

Guernsey's recognition of electronic agents and smart contracts

Service area / [Regulatory](#)

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At the recent States of Deliberation meeting on 27 February 2019, the States approved a draft ordinance under The Electronic Transactions (Guernsey) Law, 2000 (the "**Law**") which has been designed to create certainty under Guernsey law in relation to the legal effect, validity or enforceability of a contract involving an electronic agent(s).

What is an electronic agent?

The Law defines 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.*"

Electronic agents and smart contracts

The rise of blockchain technology has brought a focus on smart contracts and the legalities of both. The two are separate but have more recently been seen as compatible.

Smart contracts are automated contracts. They are self-executing with specific instructions written in their code, which are executed when certain conditions are met. These contracts can be stored on either a public or a private blockchain and are then visible to all the participants of the said blockchain.

An example of a smart contract is a computer protocol that automatically processes travel insurance claims in case of events that can be easily verified by a computer, such as flight delays or cancellation. In theory, this will expedite claims through to the resolution stage.

A smart contract will fall within the meaning of an electronic agent.

The changes to the Law

The changes to the Law provide that:

- a. contracts may be formed by the interaction of electronic agents (without any human involvement) or by the interaction of an electronic agent and a natural person; and
- b. the formation, execution, performance or termination of a contract shall not be denied legal effect solely because it involves electronic agents.

Put simply, where an electronic agent has acted on behalf of a person for the purposes of forming a contract, there is a rebuttable presumption that that person intended to create a legally binding contract. Sensibly, the rebuttable presumption will allow parties to demonstrate that the contract should not be binding if there were, for example, issues with the coding or another unintended error in the computer protocol.

Parties are still at liberty to include standard commercial provisions such as arbitration clauses, the choice of law and appropriate jurisdiction.

Guernsey's adaptive regulatory stance

These amendments to the Law are the latest steps taken in Guernsey to adapt to technological developments. Previously we have worked closely with the Guernsey Financial Services Commission and the States of Guernsey to assist a client with the launch of the first commercial deployment of blockchain technology for private equity. That is now being used for the management and administration of a private equity fund. This demonstrated a sound understanding of blockchain technology and a willingness to entertain innovative thinking in Guernsey's finance sector.

Guernsey's willingness to implement changes to the Law sees it moving ahead of competing jurisdictions in offering technological solutions and electronic commerce tools to financial services businesses. The ability to amend the Law at short notice and thereby react in a rapidly evolving area of law, provides Guernsey with a platform to deal with future advances in respect of electronic transactions.



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