

Island of



Guernsey

## Ordinance of the States

**XXIV**  
**2017**

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Made ..... 27th September, 2017

Coming into Operation ..... 1st October, 2017

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## The Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017

**The Electronic Transactions  
(Cheque Imaging)  
(Guernsey) Ordinance, 2017**

THE STATES, in pursuance of their Resolution of the 17<sup>th</sup> May, 2017<sup>a</sup>, and in exercise of the powers conferred on them by sections 9(2), 14, 21 and 23(1) and (2) of the Electronic Transactions (Guernsey) Law, 2000, as amended<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

PART I

AMENDMENT OF ELECTRONIC TRANSACTIONS LAW, 2000

**Amendment of 2000 Law.**

1. After section 9 of the Electronic Transactions (Guernsey) Law, 2000 ("the Electronic Transactions Law") insert the following section -

**"Provision as to electronic imaging of cheques and other instruments.**

**9A.** (1) The provisions of this Law are, in respect of the presentment of bills of exchange within the meaning of the Bills of Exchange (Guernsey) Law, 1958 (as that Law has effect in the Bailiwick excluding the islands of Alderney and Sark), subject to any provision made by or under -

- (a) Part IVA of that Law (presentment of cheques and other instruments by electronic means),

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<sup>a</sup> Article V of Billet d'État No. X of 2017.

<sup>b</sup> Order in Council No. VIII of 2000; amended by Ordinance No. XXXIII of 2003 and Ordinance No. XIV of 2014; see also G.S.I. No. 13 of 2001.

and

- (b) the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017.

(2) The Committee may by Order make such provision as it thinks fit -

- (a) for the purposes of authorising or facilitating, or otherwise in respect of, the implementation (including the introduction, use, administration, execution, recognition and enforcement) of electronic cheque imaging, and
- (b) to the extent relevant for those purposes, for carrying this Law (and the Bills of Exchange (Guernsey) Law, 1958, as it has effect in the Bailiwick excluding the islands of Alderney and Sark) into effect."

2. After section 22(3) of the Electronic Transactions Law insert the following subsection -

"(4) Any reference in this Law to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied."

PART II  
AMENDMENT OF BILLS OF EXCHANGE LAW, 1958

**Amendment of 1958 Law.**

3. In section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>c</sup> as it has effect in the Bailiwick excluding the islands of Alderney and Sark ("**the Bills of Exchange Law**"), after the definition of "business day" insert the following definition

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""**the Committee**", in relation to the Bailiwick excluding the islands of Alderney and Sark, means the Committee for Economic Development,".

4. After section 44(9) of the Bills of Exchange Law (presentment for payment) insert the following subsection -

"(10) This section is subject to Part IVA (presentment of cheques, etc, by electronic means).".

5. In section 51(4) of the Bills of Exchange Law (duties of holder as respects drawee or acceptor) for the words "Where the holder" substitute "Subject to Part IVA (presentment of cheques and other instruments by electronic means), where the holder".

6. After section 90(3) of the Bills of Exchange Law (presentment of note for payment) insert the following subsection -

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<sup>c</sup> Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; and Vol. XXXV(1), p. 367. Modified, in part, by Vol. XXII, p. 560.

"(4) This section is subject to Part IVA (presentation of cheques and other instruments by electronic means)."

7. After section 92 of the Bills of Exchange Law, insert the following Part

"PART IVA  
PRESENTMENT OF CHEQUES AND OTHER INSTRUMENTS  
BY ELECTRONIC MEANS : GUERNSEY

**Presentment of instruments by electronic means.**

92A. (1) Presentment for payment of an instrument to which this section applies may be effected by provision of an electronic image of both faces of the instrument, instead of by presenting the physical instrument, if the person to whom presentment is made accepts the presentment as effective.

This is subject to section 92C and to any order of the Committee under section 9A of the Electronic Transactions (Guernsey) Law, 2000 or section 8 of the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017.

(2) Where presentment for payment is made under subsection (1) -

(a) any requirement -

(i) that the physical instrument must be exhibited, presented or delivered on or

in connection with presentment or payment (including after presentment or payment or in connection with dishonour for non-payment), or

(ii) as to the day, time or place on or at which presentment of the physical instrument may be or is to be made, and

(b) any other requirement which is inconsistent with subsection (1),

does not apply.

(3) Subsection (2) does not affect any requirement as to the latest time for presentment.

(4) References in subsections (2) and (3) to a requirement are to a requirement or prohibition, whether imposed by or under any enactment, by a rule of law or by the instrument in question.

(5) Where an instrument is presented for payment under this section -

(a) any banker providing the electronic image,

(b) any banker to whom it is provided, and

- (c) any banker making payment of the instrument as a result of provision of the electronic image,

are subject to the same duties in relation to collection and payment of the instrument as if the physical instrument had been presented.

This is subject to any order of the Committee under section 9A of the Electronic Transactions (Guernsey) Law, 2000 or Part III of the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017.

**Instruments to which section 92A applies.**

- 92B.** (1) Subject to subsection (2), section 92A applies to -
- (a) a cheque, or
  - (b) any other bill of exchange or any promissory note or other instrument -
    - (i) which appears to be intended by the person creating it to enable a person to obtain payment from a banker indicated in it of the sum so mentioned,
    - (ii) payment of which requires the instrument to be presented, and
    - (iii) which, but for section 92A, could not be presented otherwise than by presenting the physical instrument.

(2) Section 92A does not apply to any banknote (within the meaning given in section 208 of the Banking Act 2009).

(3) The reference in subsection (1) to the person creating an instrument is -

(a) in the case of a bill of exchange, a reference to the drawer,

(b) in the case of a promissory note, a reference to the maker.

(4) For the purposes of subsection (1)(b)(i) an indication may be by code or number and need not indicate that payment is intended to be obtained from the banker.

**Banker's obligation in relation to accepting physical instrument for presentment.**

92C. Provision of an electronic image of an instrument does not constitute presentment of the instrument under section 92A if the arrangements between -

(a) the banker authorised to collect payment of the instrument on behalf of a customer, and

(b) that customer,

do not permit the customer to pay in the physical instrument but instead require an electronic image to be provided (whether to that banker or to any other person).

**Supplementary.**

92D. (1) For the purposes of this Part, a banker collects payment of an instrument on behalf of a customer by -

- (a) receiving payment of the instrument for the customer, or
- (b) receiving payment of the instrument for the banker (but not as holder), having -
  - (i) credited the customer's account with the amount of the instrument, or
  - (ii) otherwise given value to the customer in respect of the instrument.

(2) Section 10(4) of the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017 applies for the purposes of subsection (1) in its application to the said section 10."

PART III  
POWER OF COMMITTEE TO MAKE ORDERS IN RESPECT OF  
CHEQUE IMAGING

**Orders as to presentation of cheques.**

8. (1) The Committee may by order prescribe circumstances in which section 92A(1) of the Bills of Exchange Law does not apply.

(2) An order under subsection (1) may in particular prescribe circumstances by reference to -

- (a) descriptions of instrument,
- (b) arrangements under which presentment is made,
- (c) descriptions of persons by or to whom presentment is made,
- (d) descriptions of persons receiving payment or on whose behalf payment is received.

**Copies of instruments and evidence of payment.**

9. (1) The Committee may by order make provision for -

- (a) requiring a copy of an instrument paid as a result of presentment under section 92A of the Bills of Exchange Law to be provided, on request, to the creator of the instrument by the banker who paid the instrument,

- (b) a copy of an instrument provided in accordance with the order to be evidence of receipt by a person identified in accordance with the order of the sum payable by the instrument.
  
- (2) An order under subsection (1)(a) may in particular -
  - (a) prescribe the manner and form in which a copy is to be provided,
  - (b) require the copy to be certified to be a true copy of the electronic image provided to the banker making the payment on presentment under section 92A of the Bills of Exchange Law,
  - (c) provide for the copy to be accompanied by prescribed information,
  - (d) require any copy to be provided free of charge or permit charges to be made for the provision of copies in prescribed circumstances.
  
- (3) The reference in subsection (1)(a) to the creator of the instrument is -
  - (a) in the case of a bill of exchange, a reference to the drawer,

- (b) in the case of a promissory note, a reference to the maker.

**Compensation in cases of presentment by electronic means.**

10. (1) The Committee may by order make provision for the responsible banker to compensate any person for any loss of a kind specified by the order which that person incurs in connection with electronic presentment or purported electronic presentment of an instrument.

(2) In this section "**electronic presentment or purported electronic presentment of an instrument**" includes -

- (a) presentment of an instrument to which section 92A of the Bills of Exchange Law applies under that section,
- (b) presentment of any other instrument by any means involving provision of an electronic image by which it may be presented for payment,
- (c) purported presentment for payment by any means involving provision of an electronic image of an instrument that may not be presented for payment in that way,
- (d) provision, in purported presentment for payment, of -
  - (i) an electronic image that purports to be, but is not, an image of a physical instrument

(including an image that has been altered electronically), or

(ii) an electronic image of an instrument which has no legal effect, or

(e) provision, in presentment or purported presentment for payment, of an electronic image which has been stolen.

(3) In this section, the "**responsible banker**", in relation to electronic presentment or purported electronic presentment of an instrument, means

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(a) the banker who is authorised to collect payment of the instrument on a customer's behalf, or

(b) if the holder of the instrument is a banker, that banker.

(4) In this section -

(a) references to an instrument include references to an instrument which has no legal effect (whether because it has been fraudulently altered or created, or because it has been discharged, or otherwise),

(b) in relation to an electronic image which is not an image of a physical instrument, references to the instrument

are to a purported instrument (of which it purports to be an image), and

- (c) in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.

(5) An order under this section may in particular make provision for -

- (a) the responsible banker to be required to pay compensation irrespective of fault,
- (b) the amount of compensation to be reduced by virtue of anything done, or any failure to act, by the person to whom compensation is payable.

(6) Nothing in this section or an order under it is to be taken to -

- (a) prevent the responsible banker claiming a contribution from any other person, or
- (b) affect any remedy available to the responsible banker in contract or otherwise.

(7) Except so far as an order under this section provides expressly, nothing in this section or an order under it is to be taken to affect any

liability of the responsible banker which exists apart from this section or any such order.

**General provisions as to orders.**

11. (1) An order of the Committee under this Part of this Ordinance -
- (a) may be amended or repealed by a subsequent order hereunder,
  - (b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to the Committee to be necessary or expedient, including (without limitation) provision -
    - (i) amending, or applying exceptions, adaptations and modifications to, any of the provisions of the Bills of Exchange Law or any other enactment, and
    - (ii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law, and
  - (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

(2) Any power conferred by this Part of this Ordinance to make any order may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

#### PART IV

#### GENERAL PROVISIONS

#### **Interpretation.**

12. (1) In this Ordinance -

"**Bills of Exchange Law**" means the Bills of Exchange (Guernsey) Law, 1958, as it has effect in the Bailiwick excluding the islands of Alderney and Sark,

"**Committee**" means the States of Guernsey Committee for Economic Development,

"**Electronic Transactions Law**" means the Electronic Transactions (Guernsey) Law, 2000,

and, unless the contrary intention appears, other expressions have the same meanings as in the Bills of Exchange Law.

(2) Any reference in this Ordinance to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Extent.**

13. This Ordinance has effect in the Bailiwick excluding the islands of Alderney and Sark.

**Citation.**

14. This Ordinance may be cited as the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017.

**Commencement and transitional provision.**

15. (1) Subject to subsection (2), this Ordinance shall come into force on the 1<sup>st</sup> October, 2017.

(2) This Ordinance and the amendments made by it have effect in relation to presentment of instruments after it comes into force, including instruments created before that time.

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