



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Jan Lynn Owen

January 18, 2019

Re: _____ – Request for Interpretive Opinion

Dear _____:

Thank you for your email to the Licensing Division of the Department of Business Oversight dated June 15, 2018, as supplemented by your emails dated July 17 and August 29, 2018. As Senior Counsel for the Legal Division, I have been asked to respond to your request. _____ (“_____”) is requesting a determination of whether its payment processing service qualifies for the agent of payee exemption¹ under the California Money Transmission Act (“MTA”).²

I. BACKGROUND

_____ contemplates offering a service (“the Payment Service”), which would enable Chinese consumers traveling to the United States to purchase goods and services at participating merchants in California. To facilitate this process, _____ has separate agreements with _____, (“_____”), a China-based payment processing affiliate of the _____, and _____ (“_____”), a China-based payment processing company. This new service would enable Chinese consumers traveling to the United States to pay for goods and services at participating merchants in California using their respective _____ or _____ accounts and thereby avoid the inconvenience of exchanging Chinese currency for U.S. Dollars prior to purchasing.

_____ represents the flow of funds for this transaction as follows: The mobile payment company (_____ or _____) deducts (“_____”) from the user’s account in China and transfers _____ to the mobile payment company’s partner bank in China. That Chinese partner bank then exchanges Chinese RMB into U.S. Dollars and wires the U.S. Dollars into _____’s operational account with _____ (formerly named _____) in San Diego, California. _____ then transfers those funds to the merchant’s bank account.

II. MONEY TRANSMISSION ACT

¹ Fin. Code, § 2010, subd. (l).

² Fin. Code, § 2000 et seq.

Financial Code section 2003, subdivision (q), defines “money transmission” to include receiving money for transmission. Section 2003, subdivision (u), defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

Financial Code section 2010, subdivision (l), exempts from the MTA transactions in which the recipient of the money is an agent of the payee pursuant to a preexisting written contract, and delivery of the money to the agent satisfies the payor’s obligation to the payee. For purposes of Section 2010, subdivision (l), “agent” has the same meaning as that term is defined in Civil Code section 2295.³ Agent is defined as one who represents another, called the principal, in dealings with third persons.⁴ “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.⁵ “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.⁶

A. Agent of Payee Exemption Does Not Apply to _____’s Payment Service.

The agent of payee exemption requires a transaction to have a payor and a payee. The flow of funds in the Payment Service, however, precludes application of the exemption because there is no payor within the definition provided in the MTA. The flow of funds begins with money flowing from a Chinese national’s bank account in China to _____’s or _____’s partner bank in China. This money then goes from _____’s or _____’s bank in China to _____’s bank in the United States.

The first instance of money transmission in connection with this transaction occurs when _____ receives money in the United States because the definition of “money transmission” requires that money is received in the United States.⁷ Although there has been a payment from the Chinese consumer to _____ or _____ in China, there is no money transmission until money is received by _____. Because there is no money transmission prior to money entering the United States, receipt of funds by _____ is the beginning of the flow of funds for purposes of analyzing the transaction under the MTA.

In order for the agent of payee exemption to apply to this transaction, there must be a payor. Under these facts, however, there is no payor. The Chinese consumer cannot be the

³ Fin. Code, § 2010, subd. (l)(1).

⁴ Civ. Code, § 2295.

⁵ Fin. Code, § 2010, subd. (l)(2).

⁶ Fin. Code, § 2010, subd. (l)(3).

⁷ The definition of “money transmission” requires that money is received in the United States. See Financial Code §2003, subd. (u).

payor because there is no money transmission until money has been received in the United States. Without a payor, the requirements of Financial Code section 2010, subdivision (l) are not satisfied.

B. The Public Interest Exemption.

Financial Code section 2011 authorizes the Commissioner to exempt from the MTA any person or transaction if the Commissioner finds such action to be in the public interest and the regulation of such person or transaction is not necessary. The California Code of Regulations provides factors the Commissioner may consider in analyzing whether to grant such exemption.⁸

_____ has not requested an exemption under Section 2011. If _____ wishes to request such exemption, please provide all relevant facts, documents, and legal arguments to support its request.

If you have any questions, please feel free to contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

JLWR:ss

⁸ 10 CCR 80.3002, subd. (b).