

Contributed by Alicia Richards

The belief that current legal systems can no longer cope with the effects of globalization and the increasing interlinking of computers worldwide, has led to the view that the internet will create a lawless dimension where there is little or no control over the activities of individuals. Such beliefs are, however, countered by the view that the response by legal systems has been to develop appropriate rules by analogy, with the result that there is no single law which does or should apply to the internet, and instead the current body of law has been applied to this new communication medium leaving it in a constant state of adaptation.

The internet has become a global business place where most services are provided, and it is no surprise therefore that banks have sought to move into this new realm. In doing so they have increased their accessibility and provided greater comfort and convenience to their customers in this dynamic and competitive global market.

Their websites operate as branches at which electronic cheques and digital money can be deposited, balances checked, bills paid, payment instructions issued and funds transferred electronically. Many banks now have sites on the world wide web and this is fast becoming a cost-effective way for them to issue marketing information as well as full fledged banking services. It is now a popular belief that, with the growth in internet use, banks will soon need to accept e-cash in order to serve their customers effectively.

With the advent of e-banking, questions have naturally arisen as to whether financial institutions are compliant with the domestic laws under which they operate. By virtue of the **section 3 of *The Banking Act*** only a company duly licensed under the Act is allowed to carry on banking business in Jamaica. If the section is contravened an offence is committed. However, banking business is defined in the Act as follows : *>the business of receiving from the public, on current account or deposit account, money which is repayable on demand by cheque or order and which may be invested by way of advances to customers or otherwise; and such other business of a like nature as the Minister may, by order, prescribe@*

Such a definition does not fully encapsulate the current electronic banking models which exist in parts of this hemisphere, most of which have not yet reached our shores. Examples of such models include the electronic

cash bank, the virtual bank and the digital cash system.

There are clear advantages in the adaptation of these new systems of banking and prime among them is the fact that these electronic purses are more convenient and much safer than physical cash. There are also environmental benefits to be derived from the reduction of the paper trail associated with normal banking. On the flip side, the lack of trust which individuals will experience upon the introduction of such systems will need to be addressed, as will the need to make the society more computer literate and to provide increased access to computers.

The legal implications of these systems are too numerous to discuss in full in this article. However primary consideration must be given to the following:

- a. The authorization of banks to hold deposits pursuant to the ***Banking Act. Section 2*** of the Act defines a deposit as *Aa sum of money paid on terms which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it@.* Only authorized institutions are allowed to accept deposits, as such institutions that provide financial services on the internet are not automatically converted into banks by virtue of their activities. Conversely, if the institutions concerned are in fact accepting deposits, merely providing the deposit in digital form will not necessarily circumvent the need for authorization as a bank.
- b. The requirement for all authorized institutions to conduct their business in a prudent manner including ensuring the maintenance of sufficient capital adequacy and liquidity, having adequate provisions for diminution in the value of the bank=s assets and for future liabilities and maintaining adequate records and systems of control;
- c. Ensuring that data is protected and confidential; and
- d. Taking steps to prevent money laundering and other illegal activities.

The facility of encryption to preserve confidentiality whilst confirming the integrity of information transmitted and authenticating the underlying transaction would appear to be at odds with the law underpinning enforcement of crimes such as money laundering and tax evasion. Evidence of this is seen in circumstances where the bank has no means of matching withdrawals from one account with deposits to another, allowing for money entering the e-cash system to exit as freshly-laundered money.

From all indications banks in Jamaica are not yet accepting deposits on the internet and as such the banking services now under scrutiny are for future consideration. It is expected that with a step in this direction

legislation will be necessary to give the new cash the same protections as have been afforded for so long to its physical counterpart. We are on a revolutionary threshold and it is essential that regulatory and civil liberties issues are not overlooked in the rush to implement new payment mechanisms to meet our commercial needs. A vital appreciation of these issues must be fully considered before it is too late.

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