

SECOND CONSULTATION ON PROPOSED PAYMENTS REGULATORY FRAMEWORK

On 21 November 2017, the Monetary Authority of Singapore (MAS) launched its second consultation (Consultation) on its proposed payments regulatory framework, which included a consultation on the draft Payments Services Bill (Bill). The Consultation follows a public consultation on the proposed regulatory framework and governance model for payments, which was launched on 25 August 2016. At the same time, MAS published its responses to the August 2016 public consultation.

The Bill aims to streamline the regulation of payment services under a single legislative framework, expand the scope of regulated payment activities to take into account developments in payment services, and calibrate regulation according to the risks posed by the respective payment activities.

PROPOSED PAYMENTS REGULATORY FRAMEWORK

MAS has proposed to replace the existing legislative framework for payment services, which is currently housed under the Payment Systems (Oversight) Act (Cap. 222A) (PSOA) and the Money-Changing and Remittance Businesses Act (Cap. 187) (MCRBA), with a new payments legislation in the form of the proposed Bill to (a) streamline the regulation of payment services under a single legislative framework, (b) enhance the scope of regulated payment activities to take into account developments in payment services, and (c) calibrate regulations according to the risks posed by the respective payment activities by adopting a modular regulatory framework.

In doing so, MAS also aims to enhance user protection measures and to encourage merchants and consumers to adopt electronic payments.

The proposed Bill consists of two parallel regulatory frameworks:

- a licensing regime that focuses on retail payment activities that face consumers and merchants
- a designation regime that focuses on payment systems for which disruption would pose financial stability risks or have an impact on confidence in the financial system.

Key proposals

- Persons that carry on business in regulated payment services to hold a licence in respect of that payment service, unless an exemption applies
- Exclusions for limited purpose e-money, limited purpose virtual currency, and regulated financial services
- Exemptions for banks, merchant banks, finance companies and non-bank credit card and charge card issuers for certain activities
- Transitional arrangements for existing regulated financial institutions and payment service providers, and entities that provide payment services regulated under the Bill but which are not currently licensed
- Class exemptions for entities that do not pose significant ML/TF risks
- Licensing and business conduct requirements to apply to all licensees
- AML/CFT requirements to apply to all licensees
- User protection measures, power to impose interoperability measures, and technology risk measures to apply to Major Payment Institutions

MAS has proposed to expand its current designation criteria to allow it to designate payment systems for efficiency or competition reasons, but has otherwise proposed to largely retain the existing designation regime under the PSOA.

We set out below a high-level overview of the key proposals relating to the licensing regime.

Licensing regime

Regulated payment services

MAS has proposed that the following activities, which involve service providers dealing or contracting directly with customers or merchants, or processing funds or acquiring transactions for merchants, be regulated under the proposed licensing regime:

Activity type	Description
Activity A: Account issuance services	Issuing, maintaining or operating a payment account in Singapore, such as an e-wallet or a non-bank credit card
Activity B: Domestic money transfer services	Providing local funds transfer services in Singapore
Activity C: Cross border money transfer services (ie, remittance business)	Providing inbound or outbound remittance services in Singapore
Activity D: Merchant acquisition services	Providing merchant acquisition services in Singapore
Activity E: Electronic money (e-money) issuance	Issuing e-money in Singapore to allow the user to pay merchants or transfer e-money to another individual
Activity F: Virtual currency services (i.e., virtual currency intermediation)	Buying or selling virtual currency, or providing a platform to allow persons to exchange virtual currency in Singapore
Activity G: Money-changing services	Buying or selling foreign currency notes in Singapore

For this purpose, MAS has made a clear distinction between e-money and virtual currency:

- E-money is denominated in fiat currency, and refers to electronically stored monetary value represented by a claim on the e-money issuer that has been paid in advance for the purpose of making payment transactions through the use of a payment account and which is accepted by another person (other than the e-money issuer)
- Virtual currency, on the other hand, refers to any digital representation of value that is not denominated in fiat currency, is expressed as a unit, is accepted by the public or a section of the public as a medium of exchange, to pay for goods or services or the discharge of a debt, and which can be transferred, stored or traded electronically. Virtual currency would include cryptocurrencies such as Bitcoin and Ether.

Activities A, B, D and F are not currently regulated under the PSOA or MCRBA.

MAS has proposed some refinements to the scope of remittance business (currently regulated under the MCRBA) and activities involving stored value facilities (currently regulated under the PSOA), which will be regulated under Activities C and E respectively.

Money-changing services are currently regulated under the MCRBA and will be regulated under Activity G.

Types of licence

A person that carries on business in providing regulated payment services would need to hold a licence to carry on such activity, unless it is exempted in respect of the relevant type of payment service. A person that does not hold a payment service licence, or where an exemption is not available, would also be prohibited from soliciting for any regulated payment service and holding itself out as a licensee.

MAS has proposed to group licensees into the following categories:

- Money-Changing licence
- Standard Payment Institution licence
- Major Payment Institution licence

A Money-Changing Licensee would only be able to provide money-changing services, while Standard Payment Institutions and Major Payment Institutions would be able to provide any of the above-mentioned regulated payment services.

However, only a Major Payment Institution would be able to carry out payment services above certain prescribed thresholds. The thresholds are currently proposed to be:

- accepting, processing, or executing a monthly average of transactions (including all payment transactions) above S\$3 million, or
- holding an average daily e-money float above S\$5 million,

in a calendar year.

Excluded activities

MAS has proposed to exclude the following payment activities from the licensing requirement:

- payment services provided in respect of limited purpose e-money
- payment services provided in respect of limited purpose virtual currency
- payment services provided by a person regulated or exempted under the Securities and Futures Act (Cap. 289), Financial Advisers Act (Cap.110), Trust Companies Act (Cap.336) and Insurance Act (Cap. 142) that are solely incidental to or necessary for the carrying on of regulated activities under these Acts.

Limited purpose e-money would include:

- value stored on e-wallets that is, or is intended to be, used only in Singapore, and that satisfy any of the following:

- it is used for payment or part payment of the purchase of goods and/or services from the issuer
 - it is used only within a limited network of franchisees or related companies, or
 - the monetary value stored in the e-wallet is issued by a public authority, or a public authority has undertaken to be fully liable for or provided a guarantee in respect of the monetary value stored in the e-wallet, in the event of the issuer's default
- e-money that is used in loyalty programs, subject to certain criteria.

With respect to the limited purpose virtual currency exclusion, MAS has proposed to exclude types of virtual currency that are limited in user reach and scope of use, such as in-game assets and loyalty points, as well as loyalty points (not denominated in fiat currency) that are used in loyalty programs, subject to conditions.

Existing financial institutions and transitional arrangements

Apart from the regulated financial services exclusion above, MAS has proposed entity specific exemptions (from requirements that overlap with those in the Banking Act, Monetary Authority of Singapore Act (Cap. 186) and Finance Companies Act (Cap. 108)) and activity specific exemptions (in relation to Activities A to D and G) for banks, merchant banks, finance companies and non-bank credit card or charge card issuers.

Transitional arrangements would apply for existing regulated financial institutions and other payment service providers. In addition, in order for entities to have sufficient lead time to comply with the new regime, MAS has advised that the new Bill would commence not earlier than at least six months after the Bill is passed in Parliament.

MAS will grant an exemption to entities that provide regulated payment services under the Bill, but which are not currently licensed under the MCRBA or approved to hold a stored value facility under the PSOA from the licensing requirement for an interim period. Such entities will have six months from the commencement date of the Bill to submit their licence application.

Class exemptions

MAS is considering granting class exemptions to entities that fall within the scope of Standard Payment Institutions, but which it deems to not pose sufficient ML/TF risks. These exemptions will be prescribed in the form of regulations.

Licensing and conduct of business requirements

Licensing and business conduct requirements would apply to all payment service licensees under the Bill.

Licence conditions

It is proposed that the conditions for a licence application include the following:

- that the applicant has a permanent place of business or registered office in Singapore
- that the MAS is satisfied as to the applicant's fit and proper status, the applicant's financial condition, and whether the public interest will be served by its granting of a licence.

The following conditions are further proposed to apply to an application for a Standard Payment Institution licence or Major Payment Institution licence:

- the applicant is a company (incorporated in Singapore or overseas)
- the applicant has an executive director who is a Singapore citizen or a Singapore permanent resident
- the applicant satisfies the prescribed minimum capital requirements, and the specified financial and operational requirements.

Risk mitigating measures

Anti-money laundering (AML) / countering the financing of terrorism (CFT) requirements are proposed to apply to Money-Changing licensees, Standard Payment Institutions and Major Payment Institutions, in respect of their carrying on of Activities A, B, C, F and G. These requirements would be imposed on the relevant licensees under notices issued by the MAS. The AML/CFT requirements would not apply where a licensee confines its activities to payment services that the MAS has assessed to be low risk.

User protection measures are proposed to apply only to Major Payment Institutions. The proposed user protection measures include:

- in respect of Activity A, protection of personal use e-wallets and protection of access to funds
- in respect of Activities B, C and D, safeguarding of funds in transit
- in respect of Activity E, safeguarding of e-money float.

In this connection, MAS intends to publish at a later date a separate consultation paper on guidelines for the protection of access to funds to standardise user liability caps, notification requirements and fraud and error resolution processes for e-payments.

MAS has also proposed to have powers to impose the following interoperability measures on Major Payment Institutions:

- power to impose an access regime, i.e., to mandate that a payment system operator allows third parties to access its system to provide third party services on fair and reasonable commercial terms
- power to mandate participation in a common (or equivalent) platform to achieve interoperability of major wallets
- power to mandate the adoption of a common standard to make widely used payment acceptance methods interoperable.

Finally, MAS has proposed to extend its existing guidance on technology risk management to Major Payment Institutions that rely on technology to supply payment services.

Feedback on the Consultation Paper

The proposed activity-based payments regulatory framework will allow a more calibrated regulatory approach to be applied on an activity basis to payment service providers, rather than specific payment systems (as is the case under the PSOA and MCRBA). Such an approach will allow MAS to better address emerging risks, particularly in view of rapid technological advancements and the advent of FinTech, as well as the increasing complexity of payment services provided in Singapore.

As noted above, the introduction of the new licensing regime will have an impact on a wide range of payment services providers, including many payment service providers that are not currently regulated under the existing legislative regime. Entities should take steps to determine if they will need to apply for a licence in due course and if they will be able to satisfy the relevant licence conditions, or if they will be able to rely on an available exemption from the licensing requirement.

Affected entities should consider providing their comments and feedback to the MAS. The Consultation Paper and proposed Bill are available on the MAS' website. The closing date for the public to submit comments and feedback is **8 January 2018**.

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