

Legal Update

Proposed Amendments to the Payment Services Act

31 December 2020



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In this client update, we highlight the proposed amendments to the Payment Services Act ("**PS Act**").

The first reading of Payment Services (Amendment) Bill was on 2 November 2020 and the second reading is scheduled to take place at the next available seating. The Monetary Authority of Singapore ("**MAS**") also published its Response to Feedback Received on Proposed Amendments to the Payment Services Act 2019 ("**MAS Response**")¹ to indicate its proposed amendments to the PS Act.

Briefly, the main amendments include:

- Expansion of the definition of digital payment token ("**DPT**") services;
- Expansion of the definition of cross-border money transfer service; and
- Granting power to MAS to impose further measures on DPT service providers.

Exemption of Six Months for Newly Regulated Activities

MAS intends to grant an exemption for 6 months to (i) entities that are newly regulated under the PS Act; and/or (ii) entities that are currently licensed under the PS Act, who have to vary the terms of their licence resulting from the proposed amendments to the scope of payment services.



Expansion of Definition of DPT Services

The proposed expansion of the regulatory ambit of DPT services are as follows:

Proposed New Regulated Activity	Description
Transfer of DPTs	<p>This shall include 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.</p> <p>This activity shall be regulated regardless of the location of the computing or operating systems of the DPT service provider including the location for keeping its accounts and transaction records.</p> <p>In the MAS Response, MAS clarified that it does not seek to regulate entities that are solely involved in pure technical activities (e.g. the activity of blockchain mining) or development of software applications.</p>
Provision of custodian wallet services for DPTs	<p>This shall apply to entities that provide the service of safeguarding or administration of DPTs, where the service provider has control over such DPTs.</p>

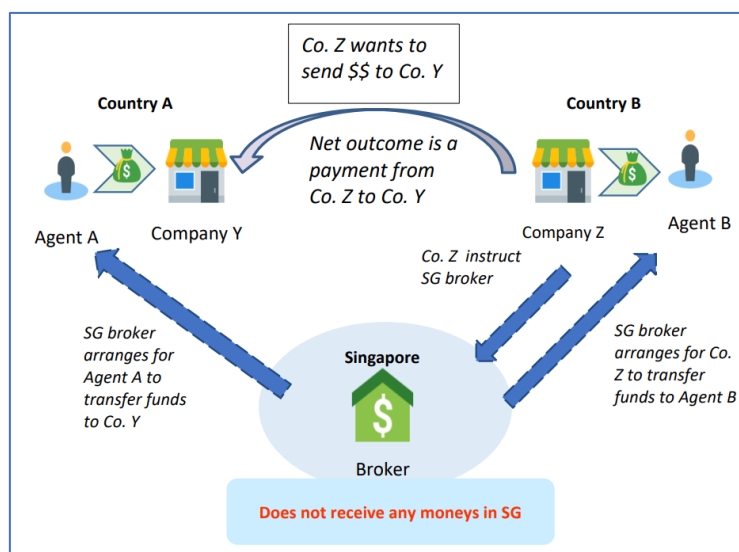
¹ The full text of the MAS Response is available on the MAS website: <https://www.mas.gov.sg/publications/consultations/2019/consultation-on-the-proposed-amendments-to-the-payment-services-act>

	<p>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.²</p> <p>There may be instances where the service provider is regulated under multiple existing or newly regulated activities. For example, a service provider involved in the transfer of DPTs may also be regulated for the service of safeguarding or administration of DPTs, depending on the business model.</p> <p>Further, if a wallet can 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.</p>
<p>Facilitating the exchange of DPTs without possession of moneys or DPTs by the DPT service provider.</p>	<p>This shall include activities where the entity carries on a business that actively facilitates the buying or selling of DPTs for any moneys or other forms of DPTs, and includes the case where the entity does not have possession of the moneys or DPTs (e.g. providing brokerage or exchange services).</p> <p>Previously, entities that were not in possession of DPTs such as brokerage services were not caught under the PS Act.</p>

 Expansion of Definition of Cross-border Money Transfer Services

MAS intends to expand the scope of cross-border money transfer service to include a circumstance **where the entity in Singapore does not accept or receive moneys in Singapore** but provides the service of arranging the transmission of money from any country or territory to another country or territory.

This is illustrated in the diagram below. The Singapore broker arranges for the transmission of moneys between Company Y, located in Country A, and Company Z, located in Country B. Though the Singapore broker does not receive any moneys in Singapore, MAS has assessed that this service presents money laundering and terrorist financing risks and will require such a service provider to be regulated in Singapore under the PS Act.



Source: MAS Response Paragraph 2.30

² Please see paragraph 2.9 of the MAS Response. 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.

There will be further consultation by MAS on whether safeguarding requirements should be extended to cross-border money transfers transactions where both the payer and payee are overseas persons.



Power to Impose User Protection Measures on certain DPT Service Providers

In recognition of the evolution and development of the DPT sector, the proposed amendments provide MAS with new powers to impose:

- (a) User protection measures on certain DPT service providers to ensure the safekeeping of customer assets held by such DPT service providers; and
- (b) Measures on certain DPT service providers where it is in MAS' view necessary or expedient in the interest of the public or a section of the public, the stability of the financial system in Singapore, or the monetary policy of MAS.

In the MAS Response, MAS further clarified that it would consult the public and the industry on any implementation of such measures.



What does this mean for you?

You should evaluate your business model in light of the proposed amendments to determine if you will need to apply for a licence or expand the scope of your licence under the PS Act. We are able to advise on the implications of the proposed amendments on your business and if necessary, assist with the application for a licence or to expand the scope of your licence under the PS Act.

References

The following materials are available for further reference:

- (a) [Payment Services \(Amendment\) Bill](#)
- (b) [Draft Amendments to the Payment Services Act 2019](#)
- (c) [Consultation on the Payment Services Act 2019: Proposed Amendments to the Act](#)
- (d) [Response to Feedback Received for Consultation on the Payment Services Act 2019: Proposed Amendments to the Act](#)
- (e) [Explanatory Brief for Payment Services \(Amendment\) Bill](#)

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