

SINGAPORE PARLIAMENT PASSES PAYMENT SERVICES BILL

The Payment Services Bill was passed by the Singapore Parliament on 14 January 2019. Once the Payment Services Act 2019 (PSA 2019) comes into operation, it will replace the current regulatory framework for payment systems and services under the Payment Systems (Oversight) Act (Cap. 222A) (PS(O)A) and the Money-Changing and Remittance Businesses Act (Cap. 187) (MCRBA) with a single legislative regime.

THE PSA 2019

The passing of the PSA 2019 follows its first and second readings in the Singapore Parliament, which took place on 19 November 2018 and 14 January 2019, respectively, and two public consultations on the proposed payments regulatory framework launched by the Monetary Authority of Singapore (MAS) in August 2016 and November 2017.

The PSA 2019 will streamline the existing legislative framework for payment systems and services under the PS(O)A and the MCRBA into a single regulatory framework that is modular and risk-based, and extends the ambit of regulated payment services to a wider range of payment activities.

We set out below a high-level overview of the key requirements imposed under the PSA 2019.

Regulatory frameworks

The PSA 2019 consists of two parallel regulatory frameworks:

- a licensing regime that enables the MAS to regulate various payment services in a manner that is tailored to the scope and services provided by a payment services provider and which allows the MAS to respond quickly and flexibly to market developments; and
- a designation regime that enables the MAS to designate a payment system which disruption would pose risk to the stability of, and impact public confidence in, the financial system.

With respect to the former, a person is prohibited from carrying on a business of providing any type of regulated payment service in Singapore unless it has in force a licence to carry on such activity, or it is an exempt payment service provider in respect of that type of payment service.

Key issues

- A person that carries on a business of providing any type of regulated payment service is required to be duly licensed, unless an exemption or exclusion applies
- Risk mitigation measures will apply to certain licensees to address (1) loss of customer monies, (2) money laundering (ML) / terrorism financing (TF) risks, (3) fragmentation and lack of interoperability across payment solutions, (4) technology risks
- Transitional arrangements apply to existing licensees under the MCRBA and approved holders of stored value facilities (SVFs) under the PS(O)A
- Transitional arrangements apply to persons who on or before the commencement date carry on certain new payment services, subject to conditions

It should be noted that where a person provides a payment service while it carries on any primary business, such person will be presumed to carry on a secondary business of providing that type of payment service, regardless of whether the provision of the payment service is related or incidental to its primary business, unless it is able to rebut such presumption.

In addition, a person (other than a licensee or exempt payment service provider), whether in or outside Singapore, is prohibited from offering to provide (or issuing any advertisement containing any offer to provide) payment services to the public, or any section of the public, in Singapore, and from making an offer or invitation (or issuing any advertisement containing any offer or invitation) to provide payment services to the public, or any section of the public, in Singapore.

As this solicitation prohibition applies to persons outside Singapore, the PSA 2019 has, in this regard, an extraterritorial application.

A person in Singapore (whether or not a licensee or exempt payment service provider) is also prohibited from carrying on such solicitation activities on behalf of a person outside Singapore.

Regulated payment services

The following activities are regulated under the PSA 2019:

Payment service	Description
Account issuance services	<p>Any of the following services:</p> <ul style="list-style-type: none"> - service of issuing a payment account to any person in Singapore; - service relating to any operation required for operating a payment account, including: (a) any service (other than a domestic money transfer service or a cross-border money transfer service) that enables money to be placed in a payment account; or (b) any service (other than a domestic money transfer service or a cross-border money transfer service) that enables money to be withdrawn from a payment account.
Domestic money transfer services	<p>The service of accepting money for the purpose of executing, or arranging for the execution of, any of the following payment transactions, each of which is between a payer in Singapore and a payee in Singapore, in any case where neither the payer nor the payee is a financial institution:</p> <ul style="list-style-type: none"> - a payment transaction executed from, by way of or through a payment account; - a direct debit (including a one-off direct debit) through a payment account; - a credit transfer (including a standing order) through a payment account; - accepting any money from any person for transfer to the payment account of a different person.
Cross-border money transfer services	<p>Either of the following services (other than any such service that the MAS may prescribe):</p> <ul style="list-style-type: none"> - service of accepting money in Singapore, whether as principal or agent, for the purpose of transmitting, or arranging for the transmission of, the money to any person outside Singapore; - service of receiving any money from outside Singapore for, or arranging for the receipt of any money from outside Singapore by, any person in Singapore, whether as principal or as agent.
Merchant acquisition services	<p>The service of accepting and processing a payment transaction for a merchant under a contract between the provider of the service and the merchant, which results in a transfer of money to the merchant pursuant to the payment transaction, regardless of whether the provider of the service comes into possession of any money in respect of the payment transaction, in a case where:</p>

	<ul style="list-style-type: none"> - the merchant carries on business in Singapore, or is incorporated, formed or registered in Singapore; or - the contract between the provider of the service and the merchant is entered into in Singapore.
E-money issuance services	The service of issuing e-money to any person for the purpose of allowing a person to make payment transactions.
Digital payment token services	Any of the following services (other than any such service that the MAS may prescribe): <ul style="list-style-type: none"> - service of dealing in digital payment tokens; - service of facilitating the exchange of digital payment tokens.
Money-changing services	The service of buying or selling foreign currency notes.

In this regard, "*e-money*" and "*digital payment token*" have the following definitions:

- "*e-money*" refers to electronically stored monetary value that: (a) is denominated in any currency or pegged by its issuer to any currency; (b) has been paid for in advance to enable the making of payment transactions through the use of a payment account; (c) is accepted by a person other than its issuer; and (d) represents a claim on its issuer (but does not include a deposit accepted in Singapore from a person in Singapore);
- "*digital payment token*" refers to a 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; (d) can be transferred, stored or traded electronically; and (e) satisfies such other characteristics as the MAS may prescribe.

Types of licence

Licensees under the PSA 2019 will be grouped into the following categories:

- money-changing licensees;
- standard payment institutions;
- major payment institutions.

A money-changing licensee would only be able to carry on business in money-changing services. On the other hand, standard payment institutions and major payment institutions would be able to provide any of the above-mentioned regulated payment services.

However, only a major payment institution would be able to carry out payment services above any of the following prescribed thresholds:

- Where both of the following apply:
 - (i) the licensee carries on a business of providing one or more of the following payment services: an account issuance service (except an e-money account issuance service), a domestic money transfer service, a cross-border money transfer service, a merchant acquisition service, a digital payment token service; and
 - (ii) the average, over a calendar year, of the total value of all payment transactions that are accepted, processed or executed by the licensee in one month exceeds S\$3 million (for any one of those payment services), or S\$6 million (for two or more of those payment services).

- Where both of the following apply:
 - (i) the licensee carries on a business of providing an e-money account issuance service; and
 - (ii) the sum of the following amounts exceeds S\$5 million: (A) the average, over a calendar year, of the total value in one day of all e-money that is stored in any payment account issued by the licensee to a person it has determined to be resident in Singapore; and (B) the average, over a calendar year, of the total value in one day of all e-money that is issued in Singapore, and is stored in any payment account issued by the licensee to any person it has not determined, to be resident outside Singapore.
- Where both of the following apply:
 - (i) the licensee carries on a business of providing an e-money issuance service; and
 - (ii) the average, over a calendar year, of the total value in one day of all specified e-money that is issued by the licensee exceeds S\$5 million.

Licensing exemptions and exclusions

Exempt payment service providers

Certain types of regulated person, including a licensed bank, merchant bank, finance company, and credit card or charge card issuer, are exempted from the licensing requirement when carrying on a business of providing a regulated payment service.

Please note, however, that such types of regulated person are nonetheless subject to certain conduct of business requirements imposed under the PSA 2019 in respect of its business of providing specified types of regulated payment services as if it were a licensee.

Excluded payment services

Certain services are expressly prescribed to not be payment services for the purposes of the PSA 2019. These include:

- any service provided by a technical service provider that supports the provision of any payment service but does not at any time enter into possession of any money under that payment service;
- any payment service that is provided by any person licensed, approved, registered or regulated, or exempt from being licensed, approved, registered or regulated, under the Financial Advisers Act (Cap. 110), the Insurance Act (Cap. 142), the Securities and Futures Act (Cap. 289) or the Trust Companies Act (Cap. 336), where the payment service is solely incidental to or necessary solely for that person to carry on its business in regulated activities under those Acts;
- any payment service that is provided by any person in respect only of limited purpose e-money;
- any service of dealing in, or facilitating the exchange of, any central bank digital payment token, carried out by a central bank or financial institution; and
- any service of dealing in, or facilitating the exchange of, limited purpose digital payment tokens.

The full list of excluded payment services is set out in Part 2 of the First Schedule to the PSA 2019.

Class exemptions

The MAS also has the general power to exempt any person or class of persons from all or any of the provisions of the PSA 2019.

Risk mitigation measures

The PSA 2019 contains requirements that are intended to mitigate against the four following risks, which the MAS considers to be common across many payment services:

- Loss of customer moneys.
- ML/TF risks.
- Fragmentation and lack of interoperability across payment solutions.
- Technology risks.

The MAS has sought to address these in the PSA 2019 by, amongst other requirements:

- Imposing requirements on major payment institutions that provide domestic money transfer services, cross-border money transfer services, merchant acquisition services or e-money issuance services, to safeguard customer moneys.
- Imposing restrictions on personal payment accounts issued by major payment institutions that contain e-money.
- Granting the MAS the power to impose the following interoperability measures:
 - Power to direct that a major payment institution be a participant of a payment system and/or enter into an arrangement with the operator of the payment system, so as to ensure interoperability between payment accounts issued by the payment service provider and the payment system.
 - Power to direct that a major payment institution that operates a payment system adopts a common standard, so as to ensure interoperability between the different payment systems operated by different payment service providers.
 - Power to impose an access regime in respect of a relevant payment system (including a payment system operated by a major payment institution and a designated payment system).
- Granting the MAS the power to impose technology risk management requirements.

The detailed anti-money laundering and countering the financing of terrorism (AML/CFT) requirements will be imposed on the relevant licensees pursuant to Notices issued by the MAS under the Monetary Authority of Singapore Act (Cap. 186).

Transitional arrangements

The transitional arrangements applicable to payment services not currently regulated under the PS(O)A or the MCRBA, but which will be regulated under the PSA 2019, will be prescribed by the MAS under subsidiary legislation, which the MAS will publish for further public consultation.

However, the MAS advised in its 19 November 2018 response to feedback received on its November 2017 consultation on the proposed Payment Services Bill that a person who on or before the commencement date of the PSA 2019 carries on any of the following new payment services and satisfies the specified conditions would be exempted from the licensing requirement for the relevant grace period:

Grace period: 12 months after the commencement of the PSA 2019

- Account issuance services, where the issued payment accounts do not store e-money
- Account issuance services, where the issued payment accounts store e-money, and where such payment accounts:
 - (a) do not allow e-money in excess of S\$1,000 to be stored;
 - (b) do not allow the withdrawal of currency from the payment account;
 - (c) do not allow a refund of e-money in excess of S\$80 in currency on termination of the use of the payment account to a person, except upon the production of the person's photograph identification

document and when records relating to both the refund and identification of such person are subject to a record retention policy of at least five years; and (d) satisfies at least two of the following requirements: (i) does not allow any form of cross border money transfer or withdrawal; (ii) is to be used only as a means of making payment for goods or services; (iii) the e-money is funded from an identifiable source.
– Account issuance services, where the issued payment accounts store e-money, and where the issuer complies with all the prevailing AML/CFT requirements imposed by MAS that are applicable to account issuance
– Domestic money transfer services
– Inward cross-border money transfer services
– Merchant acquisition services
– E-money issuance services, where the total float held by the e-money issuer does not exceed S\$30 million
Grace period: 6 months after the commencement of the PSA 2019
– Virtual currency services

Part 10 of the PSA 2019 prescribes the saving and transitional provisions that apply to persons that carry on payment services that are currently regulated under the PS(O)A or the MCRBA.

In this connection, a person who is immediately before the commencement date, a person specified in the left column of the following table, and who would be deemed to have been granted the licence specified in the adjacent column on the commencement date:

Category of person	Deemed to have been granted
• Remittance licence-holder (but not also a money-changer's licence-holder or an approved holder of a SVF)	Major payment institution licence: cross-border money transfer services
• Money-changer's licence-holder (but not also a remittance licence-holder or an approved holder of a SVF)	Money-changing licence
• Approved holder of a SVF (but not also a remittance licence-holder or a money-changer's licence-holder)	Major payment institution licence: e-money issuance services
• Remittance licence-holder and money-changer's licence-holder	Major payment institution licence: cross-border money transfer services and money-changing services
• Remittance licence-holder and an approved holder of a SVF	Major payment institution licence: cross-border money transfer services and e-money issuance services
• Money-changer's licence-holder and an approved holder of a SVF	Major payment institution licence: money-changing services and e-money issuance services
• Remittance licence-holder, money-changer's licence-holder and an approved holder of a SVF	Major payment institution licence: cross-border money transfer services, money-changing services and e-money issuance services

Further consultations

The PSA 2019 will only come into operation on a future date to be appointed by notification in the Gazette and subsidiary legislation and related MAS notices will also need to be put in place.

In this connection, the MAS has advised that it will consult further on certain measures that it intends to impose pursuant to regulations and notices. These include the MAS's proposals in relation to:

- the imposition of specific risk mitigating measures on licensees that carry on the relevant risk activity;
- the AML/CFT requirements;
- specific disclosure requirements for standard payment institutions;
- the MAS's interoperability powers;
- the technology risk management measures (please note that the MAS launched its consultation on the Notice on Cyber Hygiene on 4 September 2018);
- transitional arrangements (including class exemptions).

CONTACTS

Lena Ng
Partner

T +65 6410 2215
E Lena.Ng
@cliffordchance.com

Luke Grubb
Partner

T +65 6506 2780
E Luke.Grubb
@cliffordchance.com

Zhern Leing Thai
Senior Associate

T +65 6410 2223
E ZhernLeing.Thai
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance Pte Ltd, 12 Marina Boulevard,
25th Floor Tower 3,

Marina Bay Financial Centre, Singapore
018982

© Clifford Chance 2019

Clifford Chance Pte Ltd

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.