



# IDFPR

## Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

**JB PRITZKER**  
Governor

**MARIO TRETO, JR.**  
Acting Secretary

**FRANCISCO MENCHACA**  
Director

February 28, 2022

### VIA ELECTRONIC MAIL

## Non-Binding Statement 2022-2

Dear \_\_\_\_\_:

Thank you for your letter emailed on September 20, 2021 and supplemental information. You requested a non-binding statement pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether \_\_\_\_\_ is required to obtain a license under the Illinois Transmitters of Money Act (“TOMA”). You have requested confidential treatment.

Please be advised that consistent with governing law, the Illinois Department of Professional and Financial Regulation, Division of Financial Institutions (“Division”), does not render formal legal opinions or interpretations and non-binding statements do not have precedent value.

In addition, facts, or conditions different than those presented will require different conclusions. Persons other than those requesting the statement should not rely on this statement. The Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

### FACTS

\_\_\_\_\_ is a wholly owned subsidiary of Parent Company<sup>1</sup>. \_\_\_\_\_<sup>2</sup> intends to offer payment processing services to international based resorts (“Company” or “Companies”) as an agent of the payee using a proprietary, multi-lingual, multi-currency software<sup>3</sup> to provide resort administrators the ability select the currency in which to invoice the customer, to schedule recurring payments, and also provide historical transaction records. The Company’s customers are homeowners of the resort properties. \_\_\_\_\_ represents that it will not be providing services directly to customers residing in Illinois.

<sup>1</sup> Parent Company is located in Canada and registered as a MSB with FINTRAC and FinCEN.

<sup>2</sup> \_\_\_\_\_ will provide payment processing services for Companies if the payor is located in the United States. Parent Company will provide payment processing services for payors located in Canada.

<sup>3</sup> The software provides the Company resort administrator with a secure administrator portal for accounts receivable and reconciliation. The customer will receive an invoice from the Company resort and will pay the invoice through a unique multi-factored authenticated URL login that is provided to the Company to allow individual customers access.

\_\_\_\_\_ represents that it only operates pursuant to a Payment Services Agreement (“Agreement”) with the Company. The Agreement expressly appoints \_\_\_\_\_ as the Company’s authorized agent, for the limited purpose of accepting payments on the Company’s behalf from its customers. The Agreement further states that payment from the Company’s customers to \_\_\_\_\_ will be deemed payment to the Company and as if the customer had paid the Company directly. The Agreement further provides that the Company will “not take any action against a customer for non-payment if the customer has remitted satisfactory payment to \_\_\_\_\_.” Additionally, \_\_\_\_\_ represents a receipt is provided which fully discloses \_\_\_\_\_’s agency relationship with the Company and expressly states that payment to \_\_\_\_\_ shall be deemed payment to the Company.

With respect to payments, \_\_\_\_\_ represents that the Company may select the currency in which to invoice the customer. \_\_\_\_\_ represents that it maintains multiple currency accounts with its bank that are denominated in other currencies such as USD, CAN, MXN, and per the Agreement, \_\_\_\_\_ will exchange funds to the currency designated by the Company prior to forwarding the funds in the following manner:

- The Resort (*i.e.* Company) will invoice homeowner customer for home owner association fees and/or other services.
- Customer initiates payment to Resort and agrees to USD price which includes the USD equivalent of the designated currency (*i.e.* MXN) to be paid plus fees<sup>4</sup>.
- Customer sends USD to \_\_\_\_\_ USD bank account.
- \_\_\_\_\_ exchanges USD to designated currency.
- \_\_\_\_\_ initiates MXN to Company and Bank sends MXN to Company bank account.
- Company receives payment and credits customer’s account.

## LAW

Pursuant to Section 5 of TOMA a money transmitter is:

[A] person who is located in or doing business in this State and who directly or through authorized sellers does any of the following in this State:

- (1) Sells or issues payment instruments.
- (2) Engages in the business of receiving money for transmission or transmitting money.
- (3) Engages in the business of exchanging, for compensation, money of the United States Government or a foreign government to or from money of another government.<sup>5</sup>

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<sup>4</sup> \_\_\_\_\_ represents that the fees are transaction fees and not for currency conversion.

<sup>5</sup> 205 ILCS 657/5

TOMA applies to the “transmission of money by any means, including transmissions to or from locations within the United States or to and from locations outside of the United States by payment instrument, facsimile or electronic transfer, or otherwise, and includes bill payment services.”<sup>6</sup>

State and federal chartered financial institutions are exempt pursuant to TOMA.<sup>7</sup> An operator of a payment system is exempt from licensure pursuant to TOMA to the extent that it provides processing, clearing, or settlement services between or among persons exempt under this Section in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers.<sup>8</sup>

## CONCLUSION

If all the facts provided in counsel’s September 20, 2021 letter and supplemental correspondence are true and correct, \_\_\_\_\_ would not be required to obtain a TOMA license. \_\_\_\_\_’s business model is consistent with the Division’s prior guidance on third-party payment processors.<sup>9</sup> The Division would not recommend that enforcement action be initiated against \_\_\_\_\_ if it commenced the described activities without a TOMA license.

The Division expressly disclaims any obligation to advise you of any changes in the circumstances, laws or events that may occur after this date or otherwise update this response. This letter does not address the applicability of any law except TOMA.

Sincerely,

Francisco Menchaca  
Director, Division of Financial Institutions

By,

s/ Helen Kim  
Helen Kim  
Associate General Counsel

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<sup>6</sup> *Id.*

<sup>7</sup> 205 ILCS 657/15(3).

<sup>8</sup> 205 ILCS 657/15(6).

<sup>9</sup> See Statement Regarding Third-Payment Processors and the Transmitter of Money Act, available at <https://www.idfpr.illinois.gov/forms/DFI/CCD/07292015StatementThirdPartyProcTOMA.pdf>