

CONSULTATION PAPER

P017- 2019

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Consultation on the Payment Services Act 2019: Proposed Amendments to the Act

MAS

Monetary Authority of Singapore

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1 Preface

Background on Proposed Amendments relating to Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”)

1.1 The Payment Services Act 2019 (“PS Act”) will commence on 28 January 2020¹, and consequently, AML/CFT measures will apply to all three classes of payment service providers (holders of a money-changing licence, standard payment institutions, and major payment institutions). The respective AML/CFT Notices will apply to payment service providers providing the following payment services: (a) account issuance service (“Activity A”), (b) domestic money transfer service (“Activity B”), (c) cross-border money transfer service (“Activity C”), (d) money-changing service (“Activity G”), and (e) digital payment token (“DPT”) service (“Activity F”).

1.2 MAS had issued a consultation paper on 6 June 2019 on the new Notices to be issued under the MAS Act that would apply to payment service providers for the prevention of money laundering and countering the financing of terrorism (“PS Notices”). The two sets of notices are:

- a) Notice to Payment Service Providers (Specified Payment Services) on Prevention of Money Laundering and Countering the Financing of Terrorism (“PS Notice 01”)
- b) Notice to Payment Service Providers (Digital Payment Token Service) on Prevention of Money Laundering and Countering the Financing of Terrorism (“PS Notice 02”)

The consultation paper and response to the feedback received on the public consultation can be found here ([https://mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2019PSAMLCFTNoticesConsultation/Response-to-feedback-received-on-the-proposed-Payment-Services-AMLCFT-Notices .pdf](https://mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2019PSAMLCFTNoticesConsultation/Response-to-feedback-received-on-the-proposed-Payment-Services-AMLCFT-Notices.pdf)). The final PS Notices, issued on 5 December 2019, can also be found on the MAS website ([PS Notice 01](#) and [PS Notice 02](#)).

¹ Prior to which the Payment Services Bill (“PSB”) had been introduced and passed in Parliament on 19 November 2018 and 14 January 2019 respectively.

1.3 In the June 2019 consultation paper, MAS reiterated that all transactions under Activity F are considered to carry higher inherent money laundering and terrorism financing (“ML/TF”) risks due to the anonymity, speed and cross-border nature of the transactions. This is consistent with the position taken by the Financial Action Task Force (“FATF”), the international AML/CFT Standards setter. The FATF has revised the FATF Standards to require countries to regulate what it has termed as virtual asset service providers (“VASPs”)² for AML/CFT in light of the inherent ML/TF risks posed. As previously communicated in the June 2019 consultation paper, MAS intends to amend the PS Act to fully align with the most recent enhancements to the FATF Standards.

1.4 In our response to feedback received on the consultation on the draft PSB, which was issued on 19 November 2018, MAS also stated its intention to review and potentially expand the regulatory scope of Activity C. There are business models that facilitate the “brokering” of remittance transactions between entities in two different countries (e.g. the entity C in Singapore actively facilitates the movement or transfer of moneys between party A and party B, although the moneys are not accepted or received by entity C in Singapore). MAS intends to include entities that conduct such businesses within the scope of the PS Act and regulate them to address the ML/TF risks associated with such business models.

1.5 Aside from the AML/CFT related amendments, MAS also proposes to make other amendments in respect of DPT services and certain technical amendments in the PS Act.

1.6 **Annex A** sets out a list of questions asked in this paper. **Annex B** sets out the proposed amendments to the PS Act.

1.7 MAS invites comments from:

- c) Potential licensees and regulated entities under the PS Act – operators, settlement institutions and participants of payment systems, account issuers, domestic money transfer service providers, cross-border money transfer service providers, merchant acquirers, e-money issuers and DPT service providers;
- d) Financial institutions – Banks, merchant banks, finance companies and non-bank credit card issuers; and

² The FATF adopted the enhanced Recommendation 15 of its Standards in June 2019 to clarify how the FATF Standards apply to VASPs.

- e) Other interested parties – Members of the public, consumer associations, government agencies, audit firms, law firms, trade associations, non-profit organisations, and other parties who may be impacted by or interested in the proposed review.

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.

1.8 Please submit written comments by 28 January 2020 to –

Anti-Money Laundering Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 62203973
Email: AMLCFT_consult@mas.gov.sg

1.9 Electronic submission is encouraged. We would appreciate that you use this suggested format [[link to consultation feedback submission document](#)] for your submission to ease our collation efforts.

2 Amendments relating to AML/CFT

2.1 MAS intends to amend the PS Act to align with the enhanced FATF Standards applicable to DPT service providers. MAS also intends to introduce requirements to mitigate the ML/TF risks arising from certain business models where entities broker remittance transactions between entities in two different countries.

2.2 The proposed amendments to the PS Act relate to the expansion of the scope of the DPT service providers' activities to include the following:

- a) Transfer of DPTs;
- b) Provision of custodian wallets for or on behalf of customers;
- c) Brokering of DPT transactions (without possession of money or DPTs by the DPT service provider); and
- d) Brokering of cross-border money transfer services (without moneys accepted or received in Singapore by the payment service provider).

2.3 The regulation of other DPT activities covered in the enhanced FATF Standards are already within the scope of the prevailing PS Act, i.e. exchange between DPTs and fiat currencies, exchange between one or more forms of DPTs, and participation in and provision of financial services related to an issuer's offer and/or sale of a DPT. Entities performing such DPT-related activities are regulated under the PS Act as a DPT service provider, either in performing a service of dealing in DPTs, or a service of facilitating the exchange of DPTs.

Transfer of DPTs

2.4 Similar to entities that facilitate the exchange of DPTs, entities that, as a business, facilitate the transfer³ of DPTs could be used by bad actors to move or layer the proceeds of illicit assets by transferring value in the form of DPTs from one person to another. Hence, under the FATF Standards, these have been included within the definition and scope of VASPs and consequently, should be subject to AML/CFT requirements.

³ In FATF's context of virtual assets, transfer means to conduct a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another. MAS intends to adopt the same understanding of a transfer in the PS Act, in relation to DPTs.

2.5 In this regard, MAS agrees with the policy position of the FATF Standards. MAS will amend the PS Act to expand the definition of “digital payment token service”, to include – (a) any service of accepting digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, as principal or agent, for the purposes of transferring, or arranging for the transfer of, the digital payment tokens to another digital payment token address or account, whether in Singapore or outside Singapore; and (b) any service of arranging for the transmission of digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, to another digital payment token address or account, whether in Singapore or outside Singapore. Entities performing such activities will be required to be licensed under the PS Act, and be subject to the AML/CFT requirements under PS Notice 02.

Question 1. MAS seeks comments on the proposed amendments, which are in line with the FATF standards, to require entities that, as a business, provide the following services, to be licensed and subject to AML/CFT requirements: (a) any service of accepting digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, as principal or agent, for the purposes of transferring, or arranging for the transfer of, the digital payment tokens to another digital payment token address or account, whether in Singapore or outside Singapore; and (b) any service of arranging for the transmission of digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, to another digital payment token address or account, whether in Singapore or outside Singapore.

Provision of custodial wallets for or on behalf of customers

2.6 While DPT exchanges that offer custodial wallet services are already subject to AML/CFT requirements under the PS Act, entities that offer standalone custodial services for DPTs are similarly exposed to potential ML/TF risks. They could be used to safekeep illicit assets or assets for illicit actors, and in some cases, act as an additional layer or front. Under the FATF Standards, entities that as a business, conduct safekeeping or administration of virtual assets or instruments, enabling control over virtual assets (“custodial wallets”), are included within the definition and scope of VASPs and consequently, should be subject to AML/CFT requirements.

2.7 In line with the FATF Standards, MAS will amend the PS Act to expand the definition of “digital payment token service”, to include the service of safeguarding or administration of (i) a digital payment token where the service provider has control over the digital payment token; or (ii) a digital payment token instrument where the service provider has control over the digital payment token associated with the digital payment

token instrument. Entities carrying on a business of providing such services will be required to be licensed under the PS Act, and be subject to AML/CFT requirements under the PS Notice 02.

Question 2. MAS seeks comments on the proposed amendment which are in line with the FATF standards, to require entities that, as a business, provide the following services, to be licensed and subject to AML/CFT requirements: any service of safeguarding or administration of (i) a digital payment token where the service provider has control over the digital payment token; or (ii) a digital payment token instrument where the service provider has control over the digital payment token associated with the digital payment token instrument.

VASPs to be regulated where they “actively facilitate” the activity

2.8 In June 2019, the FATF clarified in its Guidance for VASPs that VASPs should be regulated where they “actively facilitate” the activity. It does not require the VASP to have possession of the virtual asset.

2.9 The current PS Act definition of “facilitating the exchange of digital payment token” requires the person that establishes or operates the digital payment token exchange to come into possession of money or DPT. This is not as broad as the scope envisaged by the FATF.

2.10 Given FATF’s clarification, MAS will amend the PS Act to expand the definition of “digital payment token service” and include the service of inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any digital payment tokens in exchange for any money or any other digital payment token (whether of the same or a different type). This would include a situation where the entity providing such a service does not come into possession of money or DPTs. Entities that carry on a business of providing such services will be required to be licensed under the PS Act, and be subject to AML/CFT requirements under PS Notice 02.

Question 3. MAS seeks comments on the proposed amendment, which are in line with the FATF standards, to require entities that, as a business, provide any service of inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any digital payment tokens in exchange for any money or any other digital payment token (whether of the same or a different type), to be licensed, and subject to AML/CFT requirements.

Brokering of cross-border money transfer

2.11 Under the current PS Act, cross-border money transfer service providers who do not accept or receive moneys in Singapore are excluded from the scope of regulation. However, as conveyed in MAS' response to the November 2017 consultation on the Payment Services Bill, there are business models that provide the service of "brokering" of cross-border money transfer transactions between entities in two different countries although moneys are not necessarily accepted or received in the country where the service provider operates. Such business models where they operate in Singapore, present ML/TF risks similar to entities that are already within the scope of the PS Act, and should therefore be mitigated.

2.12 To do so, MAS intends to expand the definition of "cross-border money transfer service" in the PS Act, to include the situation where the payment service provider does not accept or receive moneys in Singapore, but nonetheless provides any service of arranging for the transmission of money accepted in one country or territory, to another country or territory (other than the service of arranging for the receipt of any money from outside Singapore by any person in Singapore, whether as principal or agent). Entities that carry on a business of providing such services will be required to be licensed under the PS Act, and be subject to AML/CFT requirements under PS Notice 01.

Question 4. MAS seeks comments on the proposed amendment to include within the definition of "cross-border money transfer service", the service of arranging for the transmission of money accepted in one country or territory, to another country or territory (other than the service of arranging for the receipt of any money from outside Singapore by any person in Singapore, whether as principal or agent).

Entities incorporated in Singapore providing DPT services outside of Singapore

2.13 Under the enhanced FATF standards, VASPs must be licensed or registered in the jurisdiction(s) where they are created.⁴ As the business operations of many VASPs tend to be internet-based, and thus cross-jurisdictional in nature, this requirement is targeted at preventing regulatory circumvention (e.g. a VASP not being subjected to any AML/CFT

⁴ In FATF's context, reference to creating a legal person include incorporation of companies or any other mechanism that is used.

regulation and supervision). It provides a clear minimum criteria to determine which jurisdictions should have regulatory hold over these VASP entities.

2.14 Legislation today already captures an entity that provides services in Singapore, regardless of whether the entity is created in Singapore. However, in line with the FATF standards, MAS intends to introduce, as a new class of FIs, entities that are created in Singapore, which provide VASP services outside of Singapore. These provisions will be set out in a separate Act and consulted upon at a later stage. For such VASPs that may decide to use Singapore as a base of incorporation, MAS will apply licensing and admission criteria, to ensure that such entities have a meaningful presence in Singapore and for MAS to have adequate supervisory oversight over them, even as they provide VASP services outside of Singapore.

3 Other Amendments to PS Act

3.1 MAS intends to introduce the following Act amendments in addition to the FATF AML/CFT related amendments:

- a) A new provision to enable MAS to impose user protection measures on certain DPT service providers
- b) A new provision to enable MAS to impose restrictions on certain DPT service providers;
- c) Amendments to section 23 of the PS Act;
- d) Amendments to the scope of domestic money transfer service; and
- e) Amendments to section 94 of the PS Act.

3.2 The range of DPT services and way in which such services are provided have changed since the PS Act was introduced in Parliament in November 2018. We have proposed in Part 2 of this paper to expand the scope of DPT services beyond dealing in DPT and facilitating the exchange of DPT to adequately mitigate ML/TF risks in the following types of DPT services:

- a) Transfer of DPTs;
- b) Provision of custodian wallets for or on behalf of customers;
- c) Brokering of DPT transactions (without possession of money or DPTs by the DPT service provider); and
- d) Brokering of cross-border money transfer services (without moneys accepted or received in Singapore by the payment service provider).

3.3 We propose to introduce two new powers in the PS Act in respect of DPT services. The first is the power to impose user protection measures on certain DPT service providers. The second is the power to impose additional measures on prescribed DPT service providers.

3.4 The intent currently is still to regulate DPT service providers primarily for ML/TF risks and not for customer protection, as the use of DPTs in Singapore is still low compared to other jurisdictions. However, we recognise that the development of new DPTs, including stablecoins, has been on the rise and potential user adoption of some of these

new DPTs could gain traction quickly.⁵ As such, it is important that MAS is equipped to mitigate new risks as and when they arise and enable MAS to impose appropriate measures in a timely manner.

Power to impose user protection measures on certain DPT service providers

3.5 The power to impose user protection measures will be applicable to any person or class of persons licensed to provide digital payment token services.

3.6 Under section 23 of the current PS Act, major payment institutions are obliged to safeguard customer money. The proposed new power will enable MAS to impose user protection measures on certain DPT service providers that are suitable to ensure the safekeeping of customer assets held by the DPT service provider, when necessary. This may include (but are not confined to) one or more of the following measures:

- a) Anti-comingling measures to require DPT service providers to segregate customer assets from own assets;
- b) Ring-fencing customer assets to protect them from claims from other creditors in the event of the licensee's insolvency;
- c) Maintenance of customer assets and licensee's assets in a prescribed manner, for example maintaining a prescribed percentage of customer assets in a cold wallet, and maintaining a prescribed percentage of the licensee's own assets in a cold wallet.

3.7 For a start, MAS may impose such user protection measures on major payment institutions as well as standard payment institutions that process transactions that only involve DPT, where the value of the transactions that only involve DPT, and other payment transactions processed by the standard payment institutions, is similar to the thresholds set out in section 6(5) of the PS Act. However, we will consult the public and the industry, should there be a need to issue such regulations.

3.8 To clarify, the introduction of the new power is in addition to and does not reduce the scope of section 23. For example, MAS retains the ability to impose safeguarding requirements on major payment institutions in respect of DPT services.

⁵ Please see the consultation paper titled Consultation on the Payment Services Act 2019: Scope of E-money and Digital Payment Tokens.

Question 5. Power to impose user protection measures on certain DPT service providers. MAS seeks views on the proposed power to impose user protection measures on certain DPT service providers.

Power to apply additional measures to prescribed DPT service providers

3.9 New DPTs which are being developed have characteristics and regulatory implications that are different from first generation DPTs such as bitcoins. Accordingly, MAS' regulatory approach has to be agile and flexible so that we can respond to market developments quickly and ensure that our regulations are kept up-to-date and in line with international practices.

3.10 MAS therefore proposes to introduce a power in the PS Act, which will allow MAS to impose additional measures on any DPT service provider or class of DPT service providers (which may include all DPT service providers) by way of subsidiary legislation. This will enable MAS to adapt our regulations in a timely manner to address the characteristics, risks and stage of development of specific DPT services, as we promote innovation in the DPT space.

3.11 Specifically, the proposed provision will empower MAS to impose measures on certain DPT service providers, where this is necessary or expedient to ensure financial stability, to safeguard efficacy of monetary policy, for the protection of users or consumers, or in the interest of the public or a section of the public. These measures may include, but are not confined to, the existing measures applicable to account issuance service providers, for example, the stock and flow caps. Before imposing any measure, MAS will consider the benefits and costs carefully with a view to striking a good balance between addressing specific risks arising from the DPT service and the impact to relevant industry players. We will consult the public and the industry, should there be a need to issue such regulations.

Question 6. Power to impose measures on prescribed DPT service providers. MAS seeks views on the proposed provision to empower MAS to impose additional measures on any DPT service provider or class of DPT service providers by way of subsidiary legislation, where this is necessary or expedient to ensure financial stability, safeguard efficacy of monetary policy, protect users or consumers, or is in the interest of the public or a section of the public.

Other amendments

3.12 “Domestic money transfer service” is currently defined to mean “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:

- a) A payment transaction executed from, by way of or through a payment account;
- b) A direct debit (including a one-off direct debit) through a payment account;
- c) A credit transfer (including a standing order) through a payment account;
- d) Accepting any money from any person for transfer to the payment account of a different person.”

3.13 We intend to replace the phrase “in any case where neither the payer nor the payee is a financial institution” to “other than in the case where both the payer and the payee are financial institutions”. This is to widen the scope of domestic money transfer service to also include situations where either the payer or the payee is a financial institution. The wider scope of domestic money transfer service means that customer money is protected under section 23 for more types of payment transactions.

Question 7. Amendments to the scope of domestic money transfer service.

MAS seeks views on the proposed expansion of domestic money transfer service.

3.14 Under section 94 of the PS Act, an individual who provides MAS with any information under or for the purposes of any provision of the PS Act must use reasonable care to ensure that the information is not false or misleading in any material particular. Failing to do so is an offence. We intend to amend section 94 to apply to all persons, whether or not the person is an individual. MAS will also be making technical amendments to section 23 of the PS Act.

Question 8. Amendments to the general duty to use reasonable care not to provide false information to MAS, and amendments to the safeguarding

provision. MAS seeks views on the proposed amendments to section 94. MAS also seeks views on the proposed amendments to section 23.

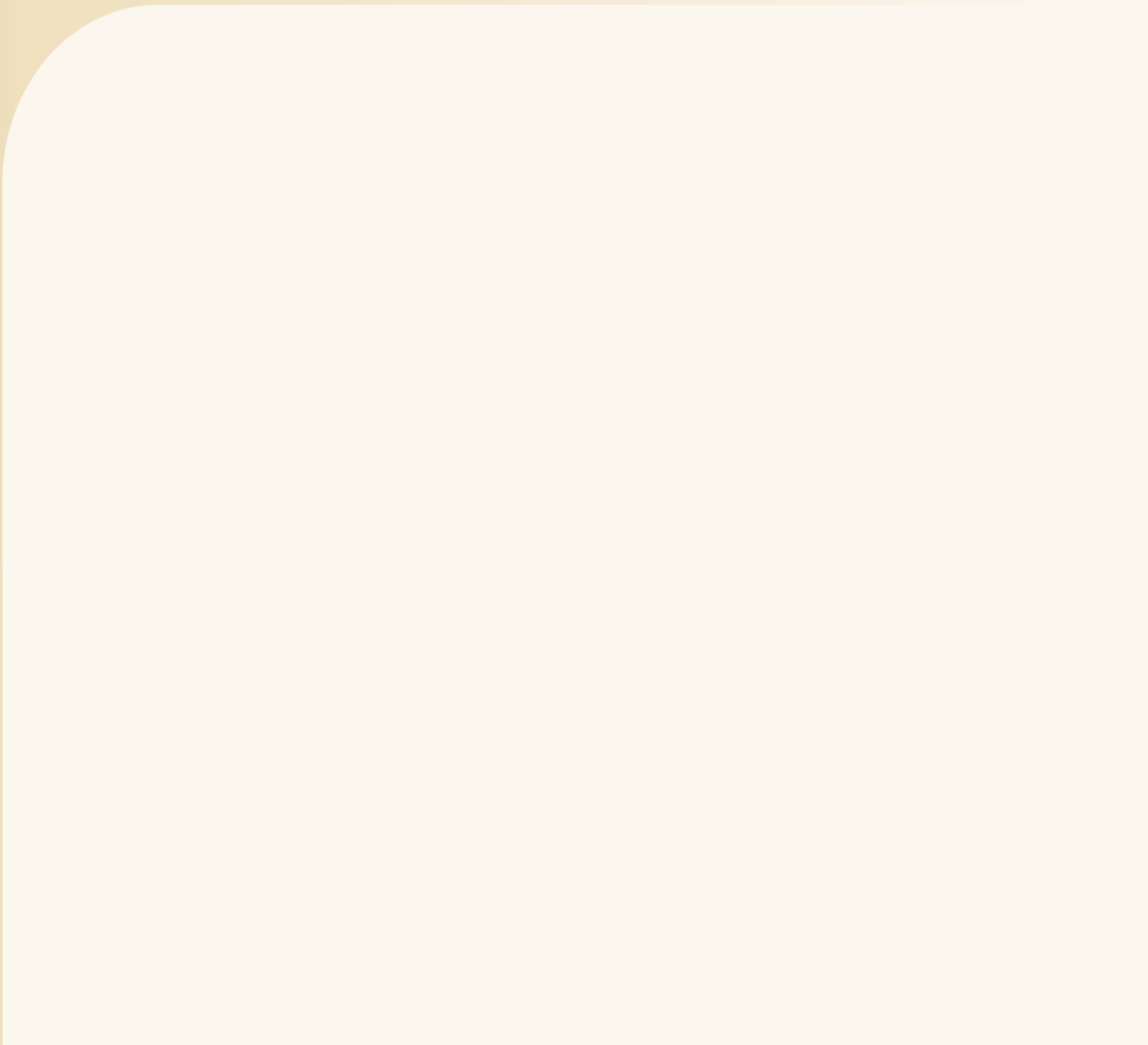
LIST OF QUESTIONS

- Question 1.** MAS seeks comments on the proposed amendments, which are in line with the FATF standards, to require entities that, as a business, provide the following services, to be licensed and subject to AML/CFT requirements: (a) any service of accepting digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, as principal or agent, for the purposes of transferring, or arranging for the transfer of, the digital payment tokens to another digital payment token address or account, whether in Singapore or outside Singapore; and (b) any service of arranging for the transmission of digital payment tokens from one digital payment token address or account, whether in Singapore or outside Singapore, to another digital payment token address or account, whether in Singapore or outside Singapore. 7
- Question 2.** MAS seeks comments on the proposed amendment which are in line with the FATF standards, to require entities that, as a business, provide the following services, to be licensed and subject to AML/CFT requirements: any service of safeguarding or administration of (i) a digital payment token where the service provider has control over the digital payment token; or (ii) a digital payment token instrument where the service provider has control over the digital payment token associated with the digital payment token instrument..... 8
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- Question 6. Power to impose measures on prescribed DPT service providers.** MAS seeks views on the proposed provision to empower MAS to impose additional measures

on any DPT service provider or class of DPT service providers by way of subsidiary legislation, where this is necessary or expedient to ensure financial stability, safeguard efficacy of monetary policy, protect users or consumers, or is in the interest of the public or a section of the public. 13

Question 7. Amendments to the scope of domestic money transfer service. MAS seeks views on the proposed expansion of domestic money transfer service. 14

Question 8. Amendments to the general duty to use reasonable care not to provide false information to MAS, and amendments to the safeguarding provision. MAS seeks views on the proposed amendments to section 94. MAS also seeks views on the proposed amendments to section 23. 14



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