon Hurry and Senior Associate Karen Stachura authored the Jersey response.

The 2024 survey, which categorises the current effectiveness of unilateral option clauses around the world, provides an expanded update to the 2021 survey and covers 120 jurisdictions.

In Guernsey, Gareth and Jack explained:

While the courts of Guernsey have not yet examined the validity of unilateral option clauses, it is thought that the courts would generally uphold such clauses as valid, following the approach adopted in England and Wales. However, a unilateral option clause in a consumer contract that gives the option to the non-consumer may be considered unfair, and therefore unenforceable against the consumer. There is no reason to believe that an arbitral award rendered on the basis of a unilateral option clause would not be enforceable in Guernsey.

In Jersey, Simon and Karen explained*:*

While the Jersey courts have not considered the validity of unilateral option clauses per se, a Jersey court would likely adopt the position that such clauses are valid, provided that they are clearly drafted. This is on the basis that, in Jersey, matters agreed by commercial parties with capacity on reasonable commercial terms should be respected without intervention by the Jersey courts, adopting the principle of "la convention fait la loi des parties", which has been enshrined in Jersey law for centuries. There are certain limited exceptions to this, such as where enforcing the term is contrary to Jersey public policy or falls foul of a mandatory provision of Jersey law, for example a matter which is expressly required in Jersey law to be done, or adjudicated, in the Jersey courts, rather than by way of arbitration.

You can read the full survey here

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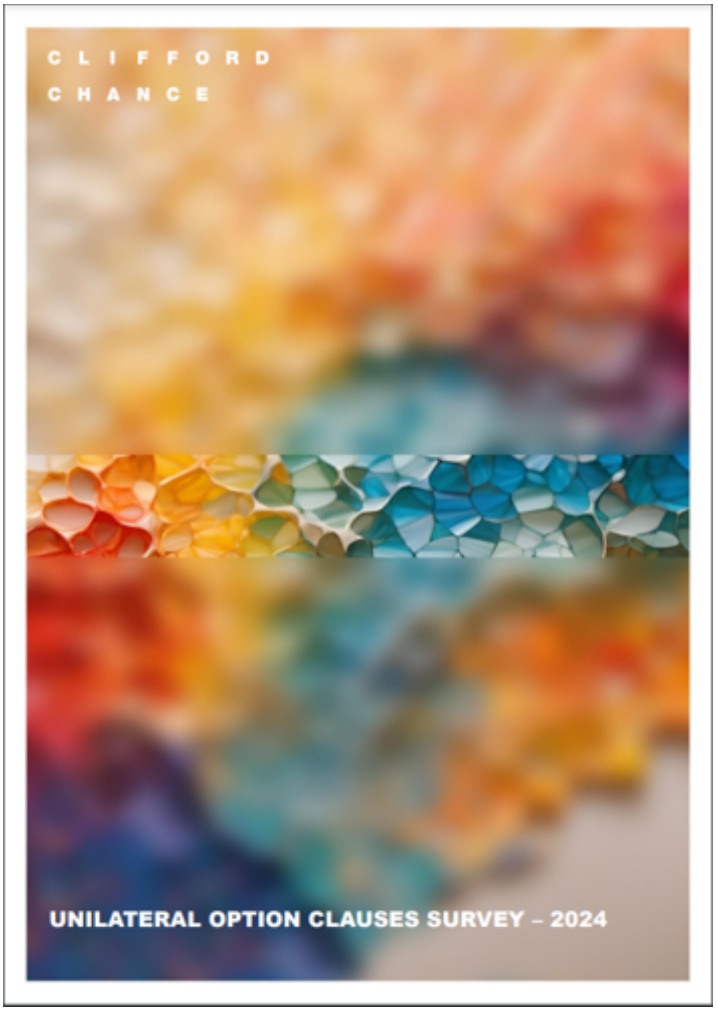

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