



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Jan Lynn Owen

February 21, 2019

Re: _____ – Amended Opinion Request

Dear Mr. _____:

Thank you for your letters to the Department of Business Oversight (“Department”) dated July 13, 2017 and June 13, 2018. You have asked the Department to confirm that certain transaction activity conducted by _____ Merchant Services LLC (“_____”) meets the agent of payee exemption¹ in the Money Transmission Act (“MTA”). This letter replaces and supersedes the Department’s letter dated January 9, 2019.

I. BACKGROUND

_____ is not currently a money transmitter licensee. _____ contemplates offering a new service (“the Payment Service”) with _____. (“_____”), a China-based payment processing affiliate of the _____.² This new service would enable Chinese consumers traveling to the United States to set up a digital wallet account with _____ in China and use this digital wallet to pay for goods and services at participating merchants in California. _____ represents the flow of funds for this transaction as follows: “From _____ [China] to an account of _____ US... from _____ US to a [_____] concentration account at a U.S. bank; from the [_____] concentration account to either (1) a [_____] settlement account held by [_____] for the benefit of merchants... or (ii) to master settlement accounts maintained by [_____]... [which will then] transfer the funds to the respective Merchant’s proprietary bank account.”

¹ Fin. Code, § 2010, subd. (l).

² _____ is a licensee of the Department. However, as _____ explained in its response letter to the Department, _____ will not report transmission activities in connection with the Payment Service as regulated transmission activity because _____ does not send or receive funds from or to California.

II. MONEY TRANSMISSION ACT

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 _____ Hong Kong. This money then goes from _____ Hong Kong to _____ in New York.

The first instance of money transmission in connection with this transaction occurs when _____ receives money in New York 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 _____ Hong Kong and from _____ Hong Kong to its United States affiliate in New York, there is no money transmission until money is received by _____ in New York. Because there is

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).

no money transmission prior to money entering the United States, receipt of funds by _____ in New York is the beginning of the flow of funds for purposes of analyzing the transaction under the MTA.

Thus, in order for the agent of payee exemption to apply to this transaction, _____ would have to be the payor because there was no money transmission within the MTA's definition prior to _____'s receipt of money. However, _____ cannot be the payor because _____ did not receive a good or service from the payee. Similarly, the Chinese consumer cannot be the 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

Senior Counsel

JLWR:ss

⁸ 10 CCR 80.3002, subd. (b).