



 DREW & NAPIER

Upcoming Regulatory Measures for Digital Payment Token Service Providers (Part 2)

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**LEGAL
UPDATE**

In this Update

On 23 November 2023, the Monetary Authority of Singapore published the second part of its response to feedback received on its previous consultation paper which proposed further new regulatory measures for digital payment token service providers. This outlines the authority's final position of the rest of its proposals and how they will be implemented.

In this update, Directors Chua Tju Liang and Benjamin Gaw summarise the additional upcoming regulatory requirements which digital payment token service providers will have to comply with.



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KEYPOINT

The MAS has outlined requirements which digital payment token service providers will have to comply with in relation to consumer access measures and business conduct, as well as technology and cyber risk management. These requirements address retail investor protection, governance and technology and cyber risks management concerns.

INTRODUCTION

The Monetary Authority of Singapore (“**MAS**”) had on 26 October 2022 published a consultation paper (“**Consultation Paper**”) which detailed proposals for regulatory measures applicable to licenced and exempt payment service providers that carry on a business of providing a digital payment token (“**DPT**”) service (“**DPTSPs**”) under the Payment Services Act 2019 (“**PS Act**”).

Our previous legal update (available [here](#)) summarised the new requirements that will be implemented as described in the first part of MAS’ response to the Consultation Paper published on 3 July 2023, which focused on the requirements to be imposed on DPTSPs concerning the segregation and custody of customers’ assets.

MAS had on 23 November 2023 published the second part of its response to the Consultation Paper (available [here](#)), which covers the following regulatory requirements:

- (a) consumer access measures;
- (b) business conduct measures; and
- (c) technology and cyber risks management measures.

This article summarises the rest of these upcoming regulatory measures.

OVERVIEW OF REGULATORY MEASURES

(1) Consumer access measures

Scope of measure

MAS will proceed to apply consumer access measures to retail customers, which are customers who are neither Accredited Investors (“AIs”) nor Institutional Investors (“IIs”).

In this regard, the MAS will implement an “opt-in” regime, similar to the approach adopted for the SFA, where DPTSPs are to treat all customers (other than IIs) as retail customers by default. If a customer meets the criteria of an AI, then such customer may opt to be treated as such.

The definitions of AIs and IIs which the MAS will adopt will be aligned with those in the Securities and Futures Act 2001 (“SFA”).

For reference, AIs under the SFA generally refer to:

- (a) an individual:
 - (i) whose net personal assets exceed S\$2 million in value (or its equivalent in a foreign currency);
 - (ii) whose financial assets (net of any related liabilities) exceed in value S\$1 million (or its equivalent in a foreign currency); or
 - (iii) whose income in the preceding 12 months is not less than S\$300,000 (or its equivalent in a foreign currency); or
- (b) a corporation with net assets exceeding S\$10 million in value (or its equivalent in a foreign currency).

In determining whether an individual meets the S\$2 million net personal asset criteria for qualifying as an AI, such individual’s DPT holdings may be taken into consideration, up to the lower of the following limits:

- (a) the valuation of that individual’s DPT holdings after applying a minimum haircut of 50% (or such higher haircut as DPTSPs or other financial institutions may choose based on their internal DPT valuation models and risk appetites); or
- (b) S\$200,000.

It should be noted that MAS-regulated stablecoins will not be treated as “DPTs” for the purposes of ascertaining whether an individual satisfies the criteria of an AI; such stablecoins will instead be treated in the same manner as fiat.

Furthermore, the consumer access measures (described below) will apply to all retail customers, regardless of whether they are resident in Singapore or otherwise. These consumer access measures will not apply to DPTSPs which do not qualify as AI or II.

Risk awareness assessment

MAS will require DPTSPs to assess if a retail customer has sufficient knowledge of the risks of DPT services before providing DPT services to that customer. As part of this requirement, DPTSPs will have to adopt policies and procedures to ensure a fair and robust assessment of retail customers' risk awareness. DPTSPs are expected to conduct risk awareness assessments for all retail customers (including existing ones) prior to providing any DPT service after the guidelines implementing these measures (“**Guidelines**”) become effective.

While MAS will not impose a validity period on the risk awareness assessment or require DPTSPs to conduct periodic re-assessment of its retail customers, DPTSPs should adopt internal processes to ascertain if retail customers should be required to undertake an updated risk awareness assessment or part thereof to reflect any new risks associated with the DPT services.

Further, where retail customers were initially assessed to have insufficient knowledge of relevant risks, DPTSPs will be permitted to allow them to re-take the assessment without a cooling-off period between assessments. In this regard, the MAS expects DPTSPs to have appropriate policies and procedures to facilitate and encourage retail customers to build their understanding and knowledge of the risks involved, for instance, through provision of reliable, independent educational material.

Restrictions on offering of incentives

MAS is taking a more prudent approach and will restrict DPTSPs from offering incentives, whether monetary or otherwise, to prospective and existing retail customers. This restriction will broadly apply to sign-up incentives, referral incentives and trading incentives which are intended to entice consumers to trade in DPTs.

Restrictions on debt-financed and leveraged DPT transactions

MAS will restrict DPTSPs from (i) providing any credit facility to a retail customer to facilitate the retail customer's purchase or continued DPT

holdings and (ii) entering into any leveraged DPT transaction with a retail customer or facilitating a retail customer's entry into any leveraged DPT transaction with any other person (including margin trading, DPT futures, options and other derivatives transactions). All retail customers, whether individual or non-individuals (e.g. corporate entities) are scoped in.

These restrictions will apply to new transactions when the Guidelines become effective, and will operate alongside the existing prohibition in section 20(1) of the PS Act. Section 20(1) of the PS Act currently prohibits licensed DPTSPs from carrying on a business of granting any credit facility to any individual in Singapore.

Further, DPTSPs will be restricted from accepting credit card or charge card payments, except from foreign-issued credit cards or charge cards. That said, it should be noted that the restriction does not prohibit DPTSPs from allowing retail customers to use direct debit, bank transfers, or "PayNow" payment methods.

(2) Measures relating to business conduct

Identification and mitigation of conflicts of interest

Having observed that DPTSPs often perform multiple roles and conduct various activities, the MAS will require DPTSPs to establish and implement effective policies and procedures to (i) identify and address conflicts of interest ("**COI**"), and (ii) disclose to customers the nature of activities and sources of COI and DPTSPs' measures and controls adopted to mitigate the COI.

MAS provided specific guidance on the following combinations of activities:

- (a) where a DPTSP operates a market and also acts as a broker, it should establish separate legal entities with separate management teams to ensure that both functions are independent; and
- (b) where a DPTSP acts as a broker and also transacts on its own account, it should establish proper functional segregation and effective Chinese walls to avoid unfair trading practices.

In either case above, the DPTSP should provide clear client disclosures so that the customer is aware of the capacity and manner in which the DPTSP is acting.

Further, MAS observed that where a DPTSP or its related entity (i) issues its own or related tokens and/or (ii) has proprietary holdings of tokens, and lists those tokens on its market or trading platform, the

DPTSP would have the means and incentive to influence the value of those tokens.

MAS will move ahead with a disclosure-based approach and require DPTSPs to make appropriate disclosures (including potential COI and mitigating measures and their proprietary holdings) in relation to its own or related token listings as well as the listing and trading of all DPTs.

For a DPTSP's proprietary holding of tokens in particular, the DPTSP should not trade on markets that the DPTSP or its related entities operate, and there must be proper Chinese walls.

As part of the regular review process, DPTSPs should also conduct close monitoring of their employees' trading activities, and their access to material non-public information to safeguard clients' interests. More details regarding this will be set out in MAS' response to the "Consultation Paper on Proposed Measures on Market Integrity in DPT Services" (not yet published). You may refer to our legal update regarding the consultation paper [here](#).

Disclosure of DPT listing and governance policies

MAS will require DPTSPs to publicly disclose their listing and governance policies for tokens listed and offered on their markets and trading platforms. Such disclosures should be made to all customers in a clear, legible and concise manner, and should not trivialise the risks of DPT trading. Furthermore, MAS expects senior managers of DPTSPs to have responsibility, control and oversight over such listing and governance policies and be responsible for listing, suspension and de-listing decisions.

DPTSPs will also need to assess whether the information they have provided will allow customers to make informed decisions about the DPTSPs' DPT listing evaluation processes. MAS will not be prescribing common listing evaluation criteria and will not be whitelisting DPTs for trading.

Complaints handling and dispute resolution

MAS will require DPTSPs to establish complaints handling policies and procedures applicable at least to their dealings with retail customers, and to all complaints relating to their provision of DPT services. These policies and procedures will be broadly aligned with the scope and rules in the Financial Advisers (Complaints Handling and Resolution) Regulations 2021.

Further, DPTSPs are expected to properly monitor and track complaints and complaints trends to ensure that customer complaints

are handled and resolved in a fair and timely manner. While MAS will not require DPTSPs, at this time, to submit regular returns on complaints data to MAS, DPTSPs should be able to provide such information to MAS when requested.

MAS has also clarified that DPTSPs should resolve disputes with retail customers via any of the principal modes of dispute resolution available in Singapore, including mediation, arbitration and litigation in the Singapore courts.

(3) Measures relating to managing technology and cyber risks

MAS will mandate the requirements in Notice PSN05 on Technology Risk Management (“**TRM Notice**” – which currently apply to operators and settlement institutions of designated payment systems) to DPTSPs.

Correspondingly, each DPTSP will be required to implement an effective and swift recovery strategy for its “critical systems” – being systems the failure of which will lead to a severe and widespread impact on its operations or materially impact its customers. Such systems include those which process time-critical transactions or provide essential services to customers. Each DPTSP should establish a proper framework and process to identify such “critical systems”.

Further, in line with the TRM Notice, DPTSPs will be required to notify MAS within 1 hour of any system malfunction or IT security incident (as defined in the TRM Notice). However, the requirement that a relevant entity shall establish a recovery time objective of not more than 4 hours for each critical system will not apply to the underlying public blockchain of DPTs.

CONCLUSION

The implementation details for the measures mentioned above will be provided in the form of Guidelines to be published in mid-2024, with a 9-month transition period for implementation. The MAS will also mandate the requirements on managing technology and cyber risks in the TRM Notice which will be extended to apply to DPTSPs in early 2024, also with a 9-month transition period for implementation.

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