



DREW & NAPIER

Legal Update

*MAS Consultation on
Proposed Amendments to the
Payment Services
Regulations, MAS Notices
and Proposed New
Regulations on Exemptions
for a Specified Period*

23 May 2023

**LEGAL
UPDATE**

In this Update

The Monetary Authority of Singapore (“MAS”) has proposed amendments to the existing notices applicable to payment service providers, and new regulations on transitional exemptions to payment service providers newly regulated under the Payment Services (Amendment) Act 2021 (“PS(A)A”). This article summarises the changes applicable to digital payment token (“DPT”) service providers.

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BACKGROUND

By way of background, the amendments introduced by the PS(A)A (which has been passed into law but is not yet in force) widens, among others, the scope of DPT services regulated under the Payment Services Act 2019 (“**PS Act**”).

In brief, the DPT services which will be newly regulated under the PS(A)A include:

- (a) facilitating the transfer of DPTs from one account to another;
- (b) custodial services for DPTs; and
- (c) facilitating the exchange of DPTs where the service provider does not come into possession of the moneys or DPTs involved.

For a fuller overview of the amendments introduced by the PS(A)A, please refer to our previous update on the proposed amendments to the PS Act (link available [here](#)).

In preparation for operationalisation of the PS(A)A, MAS is consulting on a series of proposals which will affect payment service providers and applicants for a licence under the PS Act when the PS(A)A takes effect.

This article will focus on those proposals which will affect DPT service providers both currently regulated by the PS Act, and those newly regulated under the PS(A)A, and applicants wishing to apply for a licence to carry out DPT services under the PS Act (as amended by the PS(A)A).

THE PROPOSED CHANGES

The proposals include:

- (a) amendments to existing MAS notices applicable to payment service providers; and
- (b) new regulations for a six-month transitional licence exemption period to allow industry players newly regulated under the PS(A)A to prepare and apply for a licence or variation of a licence under the PS Act (as amended by the PS(A)A).

(1) Amending the scope of application of PSN02 for alignment with the PS(A)A

The MAS Notice PSN02 (“**PSN02**”) provides certain requirements on anti-money laundering and countering the financing of terrorism, and applies to DPT service providers licensed under the PS Act. These requirements include the need for such DPT service providers to identify and know their customers, conduct regular account reviews and to monitor and report any suspicious transactions.

MAS has proposed that PSN02 be revised to include the newly regulated DPT services introduced by the PS(A)A and clarify that value transfer record and reporting obligations (such as recording the identification of the transferor and type and value of the DPT transferred) apply to the newly regulated DPT service of arranging for the transfer of one or more DPTs.

(2) Extending requirement of group-wide AML/CFT measures to licensees and exempt payment service providers

Presently, licence holders and exempt payment service providers under the PS Act are not required to develop and implement group-wide AML/CFT policies. These requirements are currently only imposed on other financial institutions such as banks and capital markets services licence holders.

In order to ensure a consistent and effective approach to identifying and managing group-wide money laundering and terrorism financing risks that payment service providers may face, MAS has proposed to extend such requirements to licence holders and exempt payment service providers under the PS Act incorporated in Singapore and which have operations overseas.

Such requirements include having payment service licence holders and exempt payment service providers procure that as far as possible, their overseas branch or subsidiary apply the higher AML/CFT standard, where such overseas branch or subsidiary’s host jurisdiction’s standards are different from those in Singapore.

Furthermore, where such licence holders / exempt payment service providers have branches or subsidiaries in countries or jurisdictions known to have inadequate AML/CFT measures or are jurisdictions which the Financial Action Task Force has called for countermeasures, the payment service licence holder / exempt payment service provider must ensure that the group AML/CFT policies are strictly complied with.

(3) Application of requirements relating to agency arrangements of DPT service providers

Currently, requirements regulating the appointment of agents are only applicable to payment service providers which provide payment services other than DPT services. These requirements are set out in the MAS Notice PSN01 (“**PSN01**”). Therefore, payment service providers only providing DPT services are not subject to these regulations. MAS proposes to extend similar requirements in PSN01 to DPT service providers through amendments to PSN02.

These requirements are currently set out in paragraph 14 of PSN01 and summarised below:

- (a) the payment service provider must meet the following requirements before appointing an agent (which is not a financial institution) to assist in providing payment services:
 - (i) the agency arrangement is documented in writing and approved by the senior management of the payment service provider;
 - (ii) the payment service provider takes appropriate steps to identify, assess and understand the money laundering or terrorism financing risks specific to the countries or jurisdictions which the agent operates in;
 - (iii) the agent is not one which MAS has specifically prohibited payment service providers from appointing; and
 - (iv) the payment service provider includes all its agents in its AML/CFT programme and monitors them for compliance with its programme;
- (b) the payment service provider must document the reasons for its satisfaction that the four requirements listed in (i) to (iv) above are met; and
- (c) the payment service provider must maintain a current list of the agents it engages and make the list accessible upon request, to MAS and to other relevant authorities in the countries or jurisdictions where the agents operate.

(4) Extension of data collection requirements in PSN04

MAS Notice PSN04 (“**PSN04**”) sets out the periodic regulatory reporting requirements related to payment service(s) provided by payment service providers licensed under the PS Act. MAS has proposed amendments to PSN04 to collect additional data from

licence holders providing DPT services newly regulated under the PS(A)A. For example, MAS proposes to require the reporting of additional data relating to breakdowns on the number of higher risk customers, transaction value and value, and account statistics.

MAS has also proposed to collect statistics on the payment service provider's exposure to anonymity-enhancing technologies, given the higher money laundering and terrorism financing risks specifically identified by MAS as being posed by such technologies. Such anonymity-enhancing technologies hide the identifies of the sender, recipient or holder of a DPT, and MAS has named privacy wallets, mixers and tumblers and internet protocol anonymisers as examples of such technologies.

(5) Updates to requirements in PSN07 and PSN08

MAS Notice PSN07 ("**PSN07**") covers general conduct requirements expected of payment service providers (including DPT service providers). These include obligations to display exchange rates and fees and information to be set out in receipts. MAS has proposed to extend these requirements in PSN07 to the newly regulated payment services under the PS(A)A.

MAS Notice PSN08 ("**PSN08**") covers requirements for licensed and exempted payment service providers (including DPT service providers) to provide certain disclosures to customers and potential customers. MAS has proposed amendments to include the newly regulated DPT services within the ambit of PSN08 and require such customers to be provided with risk warning statements. For licensed DPT service providers, the amendments also require them to clarify the extent to which they are regulated under the PS Act, and make clear that they are not regulated in respect of services provided in relation to other cryptocurrency-related products (such as the trading of DPT derivatives).

(6) New Payment Services (Exemption for Specified Period) Regulations 2023

MAS recognises that the PS(A)A will affect entities which are either newly regulated by PS Act (as amended by the PS(A)A), or currently licensed under the PS Act and required to vary their licence to include the newly regulated payment services introduced by the PS(A)A ("**affected persons**"). MAS therefore intends to grant an exemption for six months starting from the commencement of the amendments to allow such affected persons to continue their operations in Singapore while they prepare and apply for the licence or variation of their licence under the PS Act (as amended by the PS(A)A) ("**Transitional Exemption**").

The Transitional Exemption exempts such affected persons from requiring a payment services licence under the PS Act (as amended by the PS(A)A) to provide the newly regulated payment services during such period.

Same as the transitional arrangements that applied when the PS Act first came into force, the duration of this Transitional Exemption will be extended to the date on which the licence application or variation is approved, refused or withdrawn. However, an affected person who fails to submit a relevant application within the six month period described above will not be able to rely on the Transitional Exemption.

The proposed Transitional Exemption is not intended to be different from the arrangements previously proposed in the “Response to Feedback Received on the Consultation on the Payment Services Act 2019: Proposed Amendments to the Act” which MAS published on 4 November 2020 (link available [here](#)).

The Transitional Exemption will only be extended to affected persons who have commenced business on or before the commencement date of the PS(A)A (“**Commencement Date**”), and have notified MAS of the date on which they have commenced business within thirty days after the Commencement Date.

DPT service providers who are already licensed to carry on a business to provide a DPT service currently regulated under the PS Act will not need to submit a separate application to vary their existing licence to carry on the newly regulated DPT services introduced by the PS(A)A.

A new proposal by the MAS is the introduction of requirements on affected persons to provide assurances of their ability to satisfy their obligations under the PS Act as licence holders. Some of the measures which MAS is considering are:

- (a) requiring an affected person to engage an external auditor to conduct an audit on the controls addressing key risk areas; or
- (b) requiring an affected person to engage an independent third party to assess and confirm the adequacy of its compliance policies and procedures to meet its obligations under the PS Act.

Such an auditor or independent third party must have the relevant up-to-date experience in conducting such audits or assessments for licensed payment service providers and other financial institutions licensed under other MAS-administered Acts such as the Banking Act 1970 or the Securities and Futures Act 2001.

MAS is also considering requiring affected persons to submit proof of such third party assessment as part of its licence application (including

positive confirmations as to a defined set of key controls). MAS intends for such third party assessments to form a crucial component of applications and MAS will take them seriously during its review. MAS has explained that this proposal is meant to allow affected persons to confirm their understanding of regulatory requirements with an experienced independent party during the review process, which aids in the engagement process with MAS and facilitates a faster review process.

CONCLUDING THOUGHTS

The proposed amendments to the MAS notices seek to include the newly regulated payment services introduced by the PS(A)A and ultimately enhance the AML/CFT regime in Singapore in response to the growth in cross-border payments. The Transitional Exemption also aligns with the previous transitional arrangement extended to then-newly regulated payment service providers when the PS Act came into effect in 2020.

Of particular importance is the introduction of a new third party assessment / audit requirement as a component of the licence application process. If this is adopted, service providers intending to provide newly regulated payment services should start such an assessment / audit sooner rather than later to ensure that they are able to meet the application submission timeline to benefit from the Transitional Exemption.

MAS is now consulting on the abovementioned amendments and invites comments on the proposed changes by 8 June 2023 (link available [here](#)).

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