

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE ELECTRONIC TRANSACTIONS (ELECTRONIC AGENTS) (GUERNSEY) ORDINANCE,
2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance is made under sections 14(1) and 21 of the Electronic Transactions (Guernsey) Law, 2000.

Section 2 of the Ordinance makes provision for the legal effect of actions carried out by means of an electronic agent (as defined in section 5 of the Ordinance) in the context of the making, formation, creation, delivery, execution, performance and termination of contracts.

Section 3 establishes a rebuttable presumption that a person who has used an electronic agent for the purposes of making, forming or creating a contract intended to create a legally binding contract.

Sections 4 and 5 provide that nothing in the Ordinance prejudices the operation and application of the rules of private international law or the exemptions from the application of the Law conferred by the Electronic Transactions (Exemptions) Order, 2001.

The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019

THE STATES, in pursuance of their Resolution of the 25th October, 2018^a, and in exercise of the powers conferred on them by sections 14(1) and 21 of the Electronic Transactions (Guernsey) Law, 2000, as amended^b and all other powers enabling them in that behalf, hereby order:-

Legal effect of actions carried out by means of an electronic agent.

1. Sections 2 and 3 make provision for the legal effect of actions carried out by means of an electronic agent.

2. (1) A contract or any provision thereof shall not be denied legal effect, validity, enforceability or admissibility solely because its making, formation, creation or delivery involved the action or use of one or more electronic agents.

(2) An action executing, performing or terminating a contract shall not be denied legal effect, validity, enforceability or admissibility solely because it involved the action of one or more electronic agents.

(3) A contract may be made, formed or created by the interaction

^a Article XII of Billet d'État No. XXIII of 2018.

^b Order in Council VIII of 2000; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014 (No. XIV of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017 (No. XXIV of 2017).

of electronic agents, acting on behalf of the parties, even where no natural person was aware of, or reviewed, the electronic agents' actions or the resulting terms.

(4) A contract may be made, formed or created by the interaction of an electronic agent, acting on behalf of one party, and a natural person, acting on his or her own behalf or for another person, even where no natural person on whose behalf the electronic agent was acting was aware of, or reviewed, the electronic agent's actions or the resulting terms.

(5) A contract may be made, formed or created by the interaction of an electronic agent, acting on behalf of one, or more, parties to the contract, with information in electronic form, even where no natural person on whose behalf the electronic agent was acting was aware of, or reviewed, the information, the electronic agent's actions, or the resulting terms.

(6) An electronic agent may act on behalf of one or more parties to the same transaction.

(7) For the purposes of this section "**contract**" includes a document, record, notice or instrument producing legal consequences.

(8) The provisions of this section are for the avoidance of doubt.

Presumption of intention to create a legally binding contract.

3. Where an electronic agent has acted on behalf of a person for the purposes of the making, formation or creation of a contract, there is a rebuttable presumption that that person intended to create a legally binding contract.

Nothing to prejudice the rules of private international law.

4. The provisions of this Ordinance are without prejudice to the operation and application of the rules of private international law (and accordingly the legal effect, validity, enforceability and admissibility of a contract or any provision thereof will continue to be determined by the system of law applicable to the contract or that provision, or governing its legal effect, validity, enforceability or admissibility, according to the rules of private international law).

Ordinance not applicable to transactions covered by Exemptions Order.

5. The provisions of this Ordinance do not apply to transactions, matters or things exempted from the application of sections 1 to 5 and 8 of the Electronic Transactions (Guernsey) Law, 2000 by the provisions of the Electronic Transactions (Exemptions) Order, 2001^c.

Interpretation.

6. In this Ordinance "**electronic agent**" means a computer program or electronic or other automated means used independently to initiate an action or to respond in whole or in part to information or actions in electronic form or communicated by electronic means, without review or action by a natural person.

Citation.

7. This Ordinance may be cited as the Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019.

Commencement.

8. This Ordinance shall come into force on the 1st March, 2019.

^c Guernsey Statutory Instrument No. 13 of 2001.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

THE ELECTRONIC TRANSACTIONS (ELECTRONIC AGENTS) (GUERNSEY) ORDINANCE, 2019

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

10th January, 2019

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development ("**the Committee**") requests that the draft Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019 (the "**draft Ordinance**") be considered at the States' meeting to be held on 27th February 2019.

The draft Ordinance supports the implementation of the States of Guernsey's Economic Development Strategy and, more specifically, the "Objectives for a fintech foundation" set out in the Financial Services Policy Statement that was published jointly by the Committee and Guernsey Finance on the 7th December 2018.

The Committee believes it to be important that the draft Ordinance is considered by the States at the first available opportunity, to maintain momentum in the implementation of the Economic Development Strategy and the Finance Sector Policy Framework.

Yours faithfully,



C Parkinson
President

A C Dudley Owen
Vice-President

J I Mooney
D Tindall
D de Lisle