



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR Gavin Newsom • ACTING COMMISSIONER Christopher S. Shultz

IN REPLY REFER TO:
FILE NO: _____

October 20, 2021

VIA EMAIL

Re: Request for Interpretive Opinion - _____

Dear _____:

Thank you for your letter dated September 3, 2020, as supplemented by your August 18, 2021 email to the Department of Financial Protection and Innovation (“Department”) requesting confirmation _____ does not require a license under the California Money Transmission Act¹ (“MTA”).

Background

_____ proposes to offer a payment processing service for merchants (each a “Merchant” or “Payee”) to receive payments in U.S. Dollars from purchasers of goods and services (each a “Buyer” or “Payor”), to have _____ automatically exchange these payments into dollar-denominated tokens on a blockchain network (“Dollar Tokens”), and to have _____ store the Dollar Tokens in a custodial digital wallet (“Wallet”). To facilitate the service, _____ will open a bank account to receive payments in U.S. Dollars on behalf of its Merchants (“Receiving Account”) and will provide the Merchants with virtual bank account numbers to direct payments owed to them into the Receiving Account. Upon receiving payment from a Buyer into the Receiving Account, _____ will immediately and automatically transfer Dollar Tokens from _____ own inventory² into the Merchant’s Wallet in an amount corresponding to the U.S. Dollar value of the payment.

In providing these payment processing services, _____, as the Merchant’s agent, will receive money from the Buyer pursuant to a preexisting written contract between _____ and the Merchant (“Agreement”). The Agreement will state:

¹ Fin. Code, § 2000 et seq.

² For its own inventory, _____ anticipates acquiring Dollar Tokens from _____, the issuer of the _____ Dollar Token on the Ethereum network.

To enable _____ to provide Payment Services, you agree to appoint _____ as your agent for the purpose of receiving funds on your behalf in connection with a Payor's payment for goods or services provided by you to such Payor. You acknowledge and agree that a Payor's delivery of payment to _____ satisfies the Payor's obligation to pay you for such goods or services, to the extent of the payment received. In other words, you agree that a Payor's obligation to pay you is fulfilled upon receipt of payment by _____.

After a payment is processed, the Merchant may hold, transfer, or otherwise transact with the Dollar Tokens in the Wallet. On _____ platform, these transactions will include the transfer of Dollar Tokens to other _____ Merchants' Wallets or the exchange of Dollar Tokens for currency via a local exchange. The Merchant may also transfer Dollar Tokens from the Wallet to a third-party exchange, merchant, or other wallet.

Money Transmission Act

The MTA prohibits a person from engaging in the business of money transmission in California unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.³ "Money transmission" includes "receiving money for transmission" and "selling or issuing stored value."⁴ "Receiving money for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.⁵ "Stored value" means monetary value representing a claim against the issuer that is stored on an electronic or digital medium, evidenced by an electronic or digital record, and intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services; it does not include stored value only redeemable by the issuer for goods or services provided by the issuer or its affiliate, i.e. "closed loop" stored value.⁶

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 the goods or services provided. An "agent" is one who represent another, called the principal, in dealings with third persons.⁷ A "payee" is the provider of goods or services, who is owed payment of

³ Fin. Code, § 2030, subd. (a).

⁴ Fin. Code, § 2003, subd. (q).

⁵ Fin. Code, § 2003, subd. (u).

⁶ Fin. Code, § 2003, subd. (x).

⁷ Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

money from the payor for the goods or services.⁸ A “payor” is the recipient of goods or services, who owes payment of money to the payee for the goods or services.⁹

Analysis

The Department does not currently require licensure under the MTA for _____ to receive U.S. Dollars from the Buyer for transfer to the Merchant’s Wallet as Dollar Tokens. And even if the Department regulated this activity, _____ contract with the Merchant contains a provision appointing _____ as the agent of the Merchant. With that provision, _____ payment processing services satisfy the requirements of the agent-of-payee exemption in Financial Code section 2010, subdivision (l): _____ acts as the agent of the Merchant (Payee) pursuant to a preexisting written contract, and _____ receipt of payment satisfies the Buyer’s (Payor’s) obligation to the Merchant (Payee) for goods or services.

Further, the Department does not currently require licensure under the MTA for _____ to store Dollar Tokens in the Merchant’s Wallet or subsequently transfer them out of the Wallet. However, please be aware this is subject to change. At any time, the Department may determine these activities are subject to regulatory supervision. The Department may also adopt regulations or issue interpretive opinions that significantly restrict _____ business operations. If _____ chooses to operate in California, it would do so subject to these risks.

This opinion is limited to the facts and circumstances described above. Should any of the facts or circumstances change, the Department’s opinion may also change.

Sincerely,

Christopher S. Shultz
Acting Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, DFPI, Money Transmitter Division

⁸ Fin. Code, § 2010, subd. (l)(2).

⁹ Fin. Code, § 2010, subd. (l)(3).