



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** · COMMISSIONER **Clothilde V. Hewlett**

IN REPLY REFER TO:

FILE NO: _____

October 16, 2023

VIA EMAIL ONLY

Re: _____ - Request for Interpretive Opinion

Dear _____:

Thank you for your correspondence dated July 25, 2023 and September 5, 2023 to the Department of Financial Protection and Innovation (“Department”). You request an interpretive opinion from the Department regarding whether a bill payment service provided by - _____ (the “U.S. Company”) is subject to regulation under the Money Transmission Act. The U.S. Company currently holds a license under the Money Transmission Act.

Background

Proposed Business Activity

In your correspondence, you explain that the U.S. Company, in partnership with _____ (the “Filipino Company”) plans to provide a bill payment service that enables customers located in the United States to provide payment to the U.S. Company for amounts owed to billers located in the Philippines for their utility, tuition, mortgage and other related transactions. Customers will remit payment to the U.S. Company, who will provide the payments to the Filipino Company. The Filipino Company then remits payment to the biller.

You explain that the billers have appointed the Filipino Company as their agent for purposes of these transactions, and that both the billers and the Filipino Company have appointed the U.S. Company as their agent for collecting payments from customers in the United States. Your letter dated September 5, 2023 also confirms that the U.S. Company’s receipt of funds from the biller’s customer satisfies the customer’s payment obligation to the biller. You also provided certain agreements reflecting the same. Specifically, in your letter dated July 25, you provided an Addendum to the Memorandum of Agreement; and in your letter dated September 5, you provided an Agency Agreement, which state, in part:

Addendum to the Memorandum of Agreement

B. For payments made in the USA by the [Biller's] customers/clients, the [Filipino Company] and the [Biller] hereby appoint and name [U.S. Company] as its agent to collect said payment.

[U.S. Company] will remit said payment to the [Filipino Company]. The latter will then remit said payment to the [Biller] subject to the terms and conditions in the Agreement.

C. [Filipino Company] and [Biller] hereby warrant and agree that payment made by the [Biller's] customers/clients to [U.S. Company] is considered payment to the [Biller].

Agency Agreement

1. The [Filipino Company] hereby appoints the [U.S. Company] as its agent and the [U.S. Company] hereby accepts the appointment for the collection of payments from customers on behalf of the [Filipino Company].

2. The [Filipino Company] acknowledges that any payment made by customers to the [U.S. Company] to be applied as payments to billers and payees in the Philippines shall be valid and binding, and shall be considered as delivery to the [Filipino Company]. The delivery of payments made by the customers to the [U.S. Company] shall be considered as final satisfaction of the customers' obligation to the [Billers].

Money Transmission Act

Financial Code section 2030 states, "A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division or is an agent of a person licensed or exempt from licensure under this division." Money transmission is defined, in part, to include receiving money for transmission.

Financial Code section 2011, subdivision (I) exempts from the MTA transactions in which the recipient of the money is an agent of the payee pursuant to a preexisting written contract providing that delivery of the money to the agent satisfies the payor's obligation to the payee for the goods or services provided.

The Department adopted regulations regarding the agent of payee exemption that became effective on October 1, 2021. In its Final Statement of Reasons, the Department provided an example of a transaction similar to that described in your letter (emphasis added):

“Customer --> Payment Processor 1 --> Payment Processor 2 --> Merchant

Here, the Customer, as payor, purchases a good from a Merchant, as payee, and there is a payment obligation between the Customer and the Merchant constituting one transaction. If the Merchant appoints Payment Processor 2 as an agent by written contract and the other requirements of Financial Code section 2010, subdivision (I) are met, [then] Payment Processor 2 is eligible for the agent of payee exemption. Separately, Payment Processor 2 may appoint Payment Processor 1 as its agent under the laws of agency. If Payment Processor 1 is the agent of Payment Processor 2 under general agency law, money received from the Customer by Payment Processor 1 on behalf of Payment Processor 2 would not constitute money transmission because the Customer’s funds are deemed received by Payment Processor 2 at that moment.”

Analysis

Here, the U.S. Company is not engaging in the business of money transmission because it is not receiving money for transmission in its own capacity. The Agency Agreement and your letter of September 5 state that the U.S. Company is acting as Filipino Company's agent when it receives money from Biller’s customers. It also establishes that the Filipino Company is an agent of the biller by written contract and that the customer’s payment to U.S. Company satisfies the customer’s obligation to the biller.

Therefore, based on general agency principals, and consistent with the Final Statement of Reasons referenced above, because the U.S. Company is acting as an agent of the Filipino Company, the U.S. Company did not receive money for transmission because the customer's funds are deemed received by Filipino Company, not the U.S. Company, at that moment that the U.S. Company collects the funds from the customer. Therefore, no exemption from the Money Transmission Act is needed by the U.S. Company.

Conclusion

The bill payment service provided by _____ is not subject to regulation under the Money Transmission Act because it is only receiving money for transmission as an agent of another party. This opinion is based solely on the facts presented in your correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

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

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division