



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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September 26, 2019

Paul Tokarz, Esq.
Product Counsel, Payments
Google Payment Corp.
1600 Amphitheatre Parkway
P.O. Box 1568
Mountain View, CA 94043

Dear Mr. Tokarz:

This letter is in response to your correspondence dated August 8, 2019 to the Division of Banks (Division) on behalf of Google Payment Corp. (GPC) requesting the Division's opinion as to whether GPC is required to be licensed as a foreign transmittal agency in the Commonwealth. GPC's request has also been the subject of additional communications with Division staff.

As explained in the letter, there are three scenarios in which GPC products and services involve foreign parties. First, in a "Google Play Card Processing Service" transaction, GPC facilitates buyers' credit and debit card payments to the card networks (e.g. Visa or Mastercard) for purchases of digital content made through the Google Play online store and sold by third-party developers located in foreign countries. GPC then disburses such payments to the foreign third-party developers. Next, in a "Google Play Gift Card" transaction, GPC processes buyers' purchases of digital content from foreign third-party developers made with a Google Play Gift Card on the Google Play online store and disburses such proceeds to the third-party developer located in foreign countries. Lastly, in a "YouTube" transaction, GPC processes buyers' credit and debit card purchases and Google Play Gift Card purchases made by individuals in foreign countries that are sold by GPC's corporate affiliate, YouTube, and then disburses the buyers' payments to YouTube. These situations are discussed in more detail below.

With respect to the Google Play Card Processing Service, buyers make a credit or debit card payment for digital content to GPC as the merchant of record. GPC then processes the transaction as the agent of the seller (the third-party developer) pursuant to an express agreement with the seller. Under this agreement, the seller agrees that the buyer's payment obligation is satisfied once the buyer's credit card is authorized through the card network. The funds are not transmitted directly from the buyer, but rather from the issuing bank for the buyer's credit or debit card. For purchases in a Google Play Gift Card transaction, the foregoing is also true, with the exception of the payment being made from the buyer through the use of a Google Play Gift Card, rather than a credit or debit card. With respect to a YouTube transaction, GPC is conducting the same credit, debit card, or Google Play Gift Card processing activities for buyers who are purchasing certain services in connection with GPC's affiliate, YouTube, and is then transmitting the funds received for those services to YouTube.

Pursuant to M.G.L. c 169, section 1, persons who engage or are financially interested in the business of receiving deposits of money for the purpose of transmitting such deposits to foreign countries must be licensed by the Division. Licensing questions under chapter 169 traditionally have been evaluated by the Division on a case-by-case basis, taking into account: (1) whether money or its equivalent is deposited for the purpose of transmission to a foreign country; (2) the location and manner of the deposit-taking and transmittal; and, more generally, (3) whether the money transmitting operations of a particular enterprise are such as would adequately protect Massachusetts customers.

As described, all of GPC's services are provided only for the purpose of processing payments for the content and services that buyers have purchased through the Google Play online store or on YouTube in the ordinary course. *See* Division Opinions 19-004 and 14-009. GPC does not provide a general service of money transmittal for third-party developers or buyers. Notably, the contract entered into between GPC and the third-party developer, as the seller: a) expressly appoints GPC as the agent of the third-party developer; and b) provides that the buyer's payment obligation to the third-party developer is satisfied once the buyer's card issuer authorizes the purchase through the payment card networks. The Division has previously opined that such "agent of the payee" transactions do not require licensure under Chapter 169. *See* Division Opinion 19-004. In addition, funds will be transferred only through formal banking channels, moving from the buyer's card-issuing bank to GPC pursuant to the standard card network settlement process. Lastly, the Division notes that with respect to the YouTube transactions, GPC is acting as a payment processor in the same manner as described for the other scenarios, and is simply transmitting the buyers' funds to its domestic corporate affiliate, rather than to a third-party developer located in a foreign country; for this reason, the provisions of Chapter 169 would not be implicated. In light of the foregoing, it is the position of the Division that a foreign transmittal agency license would not be required for any of the activities described in GPC's correspondence.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in black ink that reads "Merrily S. Gertish". The signature is written in a cursive, slightly stylized font.

Merrily S. Gertish
Deputy Commissioner of Banks
and General Counsel