



Public Response to MAS Consultation Paper:

Proposed Payment Services Bill

A Perspective from Digital Business, e-Commerce and Online Marketplace

A Submission by OC Queen Street LLC,

A member of international legal practice Osborne Clarke

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Chia Ling is a digital business lawyer supporting digital innovation protection and commercialisation, investments and critical infrastructural transformation. He advises companies and government bodies on both contentious and non-contentious matters, including cyber security issues, data protection, intellectual property, telecommunications and media regulations, competition, FinTech, artificial intelligence, payments and financial regulations.

For his work on FinTech, Chia Ling was included in the inaugural Fintech chapter of *Who's Who Legal: Banking 2018*. He also regularly speaks on amongst others, cybersecurity and data protection, with the most recent one at Silicon Valley where he presented on Cybersecurity & Privacy trends in APAC to the Silicon Valley Association of General Counsel.



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Paul has over 25 years' experience in the financial services sector. Paul has market-leading experience and expertise in the payments industry where he has guided clients through new product development, regulatory change and transformational projects. Paul is well versed in the complexities of the payments industry's network arrangements. He also has a deep knowledge of legal and regulatory developments affecting the payments industry from Europe and elsewhere, the latter through leading Osborne Clarke's International Payments practice, working on cross-jurisdictional matters and undertaking numerous multi-jurisdictional surveys).

Osborne Clarke's Payments practice is recognized externally as top-tier ranking, with commentary such as - "*Osborne Clarke is one of the leading practices working in the payments services sphere*" and in July 2012 an award for "TMT Team of the Year 2012" at The Lawyer Awards. Recent commentary on Paul remarks that he is "*excellent and unrivalled in his ability to provide pragmatic, clear, concise and commercially balanced advice*".

RESPONSE TO CONSULTATION PAPER

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Consultation topic:	Proposed Payment Services Bill
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Confidentiality	
I wish to keep the following confidential:	<i>(Please indicate any part of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)</i>

General comments:

Generally, we propose that:

1. MAS should provide clarification when an activity is considered to be provided "in" Singapore – this issue is especially pertinent in online activities for businesses based outside of Singapore. We propose that only businesses operating in Singapore should be considered providing the services in Singapore.
2. MAS should provide clarification on the scope of extraterritorial application of the proposed Bill and what would be the sufficient nexus to Singapore for a payment services provider to be caught within the scope of the proposed Bill (c.f. MAS Guidelines on the Application of section 339 of the Securities and Futures Act).
3. To apply a truly risk-based approach, the proposed Bill should identify the proper scope of regulated activities and the appropriate risks mitigating measures targeted at each regulated activities. We submit that the current draft of the proposed Bill is overreaching and too wide in respect of the scope of the regulated activities and the risks mitigating requirements.

Question 1. Activities regulated under the licensing regime

MAS seeks comments on scope of activities selected for regulation under the licensing regime, including whether incidental payment services should be regulated. MAS also seeks views on whether the risks and considerations identified for retail payment services are suitable.

- 1.1. We fully support the approach of focusing on activities (as opposed to products) for the purposes of regulation as it has the effect of being technology-neutral. We are also of the view that the scope of activities selected for regulation under the licensing regime is appropriate.
- 1.2. However, our concern is in respect of the definition and scope of each category of the regulated activities. We submit that as it is currently drafted the definition and scope of the regulated activities are either unclear or too wide.
- 1.3. Our comments in respect of the definition and scope of each of the regulated activities are as follows:

Regulated Activities	Comments
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A	<p>We note that the proposed Bill defines "providing account issuance services" as:</p> <p><i>(a) issuing a payment account to any person in Singapore; or</i></p> <p><i>(b) providing in Singapore services in relation to any of the operations required for operating a payment account, including—</i></p> <p><i>(i) services enabling money to be placed on a payment account; or</i></p> <p><i>(ii) services enabling money to be withdrawn from a payment account.</i></p> <p><i>other than providing domestic money transfer services.</i></p> <p>In respect of sub-section (a), we would recommend that MAS clarify whether "in Singapore" refers to the issuing of a payment account (i.e. a Singapore based entity issuing a payment account to any person) or "any person" (i.e. issuing a payment account to any person who resides in Singapore).</p> <p>We propose that sub-section (a) should refer to the former (i.e. issuing a payment account in Singapore to any person) as the issuance of payment account to any person who is in (i.e., resides in) Singapore would be too wide and would capture non-Singapore businesses that do not operate in Singapore.</p> <p>MAS should also clarify the type of "payment account" that the proposed Bill intends to regulate. The proposed Bill defines "payment account" as:</p> <p><i>(a) any account held in the name of, or any account with a unique identifier of, one or more payment service users; or</i></p> <p><i>(b) any personalised device or personalised facility,</i></p> <p><i>which is used by a payment service user for the initiation, execution, or both of payment transactions and includes a bank account, debit card, credit card and charge card.</i></p> <p>This definition is overly wide and potentially captures a customer account with a business (e.g. a customer account with an online marketplace that which is used to store customers' orders and individual details) that simply links an identifiable payment / funding source, such as a bank account, credit card, and debit card (each of which are given as examples of a "payment account" in the Bill), as a method of payment or as a pay-out method.</p>
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	<p>We propose that accounts such as customer accounts with a business should not be considered a "payment account". Examples of such customer accounts include (i) an account opened by a buyer on an online marketplace that allows customer to pay for goods and services by way of bank account transfer, credit card, and debit card; and (ii) an account opened by a seller on an online marketplace that allows a seller to link bank accounts or other identifiable source for the purpose of pay-outs. These types of accounts should not in itself be considered a "payment account" under the proposed Bill.</p>
B	<p>The Consultation Paper describes "domestic money transfer services" to include payment gateway services and payment kiosk services. We believe that the inclusion of the provision of payment gateway services and payment kiosk services to be odd, and that the scope of Activity B seems to conflate the role of the technology provider and the business itself. We find that the focus of the regulation should be the business providing the services of domestic money transfer which contract directly with consumers and merchants and not the technology provider (e.g. payment gateway services and payment kiosks services that do not actually provide the actual money transfer services by way of retail to end user customers). This could potentially lead to double regulation.</p> <p>We would recommend focusing on regulating the business only.</p> <p>Further, we note that the proposed Bill defines "providing domestic money transfer services" as <i>accepting money for the purpose of executing or arranging for the execution of one or more of the following payment transactions in Singapore, where the payment service user is not a financial institution—</i></p> <ul style="list-style-type: none"> <i>(a) payment transactions executed from, by way of or through a payment account;</i> <i>(b) direct debits including one-off direct debits through a payment account;</i> <i>(c) credit transfers, including standing orders through a payment account; or</i> <i>(d) accepting any money from any person (A) for transfer to another person's (B) payment account, where both A and B are not the same person.</i> <p>To clarify the scope of Activity B that both the sender and recipient have to be in Singapore, we would recommend amending sub-section (d) to be as follows (proposed amendments in underline):</p>

	<p><i>(d) accepting any money <u>in Singapore</u> from any person (A) for transfer to another person's (B) payment account, where both A and B <u>are in Singapore</u> and are not the same person.</i></p> <p>The proposed amendment will make it clear that the proposed Bill applies only to Singapore businesses that perform domestic money transfer services locally, and excludes non-Singapore entities.</p> <p>The proposed amendment will also be consistent with the definition of "providing cross border money transfer services (i.e. <u>accepting moneys in Singapore for the purpose of transmitting, or arranging for the transmission, of moneys to any person in another country or territory outside Singapore</u> [emphasis in underline added]).</p>
C	<p>We note that the proposed Bill defines "providing cross border money transfer services" as, <i>whether as principal or agent—</i></p> <p><i>(a) accepting moneys in Singapore for the purpose of transmitting, or arranging for the transmission, of moneys to any person in another country or territory outside Singapore; or</i></p> <p><i>(b) receiving for, or arranging for the receipt by, any person in Singapore, moneys from a country or territory outside Singapore,</i></p> <p><i>but does not include such other services that the Authority may prescribe.</i></p> <p>We would recommend that MAS clarify whether Activity C is intended to capture businesses that operate in Singapore and excludes non-Singapore businesses (i.e. there is no extra-territorial effect in respect of Activity C).</p> <p>The current wording of the definition would cover non-Singapore businesses.</p> <p>In any event, we propose that the proposed Bill should not have an extra-territorial effect in respect of Activity C and that non-Singapore businesses should not be captured under the proposed Bill. The proposed Bill should only regulate businesses that operate in Singapore. This is because such non-Singapore businesses would usually already be regulated in the jurisdiction in which it operates. Imposing additional licensing requirements would lead to added costs and undue regulatory burden.</p> <p>As such, we would recommend that sub-section (b) of the definition of "providing cross border money transfer services" be amended to the following (proposed amendments in underline):</p>

	<p><i>(b) receiving <u>in Singapore</u> for, or arranging <u>in Singapore</u> for the receipt by, any person in Singapore, moneys from a country or territory outside Singapore</i></p> <p>The proposed amendments clarify that that only entities in Singapore that accept moneys from a country outside of Singapore, for the purpose of receiving for, or arranging for the receipt by a Singapore resident falls within the scope of Activity C.</p>
D	<p>We would recommend clarifying whether this regulated activity covers all models of merchant acquisition services or does it exclude models where the settlement funds do not flow through the relevant institution (e.g. because the settlement funds is passed directly from a scheme member to the merchant and does not go through financial institutions).</p>
E	<p>We note that the proposed Bill defines “e-money issuance” as <i>issuing e-money in Singapore or to persons in Singapore</i>.</p> <p>We propose that the proposed Bill should not have an extra-territorial effect in respect of Activity E and that non-Singapore businesses issuing e-money to persons in Singapore should not be captured under the proposed Bill. The proposed Bill should only regulate businesses that operate in Singapore. This is because such non-Singapore businesses would usually already be regulated in the jurisdiction in which it operates. Imposing additional licensing requirements would lead to added costs and undue regulatory burden.</p> <p>As such, we would recommend that the definition of "e-money issuance" be amended to the following (proposed amendments in strikethrough):</p> <p><i>issuing e-money in Singapore or to persons in Singapore</i></p>
F	<p>No comments</p>
G	<p>We would recommend clarifying whether this regulated activity is limited to physical "notes" or whether does it cover businesses that processes money-changing services that do not buy or sell physical "notes" (e.g. by way of bank transfers)</p>

- 1.4. Generally, we would also recommend clarifying the following positions:
- (a) Whether each of the regulated activities is meant to be mutually exclusive, or if the MAS foresees an area of overlap between the regulated activities thereby resulting in a scenario whereby an activity may trigger two types of regulated activities.
 - (b) When an activity is considered to be provided "in" Singapore – this issue is especially pertinent in online activities for businesses based outside of Singapore. We propose that only businesses operating in Singapore should be considered providing the services in Singapore.
 - (c) The scope of extraterritorial application of the proposed Bill and what would be the sufficient nexus to Singapore for a payment services provider to be caught within the scope of the proposed Bill (c.f. MAS Guidelines on the Application of section 339 of the Securities and Futures Act).
 - (d) Whether the focus and limitation of the licensing regime to retail activities apply across all of the activities.

The regulation of incidental payment services

- 1.5. We strongly believe where the payment services provided by an entity is only incidental to its main business, such entity should not fall within purview of the MAS and the proposed Bill. Only those entities that carry on a business of providing payment services and charge customers for such services should fall within the ambit of the MAS and the proposed Bill.
- 1.6. For example, the principal purpose of online marketplace platforms is to connect sellers and buyers for goods and services. Whilst they are contracted to collect payments from buyers and remit to sellers, these services are undertaken free of charge and the actual performance of the service is outsourced to licensed payment service providers such as payment gateways and payment processors (e.g. PayPal). Therefore, it is unnecessary to create another regulatory layer on online marketplaces because the payment activities are only incidental to its main business and the payment activities will actually be outsourced to licensed payment providers.
- 1.7. We are aware that there is a need for certainty in respect of regulation, that all entities providing payment services (albeit related and incidental to other businesses which they carry on) should be licenced.

- 1.8. Nonetheless, on balance, we propose that where the payment activities of an entity is only incidental to its main business, such entities should not be regulated. This is especially so if the payment activities of such entity are strictly confined to other businesses which they carry on.

Question 2. Scope of e-money and virtual currency

MAS seeks comments on whether the definitions of e-money and virtual currency accord with industry understanding of these terms. MAS also seeks comments on whether monetary value that is not denominated in fiat currency but is pegged by the issuer of such value to fiat currency should also be considered e-money.

- 2.1 The Payment Services Bill defines "e-money" as:

Any electronically stored monetary value that is denominated in any currency that – (a) has been paid in advance for the purpose of making payment transactions through the use of a payment account; (b) is accepted by a person other than the person that issues the e-money; and (c) represents a claim on the person that issues the e-money; but does not include any deposit accepted in Singapore accepted in Singapore, from any person in Singapore, by a person in the course of carrying on (whether in Singapore or elsewhere) a deposit-taking business.

- 2.2 We understand the first part of the definition to mean that e-money is regarded as value denominated (ascribed a value) in fiat currency, but is not fiat currency. This is because the e-money is not issued by the MAS directly (see Illustration 2 of the Consultation Paper). Accordingly, a claim against an issuer of e-money would be an action in damages, rather than debt.
- 2.3 The MAS may wish to clarify whether it intends for e-money to be claimed as a debt, rather than damages.
- 2.4 This confusion arises because of the exclusionary part of the definition, which specifically excludes deposits accepted by persons in the course of carrying on a deposit-taking business. This is further exacerbated by the definition of "money" as including currency and e-money.
- 2.5 The express exclusion of deposits, but not other possible forms of e-money, from the definition, implies that: (1) such excluded deposits would ordinarily fall within the scope of e-money, and as a result, an action to recover these deposits would have been framed as one for debt, rather than damages; and (2) certain forms of e-money can be recovered against the issuer by way of an action in debt.

- 2.6 Further clarification from the MAS on this point would be helpful.
- 2.7 In our view, the definition of e-money should be restricted to as value denominated (ascribed a value) in fiat currency, but is not currency. The consequence of restricting e-money in this manner is that such e-money can only be recovered by way of an action in damages but not in an action for a debt. This can be clarified by modifying the definition of e-money as follows (with proposed changes in underlines):

Any electronically stored monetary value that is denominated in any currency, but which is not currency, that – (a) has been paid in advance for the purpose of making payment transactions through the use of a payment account; (b) is accepted by a person other than the person that issues the e-money; and (c) represents a claim in damages on the person that issues the e-money; but does not include any deposit accepted in Singapore accepted in Singapore, from any person in Singapore, by a person in the course of carrying on (whether in Singapore or elsewhere) a deposit-taking business.

- 2.8 In respect of the scope of virtual currency, in the Consultation Paper, MAS states that "virtual currency" is defined as any digital representation of value that is not denominated in any fiat currency and is accepted by the public as a medium of exchange, to pay for goods or services, or discharge a debt. This definition covers the more widely known virtual currency such as Bitcoin or Ether.
- 2.9 It is however unclear whether such definition would include "utility tokens". For ease of reference, briefly, utility tokens are a type of cryptographic token issued by the issuer of the token and intended and/or designed to be used as a means to access or utilise the issuer's platform. Even though utility tokens are intended to be used only on the issuer's platforms, utility tokens are also frequently traded on virtual currency exchanges and hence have fluctuating values depending on the supply and demand of said utility tokens (not dissimilar to other widely known virtual currency such as Bitcoin and Ether). With such values tagged to the utility tokens, such utility tokens could also potentially be used as medium of exchange, to pay for goods or services, or discharge debt, provided that the recipient or creditor agree to accept such utility tokens as such medium of exchange or tools of payment.
- 2.10 As such, utility tokens could potentially fall within the proposed definition of "virtual currency" as utility token is a digital representation of value that is not denominated in any fiat currency and is potentially accepted by the public as a medium of exchange, to pay for goods or services, or discharge a debt, albeit a

smaller percentage of the public as compared to other widely-known virtual currency (as evident from its fluctuating value under virtual currency exchanges).

- 2.11 The above uncertainty becomes more significant in light of the high activity of ICOs and the issuance of utility tokens, that are subsequently listed on virtual currency exchanges.
- 2.12 Therefore, we propose that the MAS clarifies whether or not utility token fall within the scope of "virtual currency" or would otherwise fall within the scope of "limited purpose virtual currency".
- 2.13 The MAS may also wish to consider the following alternative definitions:
- (a) The Financial Action Task Force ("**FATF**") has an alternate, wider definition of virtual currency which the MAS may wish to consider. The FATF defines "virtual currency" as *"a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status ... in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency".*¹
 - (b) The FATF further sub-divides virtual currencies into three different categories: (1) centralised, convertible virtual currencies (*e.g.* WebMoney); (2) centralised, non-convertible virtual currencies (*e.g.* World of Warcraft Gold); and (3) decentralised, convertible currencies (*e.g.* Bitcoin).
 - (c) Using the FATF's definition as a starting point, the Australian Government Attorney-General's Department has proposed that digital currencies should have the following (cumulative) elements:² (1) the currency is a digital representation of value that possesses a functional aspect of money (*e.g.* a store of value or medium of exchange); (2) the currency is not issued by a central bank or public authority, nor attached to a legally established currency; and (3) the currency has two-way convertibility which allow it to be transferred, stored or traded electronically for real-world goods, services and fiat currency.

¹ Financial Action Task Force, "Virtual Currencies: Key Definitions and Potential AML/CFT Risks" (June 2014).

² Australian Government Attorney-General's Department, "Regulating digital currencies under Australia's AML/CTF regime" (December 2016).

- 2.14 By including the last element, the Australian Government Attorney-General's Department intends to exclude non-convertible digital currencies from its AML/CFT regulations, and only intends to regulate digital currencies which are convertible into fiat currency.
- 2.15 In respect of the query on whether monetary value that is not denominated in fiat currency but is pegged by the issuer of such value to fiat currency should also be considered e-money, we believe that it is not because these are usually considered a form of securities (e.g. contracts for difference) that are already regulated under the Securities and Futures Act.

Question 3. Virtual currency services

MAS seeks comments on whether the scope of virtual currency services is suitable given our primary regulatory concern that virtual currencies may be abused for ML/TF purposes.

- 3.1 We support the proposal to limit the scope of virtual currency services to those that process funds or virtual currency and exclude marketplace and social media that merely act as medium for information exchanges.
- 3.2 Similar to the Australian position, we take the view that non-convertible digital currencies which cannot be transferred, stored or traded electronically for real-world goods, services and fiat currency should not be regulated.

Question 4. Limited purpose e-money

MAS seeks comments on whether the scope of the limited purpose e-money exclusion sufficiently carves out most types of stored value where user reach is limited, not pervasive and ML/TF risks low.

- 4.1 Paragraph 3.21 of the Consultation Paper states that MAS proposes to carve out value stored on e-wallet that is, or is intended to be used only in Singapore and satisfies certain characteristics.
- 4.2 We believe that limiting the scope of "limited purpose e-money" to e-money that is intended to be used only in Singapore is too restrictive.
- 4.3 We propose that the requirement for the e-money to be used only in Singapore be removed and that it should be sufficient as long as e-money is used for payment or part payment of the purchase of goods/services of the issuer or for payment or part payment of the purchase of goods/services from a limited network of goods of service providers who have a commercial arrangement with the issuer.

Question 5. Loyalty programs as limited purpose e-money

MAS seeks views on whether there are other characteristics of a loyalty program that should be included in the exclusion.

- 5.1 We observe that criteria (b) (i.e. the dominant purpose to promote the purchase of goods and services by such merchants as may be specified by the issuer) and (d) (i.e. used for the payment of goods and services) could potentially mean that the e-money can be used to pay a wide range of merchants. This could potentially be subject to abuse and result in an uneven playing field between exempted and regulated e-money.
- 5.2 We would recommend clarifying and/or limiting the number of merchants under this criteria for the purposes of limited purpose e-money.

Question 6. Limited purpose virtual currency

MAS seeks comments on whether the proposed exclusion covers most types of virtual currency that are limited in user reach. If there are more types of such limited purpose virtual currencies that should be excluded, please let us know the names or characteristics of such virtual currencies.

- 6.1 Please refer to our comments above to Question 2.
- 6.2 Additionally, in the Consultation Paper, MAS states that MAS has identified that in-game assets and loyalty points should be excluded provided that they are, among other things, not (a) returnable, (b) transferable, or (c) capable of being sold to any person in exchange for money.
- 6.3 We observe that that criteria (b) and (c) may be common features in online games, especially "massively multiplayer online games" ("**MMOG**"). In MMOGs, players may be able to freely transfer in-game assets between themselves, and it is common for players to sell such in-game assets in exchange for money in real life.
- 6.4 The current criteria could potentially require the regulation of many online games.
- 6.5 We would recommend clarifying the scope of in-game assets as limited purpose virtual currency and/or considering excluding in-game assets from the scope of virtual currency.
- 6.6 We take the view that these in-game assets should be excluded from the definition of "virtual currency". Notwithstanding that these in-game assets can be transferred or exchanged for fiat currency, the transfer of such in-game assets usually takes place on a secondary market on a peer-to-peer basis, and such

transfers are typically not sanctioned by the game operator. In essence, these are, at best, non-convertible digital currencies.

6.7 Further, the risk that these in-game asset transfers can be used for money laundering or terrorism financing is low, given their non-convertibility and unsanctioned nature. Bearing in mind that the MAS's chief concern with virtual currencies is with the risk of money laundering or terrorism financing, we consider that it is not necessary to regulate these in-game assets.

6.8 Additionally, we would recommend clarifying whether the transfer of in-game assets between different games is permissible.

Question 7. Regulated financial services exclusion

MAS seeks comments on the scope of the regulated financial services exclusion and in particular, whether other types of regulated financial services should be included. Please be specific in your response on what these types of financial services are, and which legislation they are regulated under.

7.1 No comment.

Question 8. Excluded activities

MAS seeks comments on the other proposed excluded activities, in particular whether the description of the activities is sufficiently clear and whether more activities should be excluded. Please provide clear reasons to substantiate your comments on other activities that in your view should be excluded. Where referring to another jurisdiction's legislation, please provide us with the full name of the legislation and specific provision number.

8.1 We note that Part 1 of the Second Schedule of the proposed Bill provides excluded payment service no. 1 as:

Payment transactions between the payer and payee executed through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee, but does not include payment transactions executed on an online marketplace.

8.2 We believe that a distinction should not be made for online marketplaces as long as it falls within the description of such excluded activity (i.e. *Payment transactions between the payer and payee executed through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee*). Hence, we propose the deletion of the express exclusion of marketplace as follows (proposed amendment in strikethrough):

Payment transactions between the payer and payee executed through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee, ~~but does not include payment transactions executed on an online marketplace.~~

Question 9. Single licence structure

MAS seeks comments on the proposed single licence structure and whether this approach is beneficial for potential licensees. MAS also seeks views on the proposal to regulate Standard Payment Institutions primarily for ML/TF risks only.

- 9.1 We support the proposal to regulate Standard Payment Institutions primarily for ML/TF risks only. This is in line with the aim of promoting Singapore as a FinTech hub and also to promote innovation.

Question 10. Three licence classes

MAS seeks comments on the proposed licence classes and whether the threshold approach to distinguishing Standard Payment Institutions and Major Payment Institutions is appropriate. MAS also seeks views on whether the threshold amounts proposed are suitable for the purposes of licence class determination.

- 10.1 From the perspective of the proposed risk-based approach, we submit that there is not sufficient granularity in respect of the proposed threshold to determine the licence classes. That is to say that MAS is taking a broad brush approach in evaluating the transaction volume across all regulated activities to determine whether an entity should be licensed as a Standard Payment Institution or Major Payment Institution.
- 10.2 It is our position that MAS should reconsider applying different transaction volume thresholds for different regulated activities to determine the size of the payment service provider, and therefore the class of license the payment service provider should hold.
- 10.3 Referring to Section 7(5)(a) of the proposed Bill (Application for licence), in determining the average monthly transaction volume, we submit that it is not appropriate to aggregate the volume of one regulated activity with another regulated activity because each regulated activity has a different risk profile. For example, we believe that the ML/TF risk of "merchant acquisition services" is considerably lower than that of "virtual currency services".
- 10.4 To truly apply a risk-based approach in the proposed Bill, we propose that MAS must account for the different risk profiles of each regulated activity and apply a

different threshold. For lower risk activities such as "merchant acquisition services", the threshold to be a Major Payment Institutions should be higher. Conversely, for higher risk activities such as providing "virtual currency services", the threshold to be a Major Payment Institution should be lower.

- 10.5 For example, if an entity provides "merchant acquisition services" with an average monthly transaction volume of \$100,000 and "virtual currency services" with an average monthly transaction volume of \$2,900,000 – this would bring the entity above the \$3million threshold to be a Major Payment Institution, which require the entity impose certain safeguards for funds in transit. We submit that it would be overly burdensome for MAS to require the entity to apply measures to safeguard funds in transit for the merchant acquisition services despite the low risk and low volume activity for the "merchant acquisition services". Had the entity only provided merchant acquisition services, it would have been considered a Standard Payment Institutions only and it would not have been required to undertake funds-in-transit safeguarding measures.
- 10.6 Whilst we agree with MAS that the sum of funds that the payment service provider handles should determine its size, MAS must consider the sum of funds in light of the risk profile of the regulated activity.
- 10.7 With regard to Section 7(5)(b) of the proposed Bill (Application for licence), it would be impossible to carry on a business in e-money issuance without providing account issuance services as well. Both activities go hand in hand and cannot be offered without the other. E-money can only be issued to a user if the user has a payment account. E-money can only be stored if the user has a payment account. Therefore, we propose that Section 7(5)(b) be deleted.

Question 11. Designation criteria

MAS seeks comments on the proposed new designation criteria.

- 11.1 We note that that due to the potentially broad definition and scope of "payment system", many new payment methods (that are evolving and cutting edge) could inadvertently be caught. Hence, we would recommend that the MAS clarify what is the intention and/or scope in respect of "payment system [that] is widely used in Singapore".
- 11.2 In addition, as various 'over the top' or 'overlay' products develop (e.g. mobile or proxy payments), we would also recommend that the MAS clarify its position in respect of certain products that operate over existing rails like GIRO, as these 'over the top' or 'overlay' products may not in and of themselves be payment systems .

Question 12. Licence and business conduct requirements

MAS seeks comments on the proposed licence and business conduct requirements. In particular, MAS seeks comments on whether the proposed capital and security deposit requirements are suitable. MAS would also like to know if there are concerns regarding the directorship and place of business requirements, and whether these measures will encourage businesses to set up in Singapore.

- 12.1 No comments, save for emphasising that the MAS should clarify whether non-Singapore businesses operating outside of Singapore would be caught by the proposed Bill and when an activity is considered to be provided "in" Singapore – this issue is especially pertinent in online activities for businesses based outside of Singapore. Further, MAS to clarify scope of extraterritorial application of the proposed Bill and what would be the sufficient nexus to Singapore for a payment services provider to be caught within the scope of the proposed Bill (c.f. MAS Guidelines on the Application of section 339 of the Securities and Futures Act).
- 12.2 We would highlight that if the intention is to require foreign businesses that provide payment services to Singaporean residents to incorporate a permanent place of business in Singapore and obtain a license under the Bill in order to continue providing such services, such a requirement is too onerous on global business where Singapore payment transactions constitute only a small percentage of their global business.

Question 13. Specific risk migrating measures

MAS seeks comments on the approach of imposing specific risk mitigating measures on only licensees that carry out the relevant risk attendant activity.

- 13.1 We support the proposed approach of imposing specific risk-mitigating measures only on licensees that carry out the relevant regulated activity. We believe that this is more targeted (does not impose a blanket requirements on businesses) and could save businesses compliance costs.

Question 14. AML/CFT requirements

MAS seeks comments on the proposed AML/CFT requirements, and whether the thresholds to trigger AML/CFT requirements are appropriate. MAS also seeks views on how payment service providers will distinguish bona fide payment for goods and services from peer-to-peer transactions. Please also provide your views on whether payments made to individuals selling goods on e-commerce platforms should also be considered payments for goods and services, and thereby potentially be exempted from AML/CFT requirements.

- 14.1 Paragraph 5.13 of the Consultation Paper states that where a licensee confines its business model to conduct certain services assessed to be low risk, no AML/CFT requirements will apply to such a licensee.
- 14.2 If a licensee has a business model that is wider than just providing these low risk services, no AML/CFT requirements should apply to that licensee conducting the low risk services, even though the licensee performs other payment activities. For example, a licensee performs Activities B (with low risk features) and C – in this case, the licensee need not perform KYC checks on its customers in respect of Activity B (with low risk feature), though it is required to perform KYC checks on its customers in respect of Activity C.
- 14.3 Additionally, we submit that the some of the low risk features identified in respect of Activities A, B and C stated under Table 3 are either unnecessary or too wide.
- 14.4 In respect of Activity A (account issuance services), we believe that opening a payment account *per se* does not pose any ML/TF risks. ML/TF risk is triggered only when a customer attempts to make a payment or receives a payment. It is immaterial what the capacity of the e-wallet is because at the time of account opening, there is no e-money in the e-wallet. Hence, requiring businesses to conduct KYC checks on customers at the account opening stage is unnecessary and would hinder business because customers may drop off due to poor user experience. As such, we propose that the feature of e-wallet capacity of \$1,000 (feature (c) of Activity A) be removed.
- 14.5 In respect of Activity C (cross border money transfer services), it is stated under sub-section (a) that where the licensee confines its business model to services where the payment service user is only allowed to pay for goods/services and where the payment is funded from an identifiable source (i.e. service provided to buyer/sender), no AML/CFT requirements will apply. Invariably, businesses would want to provide services to seller/recipients as well.
- 14.6 Hence, we propose that licensees that provide payment services that allow payment service users to receive payments for goods/service funded by an identifiable source that can be withdrawn to an identifiable source (e.g. bank account) should also be considered low risk.
- 14.7 Further, if an entity has a business model whereby it provides services to buyers (with funding from identifiable source, and hence low risk) and sellers as described above, we would recommend that MAS clarify if AML/CFT requirements would be imposed on businesses in respect of sellers only or whether AML/CFT requirements would extend to both services (i.e. to buyers and sellers).

- 14.8 We believe that both services (i.e. to buyers and sellers) are low risk and no AML/CFT requirements should be imposed on either of these services. This is primarily because if money coming in from buyer is from an identifiable source (and hence low risk), it should follow that money going out to an identifiable source of the seller (e.g., a bank account) should be of low risk as well and hence should not be subject to AML/CFT requirements.
- 14.9 Alternatively, we propose that AML/CFT requirements should only apply to services provided to sellers/recipients.
- 14.10 In respect of the distinction between payments for goods or services vs peer to peer transactions, we can distinguish between the two by determining if there is consideration. In a payment for goods/service, the consideration is the provision of goods/service in exchange for cash. In a P2P transaction, there is no consideration.
- 14.11 We agree that payments made to individuals selling goods on e-commerce platforms should be considered payments for goods and services, and thereby be exempted from AML/CFT requirements. The risk in this respect is low as the relevant licensee entities supporting such payment are already subject to the AML/CFT requirements.

Question 15. User protection measures

MAS seeks comments on the user protection measures proposed.

- In particular, MAS seeks views on whether relevant licensees will be able to comply with the proposed float and funds in transit protection measures, the likely cost of such compliance and what float and funds in transit protection measures your business currently employs. Please substantiate your response with data if possible.
- MAS also seeks comments on what other options MAS should include for float and funds in transit protection measures, and what type of secure low risk assets would be suitable for safeguarding of float and funds in transit.
- With regard to the safeguarding of e-money float that is collected from Singapore residents (with residency status to be decided between the e-money issuer and the e-money user), MAS seeks views on whether the following alternative scope of e-money float is more appropriate.

The e-money float comprises:

- (a) e-money that is issued in Singapore to persons ordinarily resident in Singapore;**
or

(b)e-money that is primarily for use within Singapore.

- 15.1 Generally, we note that the user (float) protection measures are sensible and consistent with international market practice. However, the use of insurance or guarantees is rarely used in practice as there has been very limited interest on the supply side by insurers and banks.
- 15.2 We have no comment in respect of the first and second queries.
- 15.3 In respect of the third query, we propose that it would be more appropriate to have the e-money float comprise of e-money that is primarily for use within Singapore.

Question 16. Personal e-wallet protection

MAS seeks comments on the proposed protection measures for personal e-wallets, and whether the wallet size restriction of \$5,000 and transaction flow cap of \$30,000 is suitable. If these restrictions adversely affect your business please let us know what amounts would be more suitable. Please substantiate your response with data if possible.

- 16.1 We submit that the proposed amounts (i.e. wallet size restriction of \$5,000 and transaction flow cap of \$30,000) are overly restrictive. We observe that e-money users / consumers nowadays do purchase high value goods and services (of more than \$30,000) using e-money (e.g. travel accommodations, flights, luxury items, etc). Further, consumers do make such high value purchases frequently. Hence, limiting the amount of wallet size restriction to \$5,000 and transaction flow cap to \$30,000 is not practical.
- 16.2 We propose that there should not be a limit in respect of the wallet size and the transaction flow cap. In the alternative, users should have the discretion to adjust the limits.

Question 17. Disclosure requirement for Standard Payment Institutions

MAS seeks comments on the proposed disclosure requirement for Standard Payment Institutions, in particular, what information should be contained in the disclosure and how Standard Payment Institutions should be required to disclose such information to their customers. MAS also seeks views on whether there is still a need to retain the requirement to display a licence as set out in section 14 of the MCRBA.

- 17.1 We would recommend that the Standard Payment Institutions be made to expressly disclose that they are Standard Payment Institutions regulated by the MAS and that the float it holds and funds it processes are not protected under the

MAS regulations. The disclosure should also expressly contain certain risks associated with such exemptions of user protection measures (e.g. that the e-money in the end users account could potentially be lost and not claimable) and that by utilising the Standard Payment Institutions services and/or platforms, the end users are accepting such risks.

- 17.2 We are also of the view that there is no need to retain the requirement to display a licence as set out in section 14 of the MCRBA. Many businesses now operate online (i.e. they do not have physical brick and mortar branches/stores that customers can frequent). We submit that requiring such online businesses to physically display their licenses is impractical and archaic.

Question 18. Interoperability powers

MAS seeks comments on the proposed interoperability powers. MAS also seeks views on what other means we may use to achieve interoperability of payment solutions in Singapore.

- 18.1 Some solutions to support inter-operability would be by way of straight-through processing, e.g. the use of XML 20022 format and IBANs or other unique identifiers, charging principles. Though, we note that these would be more relevant and directed at the inter-bank space.

Question 19. Technology risk management measures

MAS seeks comments on the proposed approach to technology risk management regulation.

- 19.1 The Consultation Paper states at paragraph 5.46 that "Technology risk management requirements will be imposed on other licensees if they become significant players in Singapore". This contradicts with the position taken at paragraph 5.43 of the Consultation Paper that "MAS will extend the existing guidance on technology risk management to apply to licensees that rely on technology to supply payment services. Kindly clarify.

Question 20. General powers

MAS seeks comments on the general powers proposed in the Bill and the proposed approach to the exercise of emergency powers in the Bill. MAS seeks views on whether the emergency powers should be extended to all regulated entities under the Bill or should be limited to Major Payment Institutions and DPS operators and settlement institutions.

- 20.1 We support the position that emergency powers should be extended to all regulated entities for consistency with other MAS-administered legislation.

Question 21. Exemptions for certain financial institutions

MAS seeks comments on whether the proposed exemptions for certain financial institutions are appropriate and whether this helps to level the playing field for payment service providers in general. MAS also seeks views on whether any other types of entities should be similarly exempted.

- 21.1 We agree that certain financial institutions should not require separate licensing for these activities, however, it should be made clear that the relevant risk mitigating measures (e.g. user protection) would nonetheless still apply to these exempted entities.

Question 22. Transitional arrangements

MAS seeks comments on whether the proposed transitional arrangements help current regulated entities and Newly Regulated Entities to transition smoothly to the new Bill. In particular, please let us know if we have buffered sufficient lead time for all affected entities to build sufficient compliance capabilities.

- 22.1 We would recommend increasing the grace period to eighteen months (18) months, from the current proposed six (6) months grace period. Six (6) months grace period is too short for businesses, especially global businesses to comply with the proposed Bill. To comply with the proposed Bill, global businesses will require sufficient lead time for the following (among others):
- (a) for product development;
 - (b) for migration of contracting entity and back end systems; and
 - (c) to integrate a more robust AML program, adopt user protection and technology risk management measures to address the major regulatory risks identified in the Bill.
- 22.2 Our proposal of extending the grace period to eighteen (18) months considering the need to global businesses to restructuring and reorganize. The provision of more than six (6) months grace period is in line with the practice of other jurisdictions (e.g. in the recent implementation of the Payment Systems and Stored Value Facilities Ordinance 2015, the Hong Kong Monetary Authority (HKMA) provided a one (1) year transitional period for payment service providers).

Question 23. Class exemption

MAS seeks comments on the proposed class exemption and whether there are reasons not to grant such a class exemption on the grounds described.

23.1 We are in support of the proposed class exemption for Standard Payment Institutions. However, we believe that the class exemption should not be limited to Standard Payment Institutions but be extended to certain Major Payment Institutions that can demonstrate that they do not pose ML/TF risks.

About OC Queen Street LLC and Osborne Clarke

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