

Innovative new law opens Guernsey up to Artificial Intelligence

Insights - 18/07/2019

The newly enacted Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019, which came into force on 1st March this year, signals a turning point in law for companies using Artificial Intelligence which itself represents an area of exponential growth and critical importance for future development in many areas and sectors worldwide.

This exciting and innovative new legislation builds on the existing Electronic Transactions (Guernsey) Law, 2000, and contains a pioneering definition of the legal effect of using AI in contract formation procedures. Essentially, it gives electronic agents the authority to form, create, execute and terminate contracts without the input of humans, and makes it clear that the validity of any such contractual exchange will not be denied due to the use of an electronic agent.

Without realising it or being cognisant of the fact, we already make contracts with machines all the time. A great practical example is scanning a contactless card when using the Tube: humans have set the parameters of peak and off-peak fares, and the machine applies those parameters automatically at the times the humans have pre-set. If we scan our card at peak time, we form a contract with the machine to pay the set peak fare.

However, the new legislation would, for example, enable those machines to independently assess the number of people on the platform during peak time and be given the discretion to adjust the fare accordingly for each card swipe. In this new Guernsey legislation, the humans still set the ultimate parameters, but the machine is the agent in the eyes of the law.

If you start to think about it, your interactions with machines where you are effectively concluding contracts with computer programmes are increasing day by day and the sophistication of the machines is developing rapidly. Consider algorithms in computer programmes empowered to make decisions changing the price of airline tickets second by second depending on imminence and demand, vending machines reducing the price of stock approaching its sell by date.

The legal authority given for this level of discretion by machines in the contract formation process

is as far as we know a world first, and there is no relative clarity for such concepts at present in competing jurisdictions. This gives existing Guernsey-resident companies and companies operating under the auspices of Guernsey law the reassurance they need to continue adapting and innovating with technology, and prospective companies looking to become resident in Guernsey an advantage that other offshore jurisdictions do not have.

Furthermore, the clarity in the legislation does not compromise its flexibility. Although there are limited exemptions in decidedly human-to-human interactions where conflict could arise, for example property and probate, the law remains business-friendly. The Guernsey Financial Services Commission (GFSC) has, in recent months, publicly acknowledged support for the safe exploitation of technology in the financial services industry. Innovation, expertise and flexibility combined with political stability have long been hallmarks of Guernsey's approach to business.

The use of improved technologies will revolutionise the business sphere in coming years. It is clear from the direction of legislation in Guernsey that we will be at the forefront as an open and advanced jurisdiction to do business.

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