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Payment Services Act: Singapore's fintech revolution



The Payment Services Act 2019 (No. 2 of 2019) ("**PS Act**") and the accompanying Payment Services Regulations ("**PSR**") came into force on 28 January 2020, bringing significant regulatory change to Singapore's payment services ecosystem. The new PS Act provides a forward-looking and flexible framework for the payments industry. An act that aims to mitigate risk through consumer safeguards while facilitating innovation and growth for service providers, it is the latest development in the government's wider vision to transform Singapore into a smart nation.

Although the PS Act has only recently come into force, companies have already begun applying to be licensed under the new regime. For example, Binance Holdings, an operator of one of the world's largest cryptocurrency exchanges, announced on 17 February that it had applied for an operating licence under the PS Act.

This briefing note highlights some key features of the PS Act and PSR, how current regulated businesses will be affected, and how other existing businesses offering payments services which were previously unregulated may be affected.

Key features of the Payment Services Act and Payment Services Regulations

1. Payment Services Act

The PS Act comprises two parallel regulatory frameworks:

- a licensing regime that focuses on payment services for consumers and merchants; and
- a designation regime that focuses on payment systems whose disruption could pose financial stability risks or impact confidence in the financial system.

With the commencement of the PS Act, the Money-changing and Remittance Business Act ("**MCRBA**") and the Payment Systems (Oversight) Act ("**PS(O)A**") have been repealed.

Licensing regime

The following activities will be regulated under the licensing regime of the PS Act:

Activity type	Description	Status
Account issuance services E.g. GrabPay, Alipay	Issuing, maintaining or operating a payment account in Singapore, such as an e-wallet or a non-bank credit card	Newly regulated
Domestic money transfer services E.g. Stripe, Paypal	The provision of local funds transfer services, including payment gateway services and payment kiosks services in Singapore	Newly regulated
Cross-border money transfer services E.g. Paypal, Western Union	Services facilitating the inward or outward transmission of money in Singapore	Previously regulated under the MCRBA, and will generally be regulated as "cross-border money transfer services" under the PS Act
Merchant acquisition services E.g. VISA, Mastercard	Contracting with a merchant to accept and process payment transactions that result in the transfer of money to the merchant	Newly regulated
E-money issuance E.g. EZ-Link, eNETS	The provision of an electronically-stored monetary value denominated in any currency for future payments and transfers to other individuals	Previously regulated under the PS(O)A as "stored value facilities", and will generally be regulated as "e-money issuance" activities under the PS Act
Digital payment token services E.g. UPbit, Coinbase	Buying or selling of digital payment tokens (also known as virtual currency) or any other service related to digital payment tokens as provided by the Monetary Authority of Singapore (" MAS ")	Newly regulated activity
Money-changing services	Buying or selling of foreign currency notes in Singapore	Previously regulated under the MCRBA as "money-changing businesses", and will generally be regulated as "money-changing services" under the PS Act

Under the PS Act, payment service providers will only need one licence to conduct specified payment services. Three types of licences are available under the PS Act:

Licence type	Description
Money-Changing Licence	Licensees may only provide money-changing services.
Standard Payment Institution Licence	Licensees may conduct any combination of the seven regulated payment activities, but must not exceed the following thresholds (" Specified Thresholds "): <ol style="list-style-type: none"> S\$3 million monthly transactions for any payment service (other than e-money account issuance and money-changing services); S\$6 million monthly transactions for two or more payment services (other than e-money account issuance and money-changing services); and S\$5 million of daily outstanding e-money.
Major Payment Institution Licence	Licensees may carry out any combination of the seven regulated payment activities they are licensed for without being subject to the Specified Thresholds above. Licensees will however be subject to higher capital requirements on an initial and on-going basis and are required to maintain a security deposit of S\$100,000. They are also required to take measures to safeguard funds (e.g. by way of guarantee or through a trust account).

Designation regime

The designation regime empowers the MAS with the ability to designate payment systems for financial stability and efficiency reasons. The MAS is therefore able to regulate a payment system even if it does not fall within the scope of regulation under the PS Act, should it be assessed to pose a risk to financial stability.

2. Payment Services Regulations

The PSR is the main set of regulations applicable to entities regulated under the PS Act.

The PSR supplements the provisions of the PS Act, and sets out further details relating to the licensing regime and ongoing requirements licensees are required to meet. It covers various aspects such as:

- the licence application procedure, provisions relating to the lodgement of changes to a licence, as well as circumstances under which a licence will lapse;
- applicable financial requirements, including base capital requirements and security requirements;
- safeguarding requirements in relation to monies received from customers;
- approvals relating to officers of licensees; and
- other MAS approval and notification requirements, such as on change of control of the licensed entity etc.

The Payment Services (Composition of Offences) Regulations 2019 also sets out offences that are compoundable under the PS Act.

3. Notices and guidelines for payment service providers

The MAS has also issued several notices and guidelines pursuant to the PS Act, which set out additional requirements applicable to regulated entities. These measures aim to safeguard consumers from key risks common across payment services.

Below are some key notices and guidelines service providers should take note of.

1. **Anti-money laundering and countering the financing of terrorism requirements.** A licensee must comply with the AML/CFT requirements as set out in the Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism [PSN01 and/or PSN02] and the Notice on Reporting of Suspicious Activities & Incidents of Fraud [PSN03].
2. **Cyber hygiene.** A licensee must comply with the cyber hygiene requirements as set out in the Notice on Cyber Hygiene [PSN06] and put in place appropriate safeguards to protect customer information, such as securing every administrative account to prevent unauthorised access, and implementing network perimeter defences to restrict unauthorised traffic.
3. **User protection for e-payment accounts.** A licensee that issues or operates a protected account should refer to the Guidelines for E-Payments User Protection, which, amongst others, sets out duties responsible financial institutions should take on.

These duties include: to inform an account holder of user protection duties, to provide outgoing transaction notifications, and to comply with an account holder's transaction notification preferences. The guidelines also set out liability for losses arising from unauthorised transactions, and specific duties in relation to erroneous transactions.

Note that the applicable compliance requirements may differ depending on the activities being undertaken as they are tailored to the specific risks of each regulated activity. For example, user protection measures differ for account issuance providers and e-money issuance providers. Amongst other requirements, the former should refer to the guidelines in the Guidelines for E-Payments User Protection while the latter has to safeguard their e-money float by obtaining undertakings or guarantees from safeguarding institutions.

A list of MAS-issued notices and guidelines which are relevant to the PS Act is set out below.

Notices

No.	Name of notice
PSN01	Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Payment Services
PSN01A	Prevention of Money Laundering and Countering the Financing of Terrorism – Persons Providing Account Issuances Services who are Exempted under the Payment Services (Exemption for Specified Period) Regulations 2019
PSN02	Prevention of Money Laundering and Countering the Financing of Terrorism – Digital Payment Token Service
PSN03	Notice on Reporting of Suspicious Activities and Incident of Fraud
PSN04	Notice on Submission of Regulatory Returns
PSN04A	Notice on Submission of Statement of Transactions and Profit/Loss
PSN05	Technology Risk Management
PSN06	Cyber Hygiene
PSN07	Notice on Conduct
PSN08	Notice on Disclosures and Communications
PSN09	Notice on Specified Matters and Forms
PSN10	Prevention of Money Laundering and Countering the Financing of Terrorism – Exempt Payment Service Providers

Guidelines

No.	Name of guideline
PS-G01	Guidelines on Licensing for Payment Services Providers
FSG-G01	Guidelines on Fit and Proper Criteria
-	Guidelines on Outsourcing
-	Guidelines for E-Payments User Protection
-	Guidelines on Risk Management Practices – Technology Risk

Notices are legally binding on all entities they apply to. While guidelines do not have force of law, businesses would be well-advised to follow the spirit of the guidelines, as they set out general principles and best practice standards expected by the MAS.

How will this affect you?

If your business offers one or more of the regulated payment services under the PS Act, unless otherwise exempted, you will be required to apply for a payment service provider licence. Failure to apply for a licence under the PS Act would amount to an offence under the PSR, under which a fine or imprisonment term may be imposed.

Transitional arrangements – Licence exemption for specified period

Persons who have carried on certain regulated payment services prior to the commencement of the PS Act may apply to be exempted from holding a licence under the PS Act for a specified period.

This exemption is available to persons who, prior to the commencement of the PS Act, provided an account issuance service, money transfer service, merchant acquisition service, e-money issuance service and/or digital payment token service.

Note that holders of money-changer's and remittance licences under the MCRBA and approved holders of stored value facilities under the PSOA need not apply for a new licence and will be deemed to be licensed under the PS Act, subject to certain conditions being met.

To avail itself of the exemption, a business must complete and submit the Notification Form for the Purpose of Exemption for Holding a Licence under the Payment Services Act for the Specified Period to the MAS by **27 February 2020**.

Once exempted, a business offering regulated payment services will be granted a grace period during which it must apply for the requisite licence.

Regulated activities	Grace period
Account issuance services, domestic money transfer services, cross-border money transfer services, merchant acquisition services, e-money issuance services	12 months from 28 January 2020
Digital token services	6 months from 28 January 2020

Applying for a licence

Applicants should ensure that the licence you choose accommodates your business needs over a reasonable timeframe.

Licence applications are to be submitted to the MAS online using Form 1 – Application for a Payment Service Provider Licence.

Amongst other criteria, an applicant for a payment service provider licence will need to:

- comply with certain governance and ownership requirements;
- satisfy MAS that its sole proprietor, partners, or directors and CEO, shareholders and employees, as well as the applicant itself are fit and proper;
- ensure that its sole proprietor, partners or executive directors and CEO have sufficient experience in operating a business in the payment services industry or related areas in the financial service industry;
- have a permanent place of business or registered office;
- satisfy MAS that it is able to meet applicable base capital requirements (S\$100,000 for standard payment institutions and S\$200,000 for major payment institutions);
- have in place compliance arrangements that are commensurate with the nature, scale and complexity of its business;
- have plans in place for adequate independent audit arrangements to regularly assess the adequacy and effectiveness of its procedures, controls and its compliance with regulatory requirements; and
- where required by MAS, procure a Letter of Responsibility and/or Letter of Undertaking from the applicant's majority shareholders, parent company and/or related company.

MAS will consider each application on its own merits and may take into account other factors on a case-by-case basis.

How we can help

We are an approved Legal Advisor under the Payment Regulatory Evaluation Program (PREP), and are equipped to provide your business with legal advice on Singapore licensing or other regulatory issues relating to the PS Act. We can also assist in ensuring your company is fully compliant with its obligations under the PS Act and the relevant subsidiary legislation, notices and guidelines during this transition period.

We are well-versed with guiding clients through legal implications brought about by technological change. We routinely advise clients on payments and emerging financial services in a practical and commercial way, providing bespoke technical advice on:

- general regulatory compliance matters;
- establishing and implementing compliance programmes;
- licensing requirements;
- developing and launching services; and
- government enforcement actions.

Our team is multidisciplinary, with ample experience in technology transactions and transformation projects, regulatory, M&A, strategic sourcing, data privacy, finance, fintech, capital markets, dispute resolution, and intellectual property. With our expertise, we are able to put together highly effective teams to successfully navigate complex legal issues.

The commencement of the PS Act is the first of many new developments in the payment services space. We can expect additional legislation and policies that fine-tune the implementation of the PS Act's modular, risk-based approach.

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