



 DREW & NAPIER

Proposed
amendments to the
Payments Services Act
2019

10 November 2020

LEGAL
UPDATE

In this Update

The Monetary Authority of Singapore (“**MAS**”) has responded to feedback received on its public consultation on proposed amendments to the Payment Services Act 2019 (“**PSA**”), which were in relation to (a) anti-money laundering and countering the financing of terrorism (“**AML/CFT**”), and (b) other amendments in respect of digital payment token (“**DPT**”) services.

This article highlights the key amendments proposed to the PSA in relation to: (a) DPT activities; (b) cross-border and domestic money transfer services; and (c) the expansion of MAS’ powers to impose measures on certain DPT service providers.

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INTRODUCTION

KEYPOINT

The proposed amendments to the PSA seek to address AML/CFT risks posed by virtual asset service providers (“VASPs”) not already regulated by the MAS as financial institutions, and to further define the ambit of the PSA and the MAS’ powers.

On 23 December 2019, MAS issued a consultation paper proposing amendments to the PSA to:

- (a) align the PSA with the enhanced Financial Action Task Force (“**FATF**”) Standards applicable to DPT service providers;
- (b) introduce additional requirements to mitigate AML/CFT risks arising from certain business models where Singapore-based entities broker cross-border money transactions between entities in two different countries; and
- (c) introduce powers to impose user protection measures on certain DPT service providers and to impose additional measures on prescribed DPT service providers.

The MAS recently responded to feedback on its public consultation (link available [here](#)). We summarise below the proposed amendments to the PSA in relation to DPT activities and cross-border and domestic money-transfer services, as well as the MAS’ added powers to impose measures on certain DPT service providers.

EXPANDED DEFINITION OF DPT SERVICE UNDER THE PSA

The MAS proposed to expand the existing definition of a “digital payment token service” in the PSA to include:

- (a) Accepting (whether as principal or agent) DPTs from one DPT account (in Singapore or abroad) to transmit or to arrange to transmit, the DPTs to another DPT account (in Singapore or abroad): this will include entities providing for the transfer of DPT as a service, regardless of where the DPT service provider locates its computing or operating systems. However, MAS has clarified that it does not seek to regulate

entities or persons solely involved in pure technical activities (such as blockchain mining) or the development of software applications.

- (b) Safeguarding a DPT or DPT instrument (such as custodial wallets), where the service provider has control over the DPT or the service provider has control over the DPT(s) associated with the DPT instrument: “control” is determined by the MAS to be whether the DPT service provider has the ability to control access to any DPT or to execute transactions involving the DPT (whether over the DPT itself or with an associated DPT instrument).
- (c) Inducing or attempting to induce any person to agree to, or to make an offer for, entering any agreement for or with a view to buy or sell any DPT for money or any other DPT: this includes a situation where the entity providing such a service does not come into possession of money or DPTs (i.e. brokerage or exchange services, or software applications, which would enable users to find counterparties, and actively match orders for buyers and sellers of the DPTs).

Any individuals or entities offering DPT services as a business in Singapore will have to seek PSA licensing and must comply with PSA regulations, including AML/CFT requirements as set out in Notice PSN02: Prevention of Money Laundering and Countering the Financing of Terrorism – Digital Payment Token Service.

EXPANDED DEFINITION OF DOMESTIC / CROSS-BORDER MONEY TRANSFER SERVICES UNDER THE PSA

To deal with AML/CFT risks and reputational risks to Singapore, MAS has proposed to expand the definition of “cross-border money transfer service” to include the service of arranging for the transmission of money from one country or territory to another, whether as principal or agent. This would expand the scope of “cross-border money transfer service” to include scenarios where the entity in Singapore does not accept or receive moneys in Singapore, but provides a service of arranging the transmission of money from one country or territory to another.

MAS seeks to expand the definition of “domestic money transfer service” to include transactions where either the payer or the payee is a financial institution.

ADDED MAS POWERS TO IMPOSE ADDITIONAL REQUIREMENTS ON DPT SERVICE PROVIDERS LICENSED UNDER THE PSA

To remain equipped to mitigate new risks arising from the emergence of new DPTs, MAS has proposed to add to the PSA powers for it to impose user protection measures on certain DPT service providers. These measures may include:

- (a) the extent to which assets belonging to a customer held by the PSA licensee (“**licensee**”) may be commingled with other assets held by the licensee;
- (b) the maintenance in a prescribed manner of a prescribed amount or percentage of assets;
- (c) safeguarding of assets belonging to customers in the event of the licensee’s insolvency, including insurance against this risk;
- (d) the manner of dealing with customers for safeguarding their assets, protecting their data and safeguarding their DPT instruments, including the disclosure of information to customers regarding these;
- (e) monitoring customers’ DPT accounts and assets;
- (f) adopting standards and processes to safeguard customers’ assets and DPT token instruments from unauthorised use, and to protect customers’ data from unauthorised use and disclosure;
- (g) the amount of DPTs which can be contained in, or transferred out of, a DPT account;
- (h) the amount of DPTs which a licensee can hold or transfer (whether for itself or for another person);
- (i) the exchange of DPTs for Singapore currency;
- (j) the use of moneys collected in exchange for DPTs for any business activity of the licensee; and
- (k) the use of DPTs for any business activity of the licensee.

MAS has also proposed to introduce to the PSA powers for it to impose measures on prescribed DPT service providers, where this is necessary or expedient to ensure Singapore’s financial stability, to safeguard efficacy of MAS’ monetary policy, for the protection of users or consumers, or in the interest of the public or a section of the public.

Other proposed amendments to the PSA include:

- (a) allowing MAS to prescribe additional licensees or classes of licensees in respect of certain payment services that must safeguard customer money, instead of having such safeguards apply across every Major Payment Institution; and
- (b) providing that the general duty to use reasonable care not to provide false information to MAS applies to all persons, regardless of whether the person is an individual (as is presently the case).

CONCLUSION

With expanded definitions to regulated services, VASPs and DPT service providers (whether already licensed) ought to consider whether their services offered will be subject to PSA regulation. Notably, MAS has stated that it intends to grant an exemption for six months to new PSA-regulated entities and for existing PSA-licensed entities that have to vary their licence as a result of the proposed amendments to the scope of payment services under the PSA. MAS will separately consult on the exemption as part of the Consultation on Proposed Amendments to the Payments Services Regulations and Notices in Q1 2021.

For VASP entities created in Singapore, but which are carrying on a business of providing virtual asset activities outside of Singapore, please refer to our previous update under the proposed New omnibus Act that the MAS has consulted on (link available [here](#))

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