

## CHAPTER 7 – WIRE TRANSFERS

### Applicable Ordinance

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Transfer of Funds (Guernsey) Ordinance, 2007 – Appendix [ ]

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## **ORDINANCE**

In addition to the Regulations, and the Rules and Guidance elsewhere in this Handbook, there are also dedicated Ordinances which provide for the treatment of wire transfers.

Financial services businesses must comply with the Transfer of Funds (Guernsey) Ordinance, 2007 and the parallel Ordinances applicable in Alderney [and Sark] and should note that the Court will take account of the Rules and also of the Guidance provided in this Handbook in considering compliance with the Ordinances and the Regulations.

The text of the Ordinance is set out in Appendix [ ]. That text is definitive. References to an “Ordinance” in this chapter will refer to the Ordinance relevant to the Island from which the institution is operating.

## 7. WIRE TRANSFERS

A financial services business must comply with the Ordinance, the Regulations and the Rules. In order to assist financial services businesses to understand the contents of the Ordinance, much of the text below paraphrases the policies, procedures and controls which are required by the Ordinance to be established and maintained. Any paraphrasing of that text within this chapter represents the Commission's own explanation of the Ordinance and is for the purposes of information and assistance only. That paraphrasing does not detract from the legal effect of the Ordinance or from their enforceability by the courts. In case of doubt you are advised to consult an advocate.

The paraphrased text is contained within a clear box in order to provide clarity whilst the rules which must be followed in order to meet the requirements of the Ordinance are in shaded boxes.

### 7.1 Objectives

203. This chapter provides for a payment service provider (PSP) to have clear and comprehensive policies, procedures and controls for ensuring that it has the ability to trace all wire transfers back to the originator of the transfer.

### 7.2 Scope

204. The requirements summarised in this chapter apply to transfers of funds in any currency sent or received by a PSP established in the Bailiwick.

205. The requirements do not apply to the transfers set out in the Schedule to the Transfer of Funds Ordinance.

206. References to the British Islands in this chapter are to the area that comprises the United Kingdom, Guernsey, Jersey and the Isle of Man.

207. There are different requirements in relation to transfers between financial services businesses within the British Islands and to transfers where the PSP of the payer or the payee is outside the British Islands.

### 7.3 Outgoing Transfers

208. Section 7.3.1 of this chapter summarises the procedures to be undertaken for non-account holders and section 7.3.2 summarises the procedures to be undertaken for account holders.

#### 7.3.1 Transfers for non-account holders

209. In accordance with section 2 of the Ordinance, where a transfer of funds is not made from an account and the PSP is seeking to make a transfer in excess of €1,000 in a single transaction or in a linked series of transactions, it must obtain customer

identification information on the payer and verify and record that information.

210. Where the transfer is at or below the €1,000 threshold then customer identification information on the payer must be obtained and recorded but it is not necessary to verify the customer information.
211. Where the transfer is being made to a PSP in the British Islands, the transfer must, in accordance with section 3(1) of the Ordinance, include a unique identifier (which can trace a transaction back to the customer). If further information e.g. the name and address of the payer is requested by the PSP of the payee, such information must be provided by the PSP within three working days of the receipt of a request for such information.
212. Where the transfer is being made to a PSP in any other country or territory, section 2 of the Ordinance requires such transfers to include the following customer identification information (complete information):
- the name of the payer;
  - a unique identifier (which can trace a transaction back to the customer); and
  - the payer's address which may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number.

213. A customer identification number may be an internal reference number that is created by a PSP which uniquely identifies a payer (rather than an account that is operated for a payer), and which will continue throughout a relationship, or a number that is contained within an official document.

### 7.3.2 Transfers for account holders

214. In accordance with section 2 of the Ordinance where a PSP is seeking to make a transfer from an account, PSPs must:
- obtain customer identification information on the payer, verify that information, and record that information; or
  - have undertaken customer identification and verification procedures and retained records in connection with the opening of that account in accordance with the requirements of the Regulations and this Handbook

but where the payer is an existing customer the PSP may deem verification to have taken place if it is appropriate to do so taking into account the risk of money laundering or terrorist financing.

215. Where the transfer is being made to a PSP in the British Islands, section 3 of the Ordinance requires such transfers to include a customer account number. If further information e.g. the name and address of the payer is requested by the PSP of the

payee, such information must be provided by the PSP within three working days of the receipt of a request for such information.

216. Where the transfer is being made to a PSP in any other countries or territories, the transfer must include the following customer identification information:

- the name of the payer;
- the payer's account number; and
- the payer's address, which may be substituted with his date and place of birth, his customer identification number or national identity number.

217. Where a bank is itself the Payer, as will sometimes be the case even for SWIFT MT102 and 103 messages, the provision of the Bank Identifier Code (BIC) will constitute complete payer information for the purposes of the Ordinance, although it is also preferable for the account number to be included where available.

### **7.3.3 Batch files – transfers either inside or outside the British Islands**

218. In accordance with section 4 of the Ordinance, batch files from a single payer to multiple payees must carry the information identified in sections 7.3.1 and 7.3.2 of this chapter for the payer (which will depend on whether the PSP of a payee is located within or outside the British Islands). However, the individual transfers within the batch file need only carry the payer's customer account number (or unique customer identifier if there is no account number).

### **7.3.4 Minimum standards**

219. The information requirements of section 7.3 of this chapter are the minimum standards. It is open to PSPs to elect to supply complete information with transfers which are eligible for a reduced information requirement and thereby limit the likely incidence of inbound requests for complete information.

220. In order to ensure that information provided under the Ordinance is also processed in line with the Data Protection (Bailiwick of Guernsey) Law, 2001, it may be advisable for a payer PSP to ensure that its terms and conditions of business with each payer include reference to the information that it may provide – under the requirements set out in Sections 2 and 3 of the Ordinance.

## **7.4 Incoming Transfers**

221. Sections 5 and 6 of the Ordinance require PSPs to have effective policies, procedures and controls for checking that incoming payments contain the required customer identification information (which will depend on whether the payer's PSP is located within or outside the British Islands) – see sections 7.3.3 and 7.3.4 of this chapter.

#### 7.4.1 Detection of missing or incomplete information

222. PSPs will need to be able to identify empty message fields, have procedures in place to detect whether the required customer identification information is missing e.g. by undertaking sample testing to identify fields containing incomplete information on the payer, and where information is incomplete, to take specified action.

223. SWIFT payments on which mandatory Payer information fields are not completed will fail anyway and the Payee PSP will not receive the payment. Current SWIFT validation prevents payments being received where the mandatory information is not present at all. However, it is accepted that where the Payer information fields are completed with incorrect or meaningless information, or where there is no account number, the payment will pass through the system. SWIFT is currently considering how its validation standards might be improved to respond more effectively to the requirements of FATF Special Recommendation VII. Similar considerations apply to non-SWIFT messaging systems which also validate that a field is populated in accordance with the standards applicable to that system, e.g. BACS.

224. Under section 5 of the Ordinance a PSP of a payee must:

- detect whether or not the fields relating to information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of the messaging or payment and settlement system, i.e. ensure that validation rules of whichever messaging or payment system used are being utilised; and
- have effective procedures in place to detect the absence of required information on the payer.

225. PSPs must therefore subject incoming payment transfers to an appropriate level of post-event random sampling to detect non-compliant payments. .

226. The level of the sampling must be appropriate to the risk of the financial services business being used in connection with money laundering and terrorist financing and consideration should be given to areas such as:

- the value of the transaction;
- the country or territory of the payer; and
- the history of previous transfers with the PSP of the payer, i.e. whether it has failed previously to comply with the customer identification requirement.

227. Undertaking such an assessment will allow the PSP to make a considered decision as to the appropriate action to be taken.

228. Under section 6 of the Ordinance if a PSP has identified in the course of processing a payment that information on the payer is missing or incomplete it must either;

- reject the transfer; or
- ask for complete information on the payer; or
- take any other action which the Commission may by order direct,

but must comply with any other relevant provision of an enactment relating to money laundering or terrorist financing if that is contrary to such action or imposes additional requirements, e.g. compliance with tipping off provisions.

229. Where a Payee PSP becomes aware subsequent to processing the payment that information on the payer is missing or incomplete either as a result of random checking or other monitoring mechanisms under the PSPs risk based approach, it must:

- seek the necessary information on the Payer; and/or
- take any other action which the Commission may by order direct.

#### **7.4.2 Failure to supply information on a regular basis**

230. Section 6 of the Ordinance also sets out the action required where a PSP regularly fails to supply information on the payer required by the Ordinance.

231. In order to comply with the requirements of section 6 of the Ordinance, where a PSP of a payer is identified as having regularly failed to comply with the information requirements, then the PSP of the payee must notify the Commission and the FIS of that fact and take steps to attempt to ensure that such information is supplied. The action may include issuing warnings and setting deadlines, prior to either refusing to accept further transfers from that PSP or deciding whether or not to restrict or terminate the business relationship.

#### **7.4.3 Reporting of suspicion**

232. In accordance with section 7 of the Ordinance, where information on the payer accompanying a transfer of funds is missing or incomplete, the PSP of the payee must take this into account in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether a report should be made to a police officer or a nominated officer in accordance with the legislative requirements referred to in chapter 10 of this Handbook.

#### **7.4.4 Record keeping**

233. Section 7 of the Ordinance requires the PSP of the payee to retain all records of any information received on the payer of a transfer of funds for five years from the date of the transfer of funds.

234. More information on record keeping is available in chapter 12 of this Handbook.

## 7.5 Intermediary Payment Service Providers

235. In accordance with sections 8 and 9 of the Ordinance, intermediary PSPs, (e.g. those acting as agents for other payment service providers or who provide correspondent banking facilities) must, subject to technical limitations, ensure that all information received on a payer which accompanies a wire transfer is retained with the transfer.
236. Where an intermediary PSP uses a payment system with technical limitations (i.e. which prevents information on the payer accompanying transfers of funds) for transfers, and is aware that payer information is missing or incomplete it must
- notify the PSP of the payee that the information is missing or incomplete through a procedure agreed between the intermediary and the PSP; and
  - retain records of all information received on the payer for 5 years from the date of the transfer.
237. If requested to do so by the PSP of the payee, the PSP must provide the payer information within three working days of receiving the request.