

RESPONSE TO FEEDBACK RECEIVED

4 November 2020

Consultation on the Payment Services Act 2019: Proposed Amendments to the Act



Monetary Authority of Singapore

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1 Preface

1.1 On 23 December 2019, MAS issued a consultation paper on proposed amendments to the Payment Services Act 2019 (“PS Act”).

1.2 The first set of amendments relate to Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”). MAS proposed to amend the PS Act to align with the enhanced Financial Action Task Force (“FATF”) Standards applicable to digital payment token (“DPT”) service providers. In addition, MAS proposed to introduce additional requirements to mitigate the money laundering (“ML”), terrorism financing (“TF”) and proliferation financing (“PF”) risks arising from certain business models where entities broker cross-border money transfer transactions between entities in two different countries.

1.3 MAS also proposed to introduce two new powers in the PS Act in respect of DPT services. The first is the power to impose user protection measures on certain DPT service providers. The second is the power to impose additional measures on prescribed DPT service providers.

1.4 The consultation period closed on 28 January 2020, and MAS would like to thank all respondents for their contributions. The list of respondents is in Annex A and the full submissions are in Annex B.

1.5 MAS has carefully considered the feedback received and will incorporate them where it has agreed with the feedback. Comments that are of wider application, together with MAS’ responses are set out below.

2 Amendments relating to AML/CFT

2.1 We received some queries seeking clarifications on the scope of the proposed amendments:

- Some respondents asked whether an issuer that offers or sells its own DPTs, with or without an intermediary’s assistance, will be subject to regulation under the PS Act.
- A respondent asked if it was necessary for a DPT service provider to apply for separate licenses if it carried out other payment services under the PS Act.
- There was a suggestion to implement a transitional period for persons who would be newly regulated following the expansion of the scope of DPT services.
- Some respondents suggested to include e-money within the scope of DPTs.

2.2 The PS Act requires a person that carries on a business of providing any payment service in Singapore, including a DPT service, to be licensed. Consequently, persons that do not carry on a business of providing any payment service in Singapore will not be subject to requirements imposed on licensees under the PS Act. In this regard, the PS Act prohibits any person from soliciting for the provision of payment services, unless that person is a licensee, an exempt payment service provider (such as a bank) or a person exempted from licensing. MAS has separately consulted on its intent to introduce, as a new class of financial institutions (“FIs”), entities that are created in Singapore, but which are carrying on a business of providing virtual asset activities outside of Singapore.¹ This aims to align Singapore’s regime with the enhanced FATF Standards which requires virtual asset service providers (“VASPs”) to be licensed or registered in the jurisdiction where they are created. In the Singapore context, such entities will be termed digital token service providers and will be regulated under the new Omnibus Act that MAS has consulted on.

2.3 When carrying on a business in Singapore, an entity buying or selling any DPT, including its own DPT, in exchange for any money or any DPT, constitutes “dealing in” DPTs and will need to be licensed under the PS Act. Where an intermediary carries on a business of buying or selling DPTs on an issuer’s behalf, the intermediary will also need to be licensed under the PS Act.

2.4 As mentioned during the Second Reading of the Payment Services Bill, each payment service provider needs to hold only one of the three licences: (i) Money-Changing licence; (ii) Standard Payment Institution licence; or (iii) Major Payment Institution licence. This will not change with the proposed amendments in the scope of payment services under the PS Act.

2.5 MAS intends to grant an exemption for six months to entities that are newly regulated under the PS Act. MAS also intends to grant an exemption for six months to entities that are currently licensed under the PS Act, who have to vary their licence to include domestic money transfer service, cross-border money transfer service or DPT service, resulting from the proposed amendments to the scope of payment services. MAS will separately consult on the exemption as part of the Consultation on Proposed

¹ Please refer to the Consultation Paper on the New Omnibus Act for the Financial Sector at this link: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2020-July-Consultation-on-FSMA/Consultation-Paper-on-a-New-Omnibus-Act-for-the-Financial-Sector.pdf>

Amendments to the Payment Services Regulations and Notices, which will be issued in Q1 2021.

2.6 As for the suggestion to include e-money within the scope of DPTs, this is addressed in the separate consultation on the scope of e-money and DPTs.²

Transfer of DPTs

2.7 MAS had sought comments on including entities that – (i) provide the service of transfer of DPTs; or (ii) arranging for the transfer of DPTs, within the PS Act.

2.8 Respondents sought clarity on what constituted a DPT account, and how the determination of whether the DPT address or account was held in Singapore or outside Singapore would be made. There was a suggestion to distinguish between DPT transfers within permissioned and permission-less systems.

2.9 Some respondents asked for clarifications on the types of activities that would be caught under the limb of “arranging for the transfer of DPTs”, such as technical activities like blockchain mining or software developers. Another respondent suggested that there were overlaps between “dealing in DPTs” and “facilitating the exchange of DPTs”.

2.10 One respondent asked whether customer due diligence (“CDD”) measures applied to a sender or recipient, where the sender or recipient was not a customer of the DPT service provider. A respondent also asked if external service providers could be relied upon for verification of identity and blockchain analytics.

MAS’ Response

2.11 Any service of accepting DPTs from one DPT account for the purposes of transmitting, or arranging for the transmission of, the DPTs to another DPT account will be regulated, given the internet-based nature of DPT transactions. In this vein, the proposed amendments to the PS Act will capture entities that are providing transfer of DPTs as a service, regardless of where the DPT service provider locates its computing or operating systems including for keeping its accounts and transaction records. Any entity

² Please refer to the Consultation Paper on the Payment Services Act 2019: Scope of E-money and Digital Payment Tokens at this link:

https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2019/Consultation-on-the-Payment-Services-Act-2019---Scope-of-E-money-and-Digital-Payment-Tokens/Consultation-on-the-Payment-Services-Act-2019---Scope-of-Emoney-and-Digital-Payment-Tokens-MAS.pdf

offering DPT services as a business in Singapore, should be licensed and must comply with AML/CFT requirements as set out in the relevant Notice. These obligations include conducting CDD and taking appropriate enhanced risk mitigation measures for transfers that present higher ML/TF risks. For example, enhanced measures should be applied where the transfer involves persons who do not fall within the definition of an “ordering institution” or a “beneficiary institution”, such as an unregulated DPT service provider or a private wallet.³

2.12 MAS’ intent is to scope in entities that carry on a business of transmitting or arranging for the transmission of DPTs for its customers. In general, MAS does not seek to regulate entities or persons that are solely involved in pure technical activities (e.g. the activity of blockchain mining) or development of software applications. In this regard, to the extent that the activities of such entities or persons do not constitute transmitting or arranging for the transmission of DPTs, they will not be regulated under the PS Act. The service of “dealing in DPTs” and the service of “facilitating the exchange of DPTs” are distinct activities that have been separately defined in the PS Act. In gist, “dealing in DPTs” captures an entity that buys and sells DPTs in exchange for any money or any other DPTs, but excludes one that is “facilitating the exchange of DPTs”. An entity will be caught for “facilitating the exchange of DPTs”, if it operates a DPT exchange for the purposes of an offer or invitation to buy or sell any digital payment token in exchange for any money or any DPT. There is no proposed amendment to these two definitions.

2.13 Value transfer requirements as set out in paragraph 13 of MAS Notice PSN02 will apply to DPT service providers where they transmit or arrange for the transmission of DPTs for its customers. DPT service providers would be required to obtain and hold the required and accurate originator information and the required beneficiary information on DPT transfers, immediately and securely submit the above information to beneficiary DPT service providers and counterparts (if any), and make the information available on request to relevant authorities. In addition, a DPT service provider must screen the value transfer originators and beneficiaries, even if they are not its customer, against relevant

³ DPT service providers that are currently regulated under the PS Act are required under paragraph 6.27 of MAS Notice PSN02 to perform enhanced risk mitigation measures where a transaction involves a transfer of DPTs that presents higher ML/TF risks. Under paragraph 13-7 of the Guidelines to MAS Notice PSN02, DPT service providers that are currently regulated under the PS Act are expected to apply appropriate enhanced risk mitigation measures if it engages in a transaction that involves a transfer of DPTs involving persons who do not fall within the definition of “ordering institution” or a “beneficiary institution”.

information sources⁴ to identify and mitigate against its ML/TF/PF risks. Given that the anonymity, speed and cross-border nature of DPT transactions mean that such activities are inherently at higher risk of abuse for illicit purposes, these requirements are important to ensure that bad actors cannot exploit the DPT sector for ML/TF/PF, and to provide an audit trail for law enforcement agencies to trace the transactions in an investigation.

2.14 With regard to the outsourcing of AML/CFT measures to external service providers, DPT service providers should refer to the MAS Guidelines on Outsourcing⁵ which applies to all FIs, including DPT service providers. It sets out MAS' expectations in relation to their outsourcing arrangements. The DPT service provider remains responsible for complying with MAS' AML/CFT requirements, even when it outsources AML/CFT control functions. As set out in the Guidelines, outsourcing of AML/CFT control functions is considered material outsourcing. Therefore, DPT service providers should be able to demonstrate to MAS its observance of the Guidelines, including ensuring that it conducts a robust assessment of the service provider, and establishes mechanisms to monitor the outsourcing arrangement on an ongoing basis.

Provision of custodial wallets for or on behalf of customers

2.15 MAS had sought comments on including entities that provided the service of safeguarding or administration of DPTs within the PS Act, where the service provider had control over the DPT.

2.16 A few respondents sought clarity on how “control” of a DPT would be determined, in the context of how DPT service providers managed wallets. One respondent also asked about the difference between possession and control of a DPT. One respondent had asked if a DPT instrument meant that only one DPT was associated with the instrument, and another respondent asked what constituted an association with the DPT instrument.

2.17 A respondent asked whether a DPT service provider which carried out a customer’s instructions to transfer DPTs would also be caught for providing a service of safeguarding or administration of DPTs. Two respondents asked whether the provision of custodial wallets was intended to capture miners of DPTs or validator nodes of DPTs.

⁴This includes individuals and entities covered under the MAS Regulations issued pursuant to section 27A of the MAS Act as well as those under the Terrorism (Suppression of Financing) Act, and other adverse information related to ML/TF/PF (e.g. sanctions evasion typologies in the United Nations Panel of Experts reports and such information made available through credible commercial databases).

2.18 The respondent also asked how wallets that were able to hold both moneys and DPTs would be caught under the PS Act. Respondents also asked about how the amendment had tied in with the regulated activity of providing custodial services under the Securities and Futures Act (“SFA”).

MAS’ Response

2.19 A DPT service provider will have “control” of a DPT if it has the ability to control access to any DPT or to execute transactions involving the DPT. In the same vein, the service provider is caught within scope if it has control over the DPT instrument, for instance a private cryptographic key, that is associated with any DPT. The control of the DPT or DPT instrument need not be absolute or exclusive, for example, a service provider will be caught within scope as long as it has control over one of the private keys of a multi-signature wallet.

2.20 It is not necessary that only one DPT can be associated with a DPT instrument. With regard to the question on what constitutes association with the DPT instrument, this refers to a scenario where the DPT instrument enables a person to control access to the DPT or to execute a transaction involving the DPT.

2.21 To the question on whether a DPT service provider is carrying on a business of transmitting or arranging the transmission of DPTs could also be caught for the service of safeguarding or administration of DPTs, this will depend on the facts of the case and specific business models of the DPT service provider. A DPT service provider that conducts either or both of these activities will be subject to the same AML/CFT requirements.

2.22 This amendment is intended to scope in entities that carry on a business of safeguarding or administration of DPTs as a service. As explained in paragraph 2.12 above, MAS, in general, does not seek to regulate the activities of mining DPTs or the function of validator nodes. Therefore, to the extent that the activities of entities or persons that are mining DPTs or validating nodes do not constitute the carrying on the business of safeguarding or administration of the DPTs as a service, they will not be regulated under the PS Act.

2.23 If a wallet is able to hold both moneys and DPTs, and the payment service provider carries on a business of providing DPT services, account issuance services and e-money issuance services, the payment service provider will need to be licensed to provide any of those services. Finally, the regulated activity of providing custodial wallets under the SFA is scoped to specified products as defined under the Act. The scope under the PS Act relates to the custody of DPTs. Hence, entities that provide custodial services scoped-in under the SFA and PS Act, would need to obtain the appropriate licenses under the respective Acts. Such entities may wish to also consider if paragraph 2(i) of Part 2 of the

First Schedule of the PS Act, which excludes payment services that are solely incidental to or necessary solely for the entity's business in the SFA-regulated activity from licensing under the PS Act, applies to them.

Active facilitation of DPT activities

2.24 MAS had sought comments on the proposed amendment that required entities which, as a business, provided any service to induce or attempt to induce any person to enter into or to offer to enter into any agreement for or with a view to buy or sell any DPTs in exchange for any money or any other DPT (whether of the same or a different type), to be licensed, and subject to AML/CFT requirements.

2.25 Several respondents requested clarity on the scope of this amendment, and the type of activities it was intended to capture. In particular, several respondents were of the view that the proposed amendment was very broad and might inadvertently scope in a wide range of activities, including marketing and advertising activities.

MAS' Response

2.26 This amendment is intended to scope in activities where the entity carries on a business that actively facilitates the buying or selling of DPT for any money or other forms of DPTs, and includes the case where the entity does not have possession of the moneys or DPTs. An example would include an entity which carries on a business of providing brokerage or exchange services, or software applications, which enable users to find counterparties, and actively match orders for buyers and sellers of the DPTs, without taking possession of the moneys or DPTs. Depending on the facts and circumstances of each case, entities involved in general marketing and advertising activities may not necessarily be caught under the scope of DPT service. However, such entities should note that the PS Act prohibits any person from soliciting customers for the provision of payment services, unless that person is a licensee, an exempt payment service provider (such as a bank) or a person exempted from licensing.

Brokering of cross-border money transfer

2.27 MAS had sought comments on the proposed amendment to include within the definition of "cross-border money transfer service", the service of arranging for the transmission of money from any country or territory to another country or territory, whether as principal or agent.

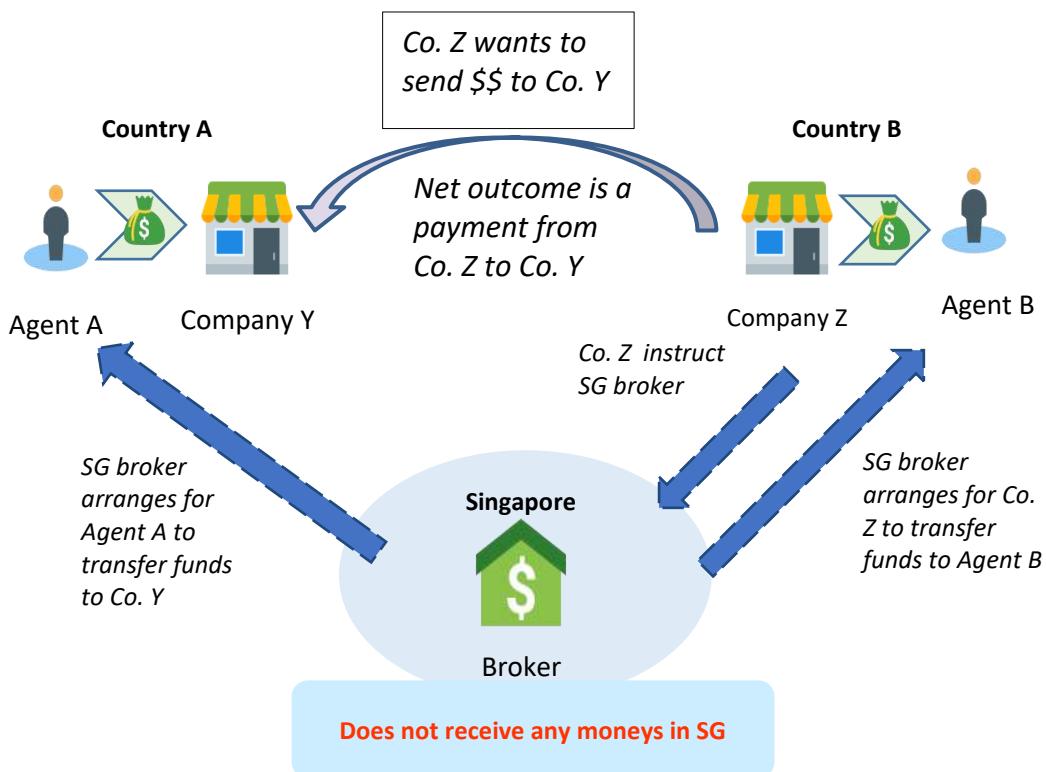
2.28 Several respondents requested clarity on the scope of the proposed expansion of cross-border money transfer service. In addition, a few respondents were of the view that the proposed amendment resulted in ambiguity in terms of how the determination of which jurisdiction would be responsible for such cross-border flows was made,

especially where the Singapore remitter or entities overseas were already required to be regulated in other jurisdictions.

2.29 One respondent was of the view that safeguarding and reporting requirements should not be applied on such cross-border money transfer brokering business models as their flows might relate to funds processed on behalf of foreign entities or persons only.

MAS' Response

2.30 The proposed amendment is intended to expand the scope of cross-border money transfer service to include a scenario where the entity in Singapore does not accept or receive moneys in Singapore, but nonetheless provides a service of arranging the transmission of money from any country or territory, to another country or territory. Please refer to the diagram below which illustrates this scenario.



2.31 In this scenario, the Singapore broker provides a service of arranging the transmission of moneys between Company Y and Company Z. MAS has assessed that such activities pose potential ML/TF risks vis-a-vis the Singapore broker. Hence, the Singapore broker will be required to hold a licence for cross-border money transfer service and comply with relevant regulatory requirements, including requirements in relation to AML/CFT. If the Singapore broker's activities are required to be regulated overseas, it

should ensure that all local and foreign laws and regulations in the respective jurisdiction(s) are complied with.

2.32 MAS' has carefully considered the feedback on reporting requirements and intends to apply reporting requirements to cross-border money transfer brokering activities, in order to allow for the ongoing monitoring of regulated payment services as part of MAS' supervisory regime. MAS will further consult on whether safeguarding requirements should be extended to cross-border money transfers transactions where both the payer and payee are overseas persons.

3 Other Amendments to PS Act

3.1 Most respondents supported the other amendments to the PS Act, recognising that there is a need for the PS Act to continue to evolve to developments in the payments space.

Power to impose user protection measures on certain DPT service providers

3.2 MAS had sought views on the proposed power to impose user protection measures on certain DPT service providers. Most respondents supported the proposed amendment in view of the rapidly changing landscape in the DPT space and welcomed the opportunity to engage MAS on any proposed implementation of user protection measures. Three respondents felt that imposing such measures might be pre-mature for the industry. One respondent felt that some measures might not be appropriate for all types of DPT e.g. DPTs that did not have underlying assets.

3.3 Two respondents also provided feedback suggesting that market conduct requirements apply to DPT service providers.

MAS' Response

3.4 MAS reiterates that these are currently powers that MAS intends to have to be able to act quickly in this developing space when needed. MAS will consult the public and the industry on any implementation of such measures. When proposing any user protection measures, MAS will also take into consideration the DPT service landscape and the appropriate level of protections, including market conduct-type protections, depending on the prevailing business models in the industry and the implications on the public.

Power to apply additional measures to prescribed DPT service providers

3.5 MAS had sought views on the proposed provision to empower MAS to impose additional measures on any DPT service provider or class of DPT service providers by way

of subsidiary legislation, where this is necessary or expedient in the interest of the stability of the financial system in Singapore, the monetary policy of MAS, or the public or a section of the public.

3.6 Most respondents were supportive of the proposal and welcomed the opportunity to engage MAS when detailed regulations were eventually consulted on. Two respondents asked for the power to impose measures to be included in the Act only after consulting industry on the specific measures to be implemented. One respondent commented that the proposed scope of the power was too broad and would be equivalent to extensive regulation of DPT service providers despite MAS' earlier indications that these providers were only targeted for AML/CFT supervision.

MAS' Response

3.7 MAS acknowledges the respondents' support for this amendment.

3.8 MAS has proposed to amend the PS Act at this stage so that MAS can respond swiftly in the fast-moving DPT landscape. While DPT service providers are currently primarily supervised to address ML/TF risks, new risks may emerge as the industry develops. The scope of the new provision is necessarily broad to allow MAS to respond flexibly and expeditiously to new risks.

3.9 Should it become necessary to introduce new measures, MAS will carefully consider the risks and impact of the proposed measures, and intends to consult on the nature of the measures to be implemented.

Other amendments – expanded scope of domestic money transfer service

3.10 MAS sought views on the proposed expansion of domestic money transfer service to include transactions where either the payer or the payee is a financial institution. Most respondents supported this amendment and recognised the additional protection it accorded to customers that engage payment service providers for payments to other financial institutions. One respondent suggested that a carve out should remain for agents.

MAS' Response

3.11 MAS acknowledges the support of the majority of the respondents. The existing carve outs for agents under the current PS Act will continue to apply.

Other amendments – Sections 23 and 94 PS Act

3.12 MAS sought views on the proposed amendments to section 23. MAS also sought views on the proposed amendments to section 94 such that all persons who provide MAS with any information under or for the purposes of any provision of the PS Act, sign documents lodged with MAS, or lodge documents with MAS, must use reasonable care to ensure that the information or document is not false or misleading in any material particular. Most respondents supported the proposed amendments. One respondent suggested that the requirement might be too wide if it were to be extended to bona fide errors.

MAS' Response

3.13 MAS acknowledges the respondents' support. MAS would like to clarify that the requirement is for a general duty to use reasonable care in providing information.

MONETARY AUTHORITY OF SINGAPORE

4 November 2020



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