

The Transfer of Funds (Guernsey) Ordinance, 2007

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The Transfer of Funds (Guernsey) Ordinance, 2007

THE STATES, in pursuance of their Resolution of the 28th day of September 2005^a, and in exercise of the powers conferred upon them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b and of all other powers enabling them in that behalf, hereby order:-

PART I

INFORMATION TO ACCOMPANY TRANSFERS OF FUNDS

Application.

1. (1) Subject to subsection (2), this Ordinance applies in relation to transfers of funds in any currency which are sent or received by a payment service provider established in Guernsey.

(2) This Ordinance shall not apply to the transfers of funds set out in the Schedule.

Information accompanying transfers of funds and record keeping.

2. (1) Subject to sections 3, 4 and 9 a payment service provider must ensure that transfers of funds are accompanied by complete information on the payer as set out in subsection (2).

(2) Complete information on the payer shall consist of the name,

a Article XI of Billet d'État No. XIV of 2005.

b Order in Council No. III of 1994.

address and account number of the payer except that -

- (a) the address of the payer may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number, and
- (b) where the payer does not have an account number, the payment service provider of the payer shall substitute it with a unique identifier, which allows the transaction in question to be traced back to that payer.

(3) Subject to the following provisions of this section, the payment service provider of the payer must, before transferring any funds, verify the complete information on the payer and such verification must be on the basis of documents, data or other information obtained from a reliable and independent source.

(4) In the case of transfers of funds from an account, the payment service provider of the payer may deem verification to have taken place if -

- (a) it has complied with any relevant requirements in regulations for the time being in force under section 49 of the Proceeds of Crime Law^c relating to the verification of the identity of the payer in connection with the opening of that account and the keeping of

^c Order in Council No. VIII of 1999; as amended by Order in Council No. II of 2005; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; G.S.I. No. 27 of 2002; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

information obtained by that verification, or

- (b) the payer is an existing customer and it is appropriate to do so taking into account the risk of money laundering or terrorist financing occurring.

(5) Where a transfer of funds is not made from an account, the payment service provider of the payer must verify the information on the payer only where –

- (a) the amount transferred exceeds 1000 Euros, or
- (b) the transaction is carried out in two or more operations-
 - (i) that appear to the payment service provider of the payer to be linked, and
 - (ii) which together exceed 1000 Euros.

(6) The payment service provider of the payer shall keep records of the complete information on the payer for five years from the date of the transfer of funds in question.

Transfers of funds within the British Islands.

3. (1) Subject to subsection (2), where both the payment service provider of the payer and the payment service provider of the payee are situated in the British Islands, a transfer of funds need only be accompanied by -

- (a) the account number of the payer, or

- (b) where there is no such account number, a unique identifier which allows the transaction in question to be traced back to the payer.

(2) The payment service provider of the payer shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee complete information on the payer within 3 working days excluding the day on which the request was received.

Batch file transfers from the British Islands to outside the British Islands.

4. Where there is a batch file transfer from a single payer where any payment service provider of the payee is situated outside the British Islands, section 2(1) shall not apply to the individual transfer of funds which is bundled together for transmission, provided that -

- (a) the batch file contains the complete information on the payer in question, and
- (b) the individual transfer carries the account number of the payer or a unique identifier.

Detection of missing information on the payer.

5. A payment service provider of a payee must -

- (a) in the messaging or payment and settlement system used to effect a transfer of funds, detect whether the fields relating to information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system,

- (b) have effective procedures in place to detect whether the following information on the payer is missing -
 - (i) for transfers of funds where the payment service provider of the payer is situated in the British Islands, the information required under section 3, and
 - (ii) subject to subparagraph (iii), for transfers of funds where the payment service provider of the payer is situated outside the British Islands-
 - (A) complete information on the payer, or
 - (B) where relevant, the information required under section 9, and
 - (iii) for batch file transfers where the payment service provider of the payer is situated outside the British Islands, the complete information on the payer but only in the batch file and not in the individual transfers bundled therein.

Transfers of funds with missing or incomplete information on the payer.

6. (1) If a payment service provider of a payee becomes aware, when receiving transfers of funds, that information on the payer required under this Ordinance, is missing or incomplete then, it must, subject to subsections (2) and (3)-

- (a) reject the transfer,

- (b) request from the payment service provider of the payer the complete information on the payer, or
- (c) take such other steps as the Commission may by order direct.

(2) Notwithstanding the requirement in subsection (1), the payment service provider of the payee must comply with any relevant requirements of any other enactment relating to money laundering or terrorist financing.

(3) The payment service provider of the payee, in deciding whether or not to reject the transfer or request complete information, must take into account any relevant guidance issued by the Commission.

(4) Where a payment service provider of a payer regularly fails to supply information on the payer required under this Ordinance, the payment service provider of the payee must –

- (a) notify the Commission and a police officer of that fact, and
- (b) take steps to attempt to ensure that such information is supplied and such steps may initially include the issuing of written warnings and written deadlines regarding the supply of the required information.

(5) If, following the taking of steps under subsection (4), a payment service provider of a payer still regularly fails to supply the required information on the payer, the payment service provider of the payee must –

- (a) reject any future transfers of funds from that payment service provider, or
- (b) decide whether or not to restrict or terminate its business relationship with that payment service provider.

Risk-based assessment and record keeping.

7. (1) Where information on the payer accompanying a transfer of funds is missing or incomplete, the payment service provider of the payee must take this into account in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether, accordingly, a disclosure is required to be made by it or a nominated officer -

- (a) under Part I of the Disclosure Law^d, and
- (b) under Part III of the Terrorism Law^e.

(2) The payment service provider of the payee shall keep records of any information received by it on the payer for five years from the date of the transfer of funds in question.

Keeping information on the payer with the transfer.

8. Subject to section 9, any intermediary payment service provider must ensure that any information received by it on the payer that accompanies a transfer of

^d Approved by resolution of the States on 30th May 2007.

^e Order in Council No. XVI of 2002 as amended by Order in Council No. XIII of 2006.

funds is kept with that transfer.

Technical limitations.

9. (1) This section applies where the payment service provider of a payer is situated outside the British Islands and the intermediary payment service provider is situated within the British Islands.

(2) An intermediary payment service provider may use a payment system with technical limitations to send a transfer of funds to a payment service provider of a payee except that where it is aware that information on the payer which is required under this Ordinance is missing or incomplete it must comply with subsection (3).

(3) Where an intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Ordinance is missing or incomplete, it may only use a payment system with technical limitations if –

- (a) it notifies the payment service provider of the payee that the information is missing or incomplete through–
 - (i) a payment or messaging system, or
 - (ii) another procedure, and
- (b) the system or procedure is agreed between the intermediary payment service provider and the payment service provider of the payee.

(4) Where an intermediary payment service provider uses a system

with technical limitations, it shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee, all information on the payer which it has received, within 3 working days excluding the day on which the request was received.

(5) Where an intermediary payment service provider uses a system with technical limitations it must keep records of any information on the payer received by it for five years from the date of the transfer in question.

(6) In this section "technical limitations" means technical limitations which prevent information on the payer accompanying transfers of funds.

Cooperation obligations.

10. (1) Payment service providers shall comply fully and without delay with -

- (a) any requirement or warrant to provide information or documents pursuant to section 25, 26, 28 or 29 of the Banking Law, 1994^f as applied by section 11,
- (b) any requirement to provide information or documents, however expressed, under -
 - (i) the Drug Trafficking (Bailiwick of Guernsey)

^f No. XIII of 1994 as amended by No. XVII and XXI of 2002 and No. XVI of 2003.

Law, 2000^g,

- (ii) the Proceeds of Crime Law,
- (iii) the Terrorism Law,
- (iv) the Disclosure Law,
- (v) regulations, for the time being in force, under section 49 of the Proceeds of Crime Law,
- (vi) the Terrorism (United Nations Measures) (Channel Islands) Order 2001^h, or
- (vii) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002ⁱ,

where such information or documents comprise information on the payer which accompanies any transfer of funds or corresponding records.

(2) Subject to any other enactment, any information or documents to which subsection (1) applies may only be used for the purposes of preventing,

^g Order in Council No. VII of 2000 as amended by Order in Council No. II of 2005.

^h S.I. 2001/3363 (registered on 11th October 2001) as amended by U.K. S.I. 2002/258 and the British Overseas Territories Act, s.2(3) an Act of Parliament.

ⁱ S.I. 2002/258 (registered on 18th February 2002) as amended by the British Overseas Territories Act 2002, s.2(3) an Act of Parliament.

investigating, or detecting money laundering or terrorist financing.

PART II ENFORCEMENT

Monitoring and enforcement-information seeking powers.

11. (1) The provisions of sections 25 (power to obtain information and documents) and 26 (right of entry to obtain information and documents) of the Banking Law shall apply –

- (a) to payment service providers who send or receive transfers of funds to which this Ordinance applies as they apply to licensed institutions within the meaning of that Law,
- (b) in relation to such information as the Commission may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of this Ordinance as they apply in relation to such information as the Commission may reasonably require for the performance of its functions under that Law, and
- (c) as if section 25(11) of that Law also allowed the powers referred to in that section to be exercised if the Commission considers that it is desirable to do so in the interests of effectively monitoring or ensuring compliance with the requirements of this Ordinance,

except that section 25(10) (information required for determining whether person is a

fit and proper person) of that Law shall not apply.

(2) Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Law shall apply in relation to an offence under this Ordinance as they apply in relation to an offence under section 1 or 21 of that Law.

(3) Section 44 (cases where disclosure is permitted) of the Banking Law shall apply as if it also permitted the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement of this Ordinance.

(4) References in any enactment to section 25, 26, 28 or 29 of the Banking Law shall be construed as including references to those sections as applied by this section.

Offences.

12. (1) Any payment service provider who, without reasonable excuse, fails to comply with any of the requirements of sections 2 to 11 of this Ordinance shall be guilty of an offence and on -

- (a) summary conviction be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale, or both, and
- (b) conviction on indictment be liable to imprisonment for a term not exceeding five years, a fine, or both.

Criminal proceedings against unincorporated bodies.

13. (1) Where an offence under this Ordinance is alleged to have been

committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(2) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance shall be paid from the funds of that body.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director thereof or any other officer thereof who is bound to fulfil any duty whereof the offence is a breach,
- (b) any partner thereof (in the case of a partnership), or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

Criminal liability of directors, etc.

14. (1) Where an offence under this Ordinance is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, controller, manager, secretary or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members,

subsection (1) applies to a member in connection with his functions of management as if he were a director.

PART III
GENERAL

Power for Commission to make rules, instructions and guidance.

15. (1) The Commission may make rules, instructions and guidance for the purposes of this Ordinance.

(2) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with this Ordinance.

Regulations, orders, rules, instructions and guidance.

16. (1) Any provision of this Ordinance may be amended by Regulations made by the States of Guernsey Home Department.

(2) Any Regulations, order, rules, instructions or guidance under this Ordinance -

(a) may be amended or repealed by subsequent Regulations, order, rules, instructions or guidance, as the case may be,

(b) may contain consequential, incidental, supplemental and transitional provisions, and

(c) in the case of Regulations or an order, 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 them, cease to have effect, but without prejudice to anything done under the Regulations or order or to the making of new Regulations or a new order.

(3) Any power conferred by this Ordinance to make Regulations, an order, rules, instructions or guidance 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, and

(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, and

(iii) any such provision either unconditionally or subject to any conditions specified in the Regulations, order, rules, instructions or guidance.

Interpretation.

17. (1) In this Ordinance, unless the context otherwise requires -

"Banking Law" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

"batch file transfer" means several individual transfers of funds which are bundled together for transmission,

"British Islands" means the United Kingdom, the Channel Islands and the Isle of Man,

"Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^j,

"complete information" shall be construed in accordance with section 2(2),

"Department of the States" includes any council or committee (however called) thereof,

"Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"document" includes information recorded in any form (including,

^j Ordres en Conseil Vol. XXX, p. 243; Orders in Council No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998 and Nos. XVII and XXI of 2002; No. XXII of 2003 and Ordinance No. XXXIV of 2005.

without limitation, in electronic form),

"EC Regulation" means Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of the 15th November 2006 on information on the payer accompanying transfers of funds^k,

"electronic money" means monetary value as represented by a claim on the issuer which is –

- (a) stored on an electronic device,
- (b) issued on receipt of funds of an amount not less in value than the monetary value issued, and
- (c) accepted as means of payment by persons other than the issuer,

"enactment" includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

"Guernsey" includes Herm and Jethou,

"intermediary payment service provider" means a payment service provider, neither of the payer nor of the payee, that participates in the execution of transfers of funds,

^k

Official Journal No. L345 of 8.12.2006, p 1.

"money laundering" is doing any act which –

- (a) constitutes an offence under section 38, 39 or 40 of the Proceeds of Crime Law,
- (b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or
- (e) would, in the case of an act done otherwise than in Guernsey, constitute an offence specified in paragraph (a), (b), (c) or (d) if done in Guernsey,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"nominated officer" means a person nominated by a payment service provider to receive disclosures under Part I of the Disclosure Law and Part III of the Terrorism Law,

"notify" means notify in writing,

"payee" means a person who is the intended final recipient of transferred funds,

"payer" means -

- (a) a person who holds an account and allows a transfer of funds from that account, or
- (b) where there is no account, a person who places an order for a transfer of funds,

"payment service provider" means a person whose business includes the provision of transfer of funds services,

"police officer" means -

- (a) a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and
- (b) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972¹,

¹ Ordres en Conseil Vol. XXIII, p. 573 as amended by Vol. XXIV, p. 87 and Orders in Council No. XIII of 1991 and No. X of 2004 and Ordinance No. XXXII of 2005.

"Proceeds of Crime Law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"States" means the States of Guernsey,

"subordinate legislation" means any ordinance, statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"Terrorism Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"terrorist financing" means doing any act which -

- (a) constitutes an offence under section 8, 9, 10 or 11 of the Terrorism Law and, for the purposes of this definition, in those sections the "purposes of terrorism" shall, include, to the extent that they do not already do so -
 - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of the Terrorism Law, or
 - (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would, in the case of an act done otherwise than in Guernsey, constitute an offence specified in paragraph (a), (b) or (c) if done in Guernsey,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"transfer of funds" means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person,

"uniform scale of fines" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1987^m,

"unique identifier" means a combination of letters, numbers or symbols, determined by the payment service provider, in accordance with the protocols of the payment and settlement or messaging system used to effect the transfer of funds,

and any other terms which are used in this Ordinance and which are also used in the

^m Orders en Conseil Vol XXXI, p.278; the scale of fines was substituted by Ordinance No. XXIX of 2006.

EC Regulation shall have the same meaning as in the EC Regulation.

(2) For the purposes of this Ordinance references to Euros shall be converted to pounds sterling or any other relevant currency at the relevant rate of conversion from time to time published in the “C” Series of the Official Journal of the European Communities.

(3) In this Ordinance, words importing the neutral gender include the feminine and masculine gender and vice versa.

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

Extent.

18. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

Citation.

19. This Ordinance may be cited as the Transfer of Funds (Guernsey) Ordinance, 2007.

Commencement.

20. This Ordinance shall come into force on the 15th December, 2007.

SCHEDULE

TRANSFERS OF FUNDS TO WHICH ORDINANCE DOES NOT APPLY

1. A transfer of funds carried out using a credit or debit card provided that -

- (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services, and
- (b) a unique identifier, which allows the transaction to be traced back to the payer, accompanies such transfer.

2. A transfer of funds carried out using electronic money where the transfer does not exceed 1,000 Euros and if the device on which the electronic money is stored –

- (a) cannot be recharged, the maximum amount stored in the device is 150 Euros, or
- (b) can be recharged, a limit of 2,500 Euros is imposed on the total amount transacted in a calendar year unless an amount of 1,000 Euros or more is redeemed in that same calendar year by the bearer of the device.

3. Without prejudice to paragraph 2, a transfer of funds carried out by means of a mobile telephone or any other digital or information technology device, provided that the transfer –

- (a) is pre-paid, and
- (b) does not exceed 150 Euros.

4. A transfer of funds carried out by means of a mobile telephone or any other digital or information technology device provided that –

- (a) the transfer is post-paid,
- (b) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services,
- (c) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer, and
- (d) the payment service provider is subject to the obligations set out in -
 - (i) Part I of the Disclosure Law,
 - (ii) Part III of the Terrorism Law in relation to disclosure, and
 - (iii) regulations for the time being in force under section 49 of the Proceeds of Crime Law,

or to similar obligations under the law of any part of the British Islands.

5. A transfer of funds –

- (a) where the payer withdraws cash from his own account,
- (b) where there is authorisation for a debit transfer between two persons which permits payments between them through accounts, provided that a unique identifier accompanies the transfer of funds, which enables the transaction to be traced back to the payer,
- (c) where truncated cheques are used,
- (d) within the British Islands, to any public authorities, including any Department of the States or Parochial officers, in respect of any taxes, rates, fines or any other levies whatsoever, or
- (e) where both the payer and the payee are payment service providers acting on their own behalf.