

New risk-based licensing regime promotes growth and agility for Singapore's payment service providers

The Payment Services Act 2019 – parliament endorses MAS's proposal



May
2019

The Payment Services Act (the “Act” or the “PSA”) creates a modular licensing framework to address specific identified risks for different payment services. The MAS has acknowledged the pace of change in the payment services sector, where new business models present emerging risks not fully addressed under the current regulatory regime.

This paper highlights some of the important changes to the current regulatory regime made by the PSA and provides some useful guidance for payment service providers on how it may affect their business.

During the second reading of the Payment Services Bill (the “Bill”) in Parliament, Mr Ong Ye Kung, Minister for Education, on behalf of Mr Tharman Shanmugaratnam, Deputy Prime Minister and Minister-in-charge of the MAS outlined the broad approach underpinning the Bill.

The new regulatory regime is modular and risk-focused, which provides the MAS with more flexibility to regulate the breadth of the payments value chain, respond quickly to changes in the ecosystem and impose proportionate regulatory measures on payment service providers based on the scale of business activity. It provides for regulatory certainty and consumer safeguards, while encouraging innovation and growth of payment services and fintech (see Key Themes, below).

In drafting the Bill, the MAS has considered regulatory regimes in various other financial centres – Australia, Hong Kong, Japan, and the United Kingdom.

In April 2019 the MAS issued a consultation paper¹ on three proposed payment services regulations and one order. Among other things, the regulations are intended to provide further detail on the definition of safeguarding institutions, prescribe amounts for security deposits and e-money wallet/transaction caps and set out further exemptions. See below for further information on safeguarding, security deposits, e-money caps, and exemptions.

Please also refer to PwC's paper, [Strengthening Singapore's payment services through regulation](#)², issued following the 2017 consultation on the Bill, which sets out some original detail on the framework, its relationship with existing legislation and on the four risk mitigation measures: (1) money laundering and terrorist financing; (2) user protection; (3) interoperability; and (4) technology risk.

Timeline

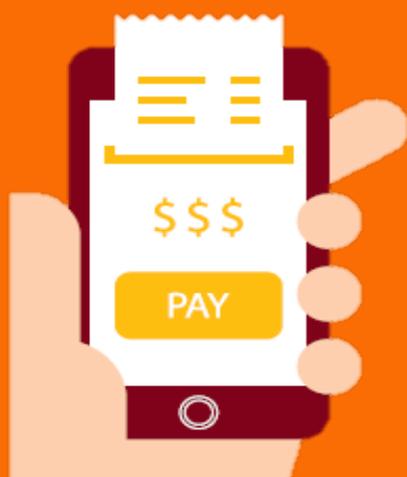
- **November 2017** – the Bill was first presented by the MAS for public consultation
- **November 2018** – the MAS issued its response to the consultation along with a revised Bill
- **14 January 2019** – the Act was passed in Parliament
- **10 April 2019** – the MAS issued secondary legislation, the Proposed Payment Services Regulations, for consultation
- **December 2019** – MAS's target commencement date for the Act, which will follow public consultations on secondary legislation
- The licensing requirements will be subject to grace periods of six or 12 months, depending on the payment service activity

¹ April 2019 Consultation Paper on Proposed Payment Services Regulations, <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2019/Consultation-Paper-on-Proposed-Payment-Services-Regulations.aspx>

² <https://www.pwclegal.com.sg/assets/docs/mas-payment-services-bill-201801.pdf>

PSA key themes

- Intended to address new risks presented by new and emerging payment methods
- Represents a focus on regulatory certainty and consumer safeguards
- Encourages innovation and the growth of payment services and fintech
- Promotes convergence across payment activities, eg, payment and remittance services
- Identifies new regulated payment services including digital payment tokens and merchant acquisition
- Provides a modular framework for multi-providers and organisations with changing business models
- Takes account of the scale of payment service providers' business activities
- Analogous to a permanent sandbox environment for Standard Payment Institutions
- Combines and replaces the Payment Systems (Oversight) Act (the "PS(O)A") and the Money-Changing and Remittance Businesses Act (the "MCRBA")
- Largely transcribes the existing PS(O)A regime for the designation of "payment systems", with additional MAS authority to make designations on the basis of efficiency or competitiveness



New licensing framework for payment service providers

The new modular licensing framework for payment service providers creates seven payment services/activities and three overarching licence categories. A PSA licensee may apply to carry out different combinations of payment services under its licence.

Subject to certain exclusions and exemptions (see below), organisations which provide any of the payment services A-G must be licensed (see Figure 3).

The payment services/activities are broadly unchanged from the Bill, as follows, with the exceptions noted:

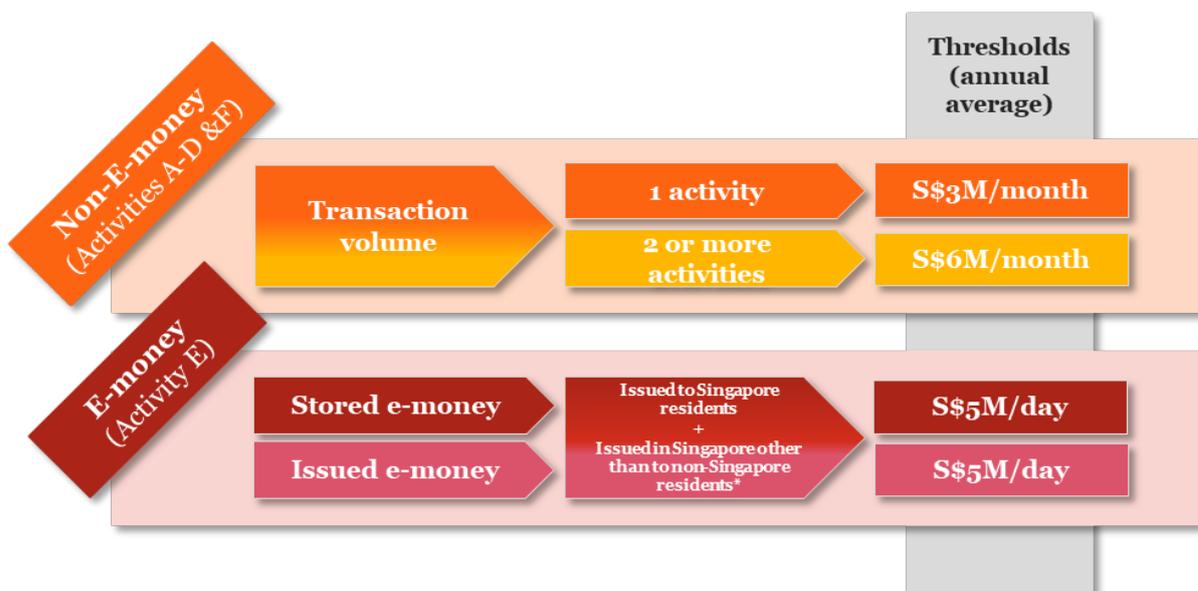
- A. Account issuance**
- B. Domestic money transfer**
- C. Cross-border money transfer**
- D. Merchant acquisition**
- E. E-money issuance** (expanded to include value pegged to a currency)
- F. Digital payment token** (amended from "virtual currency", see below)
- G. Money-changing**

The three licence categories are also retained from the Bill:

- 1. Major Payment Institution**
- 2. Standard Payment Institution**
- 3. Money-Changing**

Payment service providers providing one or more payment services are required to hold one of these licences. A Major Payment Institution licence carries additional obligations over a Standard Payment Institution licence and is required for payment service providers which exceed financial thresholds based on monthly payment transaction volumes and daily e-money issued and stored volumes (see Figure 1).

Money-Changing licences are applicable to all payment service providers which provide exclusively money-changing services, ie, no additional payment services. There are no financial thresholds applicable to the requirement to hold a Money-Changing licence.



* For scenarios where the issuer may not be able to clearly determine if e-money was issued to Singapore residents

Figure 1: Thresholds for Major Payment Institution licences

Implementation

The Act includes grandfathering provisions that provide for the automatic issuance of licences under the PSA for MCRBA licensees and approved holders of stored value facilities under the PS(O)A.

The MAS intends to set out in secondary legislation temporary exemptions to the requirements to hold a PSA licence. For payment services A-E, this is intended to be in the form of a 12 month grace period. For payment service F, six months. However, these grace periods will not necessarily exempt organisations from complying with the other PSA requirements, such as those relating to money laundering and terrorist financing, and will be subject to carve-outs for some activities (eg, outbound remittances under Activity C) and limitations for others (eg, e-money issuance, Activity E). The MAS does not intend to specify a grace period or transitional conditions for Activity G, money-changing (see above in relation to grandfathering of MCRBA licences).

Digital payment tokens and e-money

The Act replaced “virtual currency”, as a definition, with “digital payment token”. This is tied to an expanded definition of “e-money”.

between fiat currency and the broad range and functionality of digital tokens. To qualify as digital payment tokens and not e-money, digital payment tokens must not be pegged by the issuer to any currency. Accordingly, the definition of “e-money” has been expanded to include any electronically stored monetary value that is pegged by its issuer to a currency.

The Act also provides for user wallet and transfer caps for Major Payment Institutions, which are intended to be S\$5,000 and S\$30,000, respectively, and will be prescribed in secondary legislation (see above reference to the April 2019 MAS consultation paper).

This approach to e-money and digital payment tokens reflects an overarching theme of the Act, which is to achieve a modular licensing framework based on targeted risk-mitigation. The risks posed currently by digital payment tokens and e-money are not equal in severity; and payment service providers who provide these services are subject to different risk mitigation obligations. E-money-type services are already well established in Singapore, in the form of stored value facilities under the PS(O)A, whereas consumer adoption of digital payment tokens is more limited and sporadic.

Nevertheless, the money laundering and terrorist financing risks posed by digital tokens and the intermediaries who provide an interface between consumers and traditional financial systems are significant. Accordingly, protection against money laundering and terrorist financing is the focus of the risk mitigations applicable to service providers offering these services, rather than user protection.

The MAS is among the first of the world's financial services regulators to introduce a regulatory regime for digital payment token services and to safeguard against the significant money laundering and terrorist financing risks arising due to the anonymous and borderless nature of the transactions digital payment token services can enable.

The MAS anticipates future refinements to the scope of the digital payment token services activity as its risks continue to emerge. Important distinctions between the digital assets created by decentralised ledger technologies such as those that operate as money or a medium of exchange, represent ownership or other rights in assets, provide functionality or utility, or facilitate participation rights in a network or system are not currently addressed by the PSA.

Capitalisation, security and safeguarding

The Act includes new provisions for security deposits and the safeguarding of customer funds; and the MAS intends also to prescribe minimum capitalisation requirements in secondary legislation (see Figure 2).

These requirements are, broadly, more flexible in terms of safeguarding options than equivalent regimes under existing regulation but include within their scope more categories of payment service providers.

Standard and Major Payment Institutions will be subject to the new minimum capitalisation requirements. Only Major Payment

Institutions will be subject to the new security deposit requirements (see Figure 2).

Major Payment Institutions providing domestic money transfer, cross-border money transfer, merchant acquisition and e-money issuance services (Activities B-E) are subject to the new safeguarding requirements. Money-Changers and Standard Payment Institutions (irrespective of the services they provide) are not in scope.

For Money-Changers, this represents no change to the current requirements under the MCRBA, which does not require safeguarding of customer funds. For remittance businesses previously regulated under the MCRBA which are now regulated as domestic and cross-border money transfer payment services (Activities B and C), the new safeguarding regime represents greater flexibility than under the MCRBA.

	MPI	SPI	Money Changer
Capitalisation	 S\$250k	 S\$100k	
Security	<ul style="list-style-type: none"> • Cash deposit • Bank guarantee • Other 		
Safeguarding	<ul style="list-style-type: none"> • Liability Undertaking • Guarantee • Deposit • Other 		

Figure 2: Capitalisation, security and safeguarding³ requirements

³ Safeguarding requirements apply to Major Payments Institutions who conduct certain activities (see below). The MAS intends to define the permitted safeguarding institutions for each safeguarding requirement outlined below (see above reference to the April 2019 MAS consultation paper).

- "Liability Undertaking" refers to an undertaking to be fully liable to the customer from any bank in Singapore or prescribed financial institution (the MAS intends to include banks, merchant banks and finance companies)
- "Guarantee" refers to a guarantee by any bank in Singapore or prescribed financial institution (the MAS intends to include banks, merchant banks, finance companies and finance guarantee insurers)
- "Deposit" refers to an amount deposited and segregated in a trust account with an institution as prescribed by the MAS (the MAS intends to include banks, merchant banks and finance companies)
- "Other" refers to other forms of safeguard as may be prescribed by the MAS

The minimum capitalisation requirements are intended to be the same for Standard Payment Institutions as in the MCRBA but higher for Major Payment Institutions, and will be prescribed in secondary legislation (see above reference to the April 2019 MAS consultation paper).

For holders of stored value facilities previously regulated under the PS(O)A, regulation as an e-money issuer (Activity E) represents added obligations but also greater flexibility. The old regime required a fully licensed bank to assume liability for the protection of customer funds alongside the applicant holder of a stored value facility in excess of S\$30M. The PSA has potentially wider application as the thresholds are lower (S\$5M daily average) and apply to both stored and issued e-money (issued being easier to exceed than stored as customers do not have to maintain the balance for it to be counted). However, the safeguarding options are broader and no longer limited to an undertaking from a fully licensed bank.

Exemptions and exclusions

The Act provides for conditional “exemptions” from PSA requirements for certain regulated institutions, reaffirms the regulated status of incidental payment services and provides three categories of “exclusions” from the scope of the PSA.

Limited purpose e-money

The scope of limited purpose e-money was expanded in the Act, as summarised below.

Limited purpose e-money must, however, continue to meet certain conditions such as carrying low money laundering and terrorist financing risks. Limited purpose e-money must be:

- provided by the e-money issuer (eg, store vouchers issued by a single shop);
- for use within a limited network (eg, a commercial consortium of retailers);
- for use within the physical premises operated, owned or managed by the issuer;
- issued by a public authority; or

- provided as rewards for the purchase of goods and services of specified merchants (eg, loyalty programmes).

Limited purpose digital payment tokens

The scope of limited purpose digital payment tokens, as summarised below, was broadly retained from the Bill. The MAS will consider issuing guidance on the scope of in-game assets with reference to existing games, if necessary.

- Non-monetary customer loyalty or reward points that can only be used for payment for goods and/or services provided by the issuer or merchant specified by the issuer.
- In-game asset or similar that can only be used in exchange for virtual objects or virtual services within an online game.

Regulated financial services

Certain regulated organisations are excluded from the scope of the PSA. Solely incidental or necessary activities pursuant to any regulated activity under the below acts would not constitute payment services under the PSA.

- Securities and Futures Act
- Financial Advisers Act
- Trust Companies Act
- Insurance Act

Incidental payment services

The Act reaffirms the position in the Bill that payment services which are incidental to an organisation’s core business are, nevertheless, regulated activities.

The effect is to disapply the 2017 Singapore High Court decision in *Chinpo Shipping Co (Pte) Ltd v. Public Prosecutor*, which had created the precedent that the undertaking of remittances that are purely incidental to a primary business of ship agency and ship chandelling does not constitute a licensable activity under the MCRBA.

The example provided by the MAS in its consultation response to illustrate incidental payment services is an online marketplace which offers payment services to facilitate transactions in the marketplace – the online marketplace would require a PSA licence.

Exemptions for regulated institutions

Certain regulated institutions subject to more prudential regulation and supervision, such as on minimum capitalisation, concentration risk, and the management and mitigation of repayment risks, are exempted from the PSA licensing requirements. Depending on the nature and extent of the activity, these exempt payment service providers remain subject to other PSA obligations as if they were PSA licensees.

Notably, these obligations include certain notification and information provision obligations to the MAS, ring-fencing, interoperability, safeguarding and e-money lending restrictions.

This exemption applies to:

- Banks and card issuers under the Banking Act;
- Merchant banks approved as financial institutions under the Monetary Authority of Singapore Act; and
- Finance companies under the Finance Companies Act

Further exemptions and exclusions may be prescribed by the MAS either as stipulated in the Act or via secondary legislation (see above reference to the April 2019 MAS consultation paper proposing further exemptions).

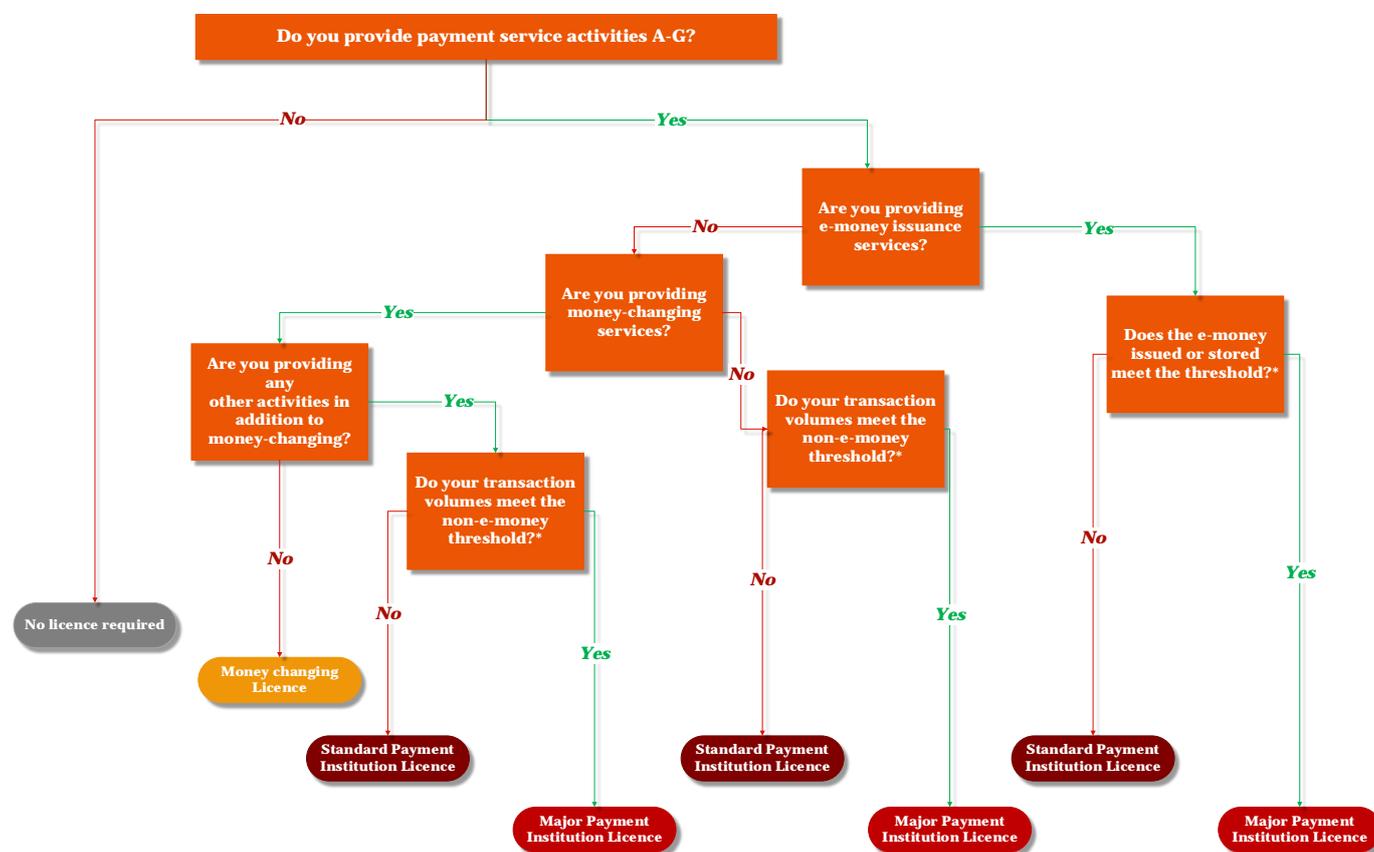
Exclusions from the scope of the PSA

- Limited purpose e-money
- Limited purpose digital payment tokens
- Regulated financial services institutions

Roadmap to compliance

- Consider whether your organisation undertakes PSA licensable activities. Map your payment activities to the licensing framework
- Consider existing licences, grandfathering provisions and obligations during grace periods under the Act
- Consider your supply chain and counterparty risk
- Assess compliance effort. Re-assess risk mitigation strategy and policies and map against the new framework.
- Engage in consultations on secondary legislation over the course of the next year
- Plan early: identify implementation timeframes applicable to your organisation and start planning early for implementation





* See Figure 1 for further detail on thresholds

Figure 3: Do you require a PSA licence?

How PwC can help

PwC is a network of firms with global and local subject matter experts in payments, legal, compliance, tax, risk and strategy. Singapore legal advice is provided by PwC network firm, Eng and Co. LLC.

We provide constructive insights, drawing from experience advising on similar regimes in other jurisdictions, and help you assess the impact the PSA will have on your organisation and your roadmap to compliance. We can advise on obtaining a licence; conduct gap assessments to determine areas which require improvement; identify opportunities for growth; make recommendations on enhancements to current practices; and carry out a remediation plan to address identified gaps.



Connect with us

Please contact us if you would like further information in relation to the issues outlined in this paper.

Christopher Overton

Senior Associate, Digital & Technology
PwC Legal International Pte. Ltd. (a licensed Foreign Law Practice)
christopher.overton@pwclegal.com.sg

Rachel Eng

Managing Director
Eng and Co. LLC
rachel.eng@engandcollc.com

Henry Goodwin

Partner, Digital & Technology
PwC Legal International Pte. Ltd. (a licensed Foreign Law Practice)
henry.dn.goodwin@pwclegal.com.sg

Sam Kok Weng

Leader, Financial Services
PwC Singapore
kok.weng.sam@sg.pwc.com

Lie Ay Wen

Partner, Financial Services
PwC Singapore
ay.wen.lie@sg.pwc.com

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, to the extent permitted by law.

PwC does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

PwC Legal International Pte. Ltd. (a licensed Foreign Law Practice) ("PwC Legal International") and Eng and Co. LLC ("Eng & Co.") are members of the PwC network (see above) and are separate legal entities.

As a licensed foreign law practice in Singapore, PwC Legal International is not permitted to provide Singapore legal advice. To the extent this publication contains guidance on matters relating to Singapore law, this is provided by Eng & Co. © PwC 2019. All rights reserved.

