

New ordinance on electronic agent use in Guernsey

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The States of Guernsey has put forward a proposal to enact an ordinance ("**Ordinance**") to enhance the framework under The Electronic Transactions (Guernsey) Law, 2000 ("**Electronic Transactions Law**"). The purpose of the Ordinance is to provide certainty regarding the use of electronic agents in contract formation, execution, performance and termination under Guernsey law.

What is an "electronic agent" and why does this matter?

An "electronic agent" is defined in the Electronic Transactions Law as:

"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."

For example, an electronic agent may be a computer program that searches for the lowest priced item and then agrees to buy it, without any input from a natural person.

At present, in some jurisdictions, there is still uncertainty surrounding the legal validity of contracts formed, executed, performed and terminated by electronic agents. In addition, the increasing use of "smart contracts" (essentially computer protocols recording the terms of and performing an agreement between two parties by automated, electronic means) and related technologies in both the finance industry and wider economy means that use of electronic agents will become more prevalent. Enacting an Ordinance to ensure the position under Guernsey law with regard to the use of electronic agents is clear helps maintain Guernsey's position as an attractive jurisdiction for innovative businesses, be they start-ups or global institutions.

The new Ordinance

It is proposed that if enacted, the Ordinance will provide that (amongst other things):

1. the formation, execution, performance or termination of a contract shall not be denied legal effect solely because it involved the action of one or more electronic agents;
2. contracts may be formed by the interaction of electronic agents (without input from natural persons); and
3. contracts may be formed by the interaction of an electronic agent and a natural person.

In short, the proposed Ordinance seeks to clarify that an electronic agent can, legally, make a contract, act on behalf of natural persons, and be involved in transactions in a number of ways without revoking the legal validity of a contract.

The proposals are currently being reviewed by Her Majesty's Procureur for advice on any legal or constitutional implications of enacting such ordinance. We will provide a further update when the Ordinance is due to come into force.

Wayne Atkinson, a group partner in Collas Crill's Corporate, Finance and Funds team, comments: *"New and disruptive technologies can challenge existing legal norms by creating situations that a legal draftsman would never have considered just a few years ago. Quick, effective legislative response to change has always been a Guernsey strength and this example of it will help ensure Guernsey stays at the front of the pack for those using technologies in their business."*

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