

UPDATE

Enhanced certainty regarding the use of electronic agents

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Proposals have been approved to enact new legislation affording enhanced certainty regarding the use of 'electronic agents' in relation to the formation, execution, performance and termination of a contract and the legal status of the resulting contract.

Introduction

The States of Guernsey (the **States**) has approved proposals for new legislation under the Electronic Transactions (Guernsey) Law, 2000 (the **Electronic Transactions Law**) regarding the use of 'electronic agents' in relation to the formation, execution, performance and termination of a contract and the legal status of that contract.

While the laws of agency and contract formation were considered to be 'sufficiently robust to encompass electronic agents' at the time the Electronic Transaction Law was enacted, the Electronic Transactions Law was drafted to permit the States to legislate specifically for electronic agents and the legal effect of actions carried out by such means.

What is an 'electronic agent'?

The Electronic Transactions Law describes an 'electronic agent' 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'.

The proposals

The States has approved proposals to enact an ordinance under the Electronic Transactions Law to enhance certainty in relation to the legal effect, validity or enforceability of a contract involving the action of one or more electronic agents.

The new legislation will permit the formation of a contract by the interaction of electronic agents, acting on behalf of the parties without any human involvement at all, on the presumption that the natural persons (on whose behalf the electronic agents are acting) intended to create a legally binding contract. Alternatively, a contract can be formed by the interaction of an electronic agent acting on behalf of one party and a natural person acting on his own (or another party's) behalf. It will also allow an electronic agent to act on behalf of one or more parties to the same transaction.

The proposals behind this new legislation have been developed in the context of the Economic Development Strategy (which sets out a vision for Guernsey's economy) and form part of the Committee for Economic Development's plan for growth and diversification in Guernsey's finance sector. Fintech, including blockchain and smart contracts, has been identified as one of the five action areas to progress that plan.

What about smart contracts?

A 'smart contract' is not a legal term but a technological one for a self-executing contract, the terms of which are written in computer code. As things stand under Guernsey law, it should already be possible, in principle, for a smart contract to create a legally binding contract. That being said, there is some potential for doubt which will be clarified by the new legislation whereby a smart contract will fall within the meaning of an 'electronic agent'.

Conclusion

The use of electronic agents, smart contracts and fintech generally continues to be an area subject to ongoing debate and discussions both in Guernsey and beyond. Whilst the laws of most jurisdictions do not yet explicitly address electronic agents, now is the perfect time to enhance the Electronic Transactions Law, which continues to facilitate electronic commerce and the use of information and communications technology in business.

The new legislation will undoubtedly add to Guernsey's appeal as a jurisdiction in which to do business affording Guernsey law as the international law of choice for commercial contracts, for those wishing to use electronic agents smart contract technology.

Contacts



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