

The Payment Services Bill – A New Regulatory Framework for Payments

The Monetary Authority of Singapore ("MAS") currently regulates various payment services under the Payment Systems (Oversight) Act ("PS(O)A") and the Money-changing and Remittance Businesses Act ("MCRBA"). New payment models and services have since developed which create uncertainty over the regulatory scope of the PS(O)A and MCRBA and present new risks to be addressed.

MAS conducted a public consultation on key proposals in the proposed Payment Services Bill ("PSB") on 21 November 2017 (our update on this can be accessed [here](#)) and issued its response to feedback received on the public consultation on 19 November 2018 (available [here](#)).

On 19 November 2018, the PSB (available [here](#)) was read in Parliament for the first time.

The PSB will:

- streamline payment services under a single legislative framework by combining the PS(O)A and the MCRBA;
- enhance the scope of regulated activities by taking into account developments in payment services; and
- take a risk-based approach, i.e., it will calibrate regulations according to the risks posed by the various regulated activities by adopting a modular regulatory regime,

and comprises two parallel regulatory frameworks:

- a licensing framework for payment service providers; and

- a designation framework for significant payment systems.

This Update highlights the key points of the Payment Services Bill.

LICENSING REGIME

Regulated Activities

For the purposes of the licensing regime, the PSB takes an activity-based approach, and regulates the following payment services that (i) face either customers or merchants, or (ii) process funds or acquire transactions:

- account issuance services;
- domestic money transfer services;
- cross border money transfer services (i.e., providing inbound or outbound remittance services in Singapore);
- merchant acquisition services;
- electronic money ("e-money") issuance;
- digital payment token services; and
- money-changing services.

An entity will need a licence under the PSB ("licensee") to provide these payment services (even if such payment service is incidental to its other businesses, whether related or not), unless the entity falls within an exemption, or the activity is excluded from the scope of the PSB.

MAS had previously, in its consultation paper, used the term "virtual currency" for one of the regulated activities. MAS will revise the term "virtual currency" to "digital payment token" instead to accurately reflect its payment function within the broader rubric of digital tokens and distinguish it from fiat currency.

Prohibited Activities

There are certain activities which a licensee is prohibited from conducting. This includes:

Prohibition against solicitation

A person in Singapore (whether or not a licensee or exempt payment service provider) is prohibited from doing certain things on behalf of a person outside Singapore who is not a licensee nor an exempt payment service provider, such as advertising / offering to provide to the public (or any section of the public) in Singapore, any type of payment service, whether in Singapore or elsewhere.

Prohibition against consumer lending

A licensee is prohibited from granting any credit facility to any individual in Singapore.

Prohibition against materially financing businesses out of money received

A licensee carrying on e-money issuance is not permitted to on-lend the moneys received from customers as payment for e-money to finance any business carried on by the licensee.

Excluded Activities

The three most significant activities which are excluded from the ambit of the PSB are:

- limited purpose e-money;
- limited purpose virtual currency; and
- regulated financial services.

Limited purpose e-money

The limited purpose e-money exclusion includes e-money that can only be used for payment of goods and services provided by merchants with the physical premises owned, operated or managed by the e-money issuer or any related corporation or associated corporation of that issuer. Such e-money issuer will not be required to hold a licence under the PSB provided that e-

money also meets certain conditions such as carrying low money laundering / terror financing ("ML/TF") risks.

Loyalty program limited purpose e-money will be excluded from the ambit of the PSB.

Limited purpose virtual currency

In-game assets are virtual assets which facilitate participation in the game. Those that do not have any tangible value outside of the game are excluded from the PSB but those that are returnable, transferable or capable of being sold for money will be regulated under the PSB if they come within the definition of digital payment token.

Regulated Financial Services

Regulated financial services provided by any person regulated or exempted under the Securities and Futures Act, the Financial Advisers Act, the Trust Companies Act and the Insurance Act which are solely incidental or necessary for carrying out the regulated activities under those Acts are excluded from the PSB.

Three Licence Classes

To conduct any or all of the regulated activities, a payment service provider need only obtain a single licence. There will be three types of licences:

- Money-Changing licence;
- Standard Payment Institution licence; and
- Major Payment Institution licence.

A licensee may only conduct the payment services that it is approved to conduct in its licence. Any intended change in payment services will require the approval of MAS for a variation of the licence.

A Money-Changing licensee may only provide money-changing services whilst the other two types of licensees (i.e., a Standard Payment

Institution and Major Payment Institution) may provide any regulated activity.

As a Standard Payment Institution does not have a similar consumer reach or pose the same level of risk as a Major Payment Institution, MAS does not wish to unduly burden a Standard Payment Institution with the same regulations as it would impose on a Major Payment Institution.

An entity will require a Major Payment Institution licence if it intends to provide payment services in excess of any of the following payment transaction thresholds:

- Any licensable activity where the average, over a calendar year, of the total value of all payment transactions that it accepted, processed or executed in one month exceeds S\$3 million; or
- 2 or more licensable activities where the average, over a calendar year, of the total value of all payment transactions that it accepted, processed or executed in one month exceeds S\$6 million.

The above thresholds do not apply to any money-changing service and any account issuance service where each account issued stores e-money.

Exempt payment service providers

To minimise overlapping regulation, certain entities (such as banks licensed under the Banking Act, merchant banks approved as a financial institution under the Monetary Authority of Singapore Act and credit or charge card issuers licensed under the Banking Act) are exempted from having a licence to be able to carry on a business of providing any payment service but will be required to comply with certain provisions of the PSB.

Capital requirements

All licensees (except money-changing licensees) must satisfy minimum capital requirements on an

initial and on-going basis. The minimum capital requirement for Major Payment Institutions is S\$250,000 whilst that for Standard Payment Institutions is S\$100,000. These capital requirements will be set out in subsidiary legislation.

Specific Risk Mitigating Measures

Licensees will be subject to activity-specific risk mitigating measures. To avoid overregulation, such measures will be imposed on licensees only where they conduct regulated services that pose the relevant risk. Specifically, MAS seeks to address the following risks in retail payment services:

- ML/TF;
- user protection;
- interoperability; and
- technology risk.

More details regarding the measures to address ML/TF risks for payment services will be addressed in future public consultation by MAS.

Major Payment Institutions that provide certain payment services such as money transfer services or issue e-money will be required to safeguard the relevant e-money float or funds in transit by certain prescribed ways including having the equivalent amount of money covered by an undertaking from, or guarantee by, any bank in Singapore or approved financial institution.

With regard to interoperability issues, MAS will have powers on three interoperability measures, namely, access regime, control platform and common standards, but has said that it will engage with the industry before imposing such measures.

Technology risks management requirements (e.g., maintaining high availability, recoverability, data protection or incident reporting) will only apply to operators and settlement institutions of designated payment systems which pose financial

stability risks to Singapore. MAS has said that it will be monitoring the use of technology by other payment institutions and impose requirements if necessary.

DESIGNATION REGIME

Under this regime, MAS may designate a payment system as a designated payment system for the purposes of the PSB.

This will allow MAS to regulate a payment system even if it does not fall within the scope of licensable activities but where it poses other risks such as, e.g., where its disruption could pose systemic disruption to the financial system, affect public confidence in the payment systems or the financial system of Singapore, pose efficiency or competition concerns, or where it is in the interest of the public to do so.

Once a payment system is designated, the participant, operator or settlement institution of

that payment system may be subject to such conditions or restrictions as MAS requires.

GENERAL POWERS OF MAS

Under the PSB, MAS will be given general powers, such as emergency powers, inspection powers, powers to issue regulation and directions and penal powers, required for it to effectively regulate parties under the PSB.

TRANSITIONAL ARRANGEMENTS

To facilitate a smooth transition into the new regulatory framework, the PSB provides a transitional grace period of 12 months for most payment services except for digital payment token services which only has a grace period of 6 months due to the potentially higher ML/TF risks.

No grace period will be granted for money-changing services.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or the following partner:



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