

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

LEGISLATION TO FACILITATE ELECTRONIC CHEQUE IMAGING IN THE PRESENTMENT OF
CHEQUES AND OTHER BILLS OF EXCHANGE

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Legislation to facilitate electronic cheque imaging in the presentment of cheques and other bills of exchange' dated 6th April, 2017, they are of the opinion:-

1. To agree that legislation should be enacted in Guernsey replicating the effect of the provisions of the new Part 4A of the Bills of Exchange Act 1882.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

6th April, 2017

Dear Sir

1 Executive Summary

- 1.1 This report recommends the enactment of legislation to facilitate the use of electronic images of cheques as an alternative to the physical instrument in the presentment of cheques for payment. The Committee *for* Economic Development ("**the Committee**") believes that it is appropriate to enact legislation amending the Bills of Exchange (Guernsey) Law, 1958 ("**the 1958 Law**") and creating secondary legislation powers in order to replicate the effect of recent amendments in the United Kingdom to the Bills of Exchange Act 1882 ("**the 1882 Act**") which will underpin the implementation of a new electronic image clearing system for cheques and other bills of exchange.

2 Background

- 2.1 The 1958 Law is closely based on the equivalent legislation in the United Kingdom (the 1882 Act).
- 2.2 Following discussion in the UK over a number of years regarding the future of cheques in the payments and banking industry, the UK Government decided to legislate to facilitate the use of electronic cheque imaging in the cheque clearing system. In the UK, this required amendments to the 1882 Act to remove a statutory requirement for the presentment of a physical cheque to the paying bank.
- 2.3 The Cheque and Credit Clearing Company ("**the C&CCC**") is the industry body

that manages the cheque clearing system in England, Wales and Scotland. The C&CCC is working to develop a new electronic image clearing system for the processing of cheques. Banks in the Bailiwick of Guernsey clear cheques through the system managed by the C&CCC and will therefore need to participate in the new system in due course. The implementation of an electronic image clearing system will allow the banking industry and the public to benefit from faster, more efficient and more cost-effective clearing of cheques.

- 2.4 The amendments also facilitate the development of innovative services by banks who will, for example, in future be able to offer their customers the option of paying in an electronic image of both sides of a cheque instead of delivering the physical cheque to a branch. This customer facing aspect of the amendments to the 1882 Act is, however, optional. The legislation in the UK provides that no customer will be required to pay in an electronic image of a cheque as a result of the amendments. The necessary amendments in the UK were effected by means of section 13 of the Small Business, Enterprise and Employment Act 2015 and came into force in the UK in July 2016.
- 2.5 The amendments have also inserted regulation making powers for HM Treasury, which have not yet been exercised, but which will contain important supplemental provisions that will underpin the functioning of the proposed new electronic image clearing system.
- 2.6 In summary, the amendments to the 1882 Act comprise the insertion of a new Part 4A 'Presentment of instruments by electronic means' to:
 - i. provide for presentment of relevant payment instruments (cheques, certain other bills of exchange and promissory notes) to be effected by provision of an electronic image of both faces of the instrument;
 - ii. disapply requirements and prohibitions which are inconsistent with this;
 - iii. require bankers to continue to permit the customer to pay in the physical instrument;
 - iv. create regulation making powers allowing HM Treasury to prescribe and make provision for matters connected to the amendments including;
 - circumstances in which electronic presentment is not permitted;
 - copies of instruments and evidence of payment;
 - compensation to be paid by a responsible banker for loss in connection with electronic presentment or purported electronic presentment; and

- supplementary matters.

3 Relevant Legislation in the Bailiwick of Guernsey

- 3.1 The 1958 Law governs the use of bills of exchange and promissory notes throughout the Bailiwick and is closely based on the 1882 Act and also incorporates provisions equivalent to those in the UK Cheques Act 1957. The 1882 Act was itself largely a codification of the existing common law relating to bills of exchange and promissory notes.
- 3.2 A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer. Examples of bills of exchange include cheques, traveller cheques, postal orders and bankers' drafts.
- 3.3 A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.
- 3.4 Each of the islands in the Bailiwick of Guernsey also has an Electronic Transactions Law which facilitate electronic commerce. In Guernsey that relevant legislation is the Electronic Transactions (Guernsey) Law, 2000 (**"the 2000 Law"**). This legislation assists by providing that a document shall not be denied legal effect solely because it is in electronic form and that a document in electronic form satisfies the requirements of any law requiring a document to be given, produced, served, sent or delivered. There is no direct equivalent to these provisions in the UK.
- 3.5 However, whilst the provisions of the 2000 Law are certainly helpful, in circumstances where local banks will need to participate in the new electronic clearing system managed by the C&CCC, and are also likely to wish to be able to offer the same new services to customers as banks in the UK, the Committee considers it appropriate that amendments are made to the 1958 Law to reflect the amendments to the 1882 Act as closely as possible.
- 3.6 The Committee also believes it is necessary to ensure that it has the power to make secondary legislation, in due course, equivalent to regulations that can be made by HM Treasury in the UK and which will underpin the new electronic image clearing system.
- 3.7 The Committee therefore believes that legislation should be enacted to replicate the effect of the provisions of new Part 4A of the 1882 Act.

4 Bailiwick Legislation

- 4.1 The Law Officers have advised that the necessary amendments can be effected through the enactment of Ordinances under the Electronic Transactions legislation in each Bailiwick island (to be underpinned by orders of the relevant Committees dealing with technical matters which will, in the case of Guernsey, be laid before the States of Deliberation who will have the option of annulment).
- 4.2 The Committee therefore recommends the enactment of an Ordinance under the 2000 Law making the necessary amendments to the 1958 Law in respect of the island of Guernsey, as well as necessary consequential and supplemental provision including ancillary amendments to the 2000 Law.
- 4.3 The Committee has engaged with the States of Alderney and Chief Pleas in Sark to advise of the recommendations in this report to enact amendments to the 1958 Law, as it applies in Guernsey, and has recommended that they enact equivalent legislation in those islands.

5 Consultation

- 5.1 The Finance Sector Development team has engaged with the Association of Guernsey Banks which is supportive of these proposals.
- 5.2 The Committee has also engaged with the States of Alderney and the Chief Pleas in Sark regarding this matter as noted in paragraph 4.3 above.
- 5.3 The Law Officers have been consulted and have advised on the proposals in this report.

6 Propositions

The States are asked to decide whether they are of the opinion:-

- 1. To agree that legislation should be enacted in Guernsey replicating the effect of the provisions of the new Part 4A of the Bills of Exchange Act 1882.
- 2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

7 Committee Support for Propositions

- 7.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above

have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache
President

J Kuttelwascher
Vice-President

A C Dudley-Owen
J S Merrett
J I Mooney