

# Legal Update

## Proposed Expansion of Regulated Digital Token Service Providers

22 September 2020



### Expanding the Scope of Regulation of Digital Token Service Providers under Omnibus Act and Amendments to Payment Services Act

In this client update, we highlight the one key proposed regulatory change by the Monetary Authority of Singapore (“MAS”) to expand the scope of regulation of virtual assets service providers (“VASPs”) to align Singapore’s anti-money laundering and countering the financing of terrorism (“AML/CFT”) regulation with the enhanced Financial Action Task Force (“FATF”) standards.

In July 2020, MAS proposed to expand the scope of regulation of VASPs to include a wider range of virtual assets and activities as well as the extraterritorial reach of MAS for the purposes of regulating VASPs (“**Second Scope Enhancement**”) with the introduction of a New Omnibus Act for the Financial Sector (“**Omnibus Act**”).<sup>1</sup> This Omnibus Act, which targets *Singapore entities that have operations outside Singapore*, will apply concurrently with the Payment Services Act (No. 2 of 2019) (“**PS Act**”) which separately targets entities which operate *in Singapore*.

Also, previously, in December 2019, MAS had already proposed to expand the regulatory scope of the PS Act to include more activities such as the transfer of digital payment token (“**DPT**”), the provision of custodian wallets and the brokering of DPT transactions (“**First Scope Enhancement**”).<sup>2</sup>

No timeline has yet been published on when these amendments are intended to take effect. Given that these are only proposed for consultation, there may also be further changes to the regulations.



### What are the regulatory changes?

#### 1. Expansion to cover more virtual assets to align with the FATF<sup>3</sup> rules

	Existing Regulatory Regime	First Scope Enhancement	Second Scope Enhancement
Relevant Act	PS Act	PS Act (Amended)	Omnibus Act
Type of Virtual Asset Regulated	DPT <sup>4</sup>		Digital Tokens (“ <b>DT</b> ”), defined as: (a) DPT; <u>or</u> (b) <u>a digital representation of a capital markets product<sup>5</sup> which can be transferred, stored or traded electronically.</u>

With the Second Scope Enhancement, previous digital representation which may not have constituted a DPT may now fall under a DT and be regulated under the Omnibus Act. Hence, Singapore entities providing any service outside of Singapore, involved in dealing with digital representation of capital markets product should be alerted to its potential regulatory obligations in anticipation of the proposed

<sup>1</sup> Consultation Paper on a New Omnibus Act for the Financial Sector issue by MAS (“**Omnibus Act Consultation Paper**”) on 21 July 2020, pages 8-17.

<sup>2</sup> Consultation on the Payment Services Act 2019: Proposed Amendments to the Act issued by MAS on 23 December 2019, pages 6-9.

<sup>3</sup> Financial Action Task Force (“**FATF**”)

<sup>4</sup> A DPT is defined under the PS Act as any digital representation of value that –

- (a) is expressed as a unit;
- (b) is not denominated in any currency, and is not pegged by its issuer to any currency;
- (c) is, or is intended to be, a medium of exchange accepted by the public or a section of the public as payment for goods or services or for the discharge of a debt; and
- (d) can be transferred, stored or traded electronically.

<sup>5</sup> Under the Securities and Futures Act (Cap. 289), a capital markets product means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading.

expansion of regulatory ambit. Notably, the PS Act's reference to DPT has not been proposed to be changed at the time of writing. Hence, reference to DTs is only relevant to the Omnibus Act.

## 2. Widened Regime of types of Regulated Activities under the Omnibus Act

	Existing Regulatory Regime	First and/or Second Scope Enhancement
<b>Type of Activities Regulated</b>	Existing Regulated Activities:  (a) Dealing in DPTs (i.e. the buying and selling of DPTs)  (b) Facilitating the exchange of DPTs (i.e. operating a DPT exchange)	Activities to be added (additions in <u>underline</u> ):  (a) Dealing in DTs (b) Facilitating the exchange of DTs (c) <b>Inducing or attempting to induce any person to enter into any agreement to buy or sell any DTs/DPTs;</b> (d) <b>Accepting DTs/DPTs for the purposes of transferring, or arranging for the transfer of, the DPTs or arranging for the transmission of DTs/DPTs (where the service provider does not come into possession of the DTs/DPTs);</b> (e) <b>Safeguarding or administration of a DTs/DPTs instrument, where the service provider has control over the DTs/DPTs associated with the DT/DPT instrument; and</b> (f) <b>Advisory services relating to the offer or sale of DTs.</b>

MAS intends to regulate service providers who actively facilitate the dealing of DPTs and/or DTs. Hence, this means that brokering of DPT/DT transactions will be regulated (without possession of money or DT by the service provider). It bears noting that with the Omnibus Act and the First Scope Enhancement,

- (1) custodial of DTs/DPTs, which were previously not regulated, will now be caught under the enhanced regulations; and
- (2) "advisory" activities which markets or attracts any person to buy or sell DT will also be regulated. Only service providers under the Omnibus Act will be regulated for providing advisory services as the regulation of advisory activities has not been yet proposed for the PS Act.

## 3. Regulation of DT Service Providers Conducting Regulated Activities outside of Singapore

	Existing Regulatory Regime	Second Scope Enhancement
<b>Regulatory Scope of entities</b>	Any entity providing digital payment token service in Singapore (" <b>DPT Service Providers</b> ")	In addition, any of the following will be regulated:  (a) any individual operating from a permanent place of business in Singapore; (b) any corporation incorporated in Singapore; (c) any partnership or limited liability partnership formed in Singapore,  providing digital token services outside Singapore (" <b>DT Service Providers</b> ").

Under the enhanced FATF standards, DT Service Providers must be regulated in the jurisdictions which they are created. This is to prevent regulatory arbitrage where no single jurisdiction has sufficient regulatory hold over a specific DT Service Provider taking into account the internet-based nature of their operations. MAS intends to regulate such entities for AML/CFT risks and has hence expanded the regulatory ambit to cover Singapore entities which only perform services outside of Singapore.

MAS does not expect to have any low risk exemptions in respect of DT services. All DT service providers will be subject to the full set of AML/CFT requirements, including cross border value transfers and requirements on occasional transactions.



## Licensing and Ongoing Requirements

For DT service providers regulated under the proposed Omnibus Act will be required to be licensed under Section 4(1) of the Omnibus Act. Other regulatory requirements are generally similar to that of the existing PS Act. This includes among other requirements:

- (a) appointing at least one executive director who is resident in Singapore;
- (b) having a permanent place of business in Singapore;
- (c) complying with AML/CFT requirements to be published in a new notice which would be aligned with the requirements imposed in the existing [Notice PSN02](#)<sup>6</sup>; and
- (d) satisfying such financial requirements as may be prescribed by MAS.

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<sup>6</sup> MAS does not expect to have any low risk exemptions in respect of DT services and all DT service providers will be subject to the full set of AML/CFT requirements, including cross border value transfers and requirements on occasional transactions.