

# **RESPONSE TO FEEDBACK RECEIVED - CONSULTATION ON DRAFT PAYMENT SYSTEMS (OVERSIGHT) BILL**

On 23 December 2004, MAS issued a consultation paper inviting comments on the draft Payment Systems (Oversight) Bill ("draft Bill").

The consultation period for the draft Bill closed on 28 Jan 2005. A total of 19 respondents (listed in the *Appendix*) provided comments on the draft Bill. MAS has reviewed the feedback received, and where applicable, incorporated the comments into the Payment Systems (Oversight) Bill. The Bill was introduced for first reading in Parliament on 21 November 2005.

MAS thanks all respondents for their comments. Some of the comments of wider interest and our responses are highlighted below.

## **COMMENTS RELATING TO INFORMATION GATHERING POWERS OVER PAYMENT SYSTEMS**

### **1. Information-gathering Powers**

#### **1.1 Format, Frequency and Cost**

One respondent suggested that greater clarity should be provided on the type and format of the information that MAS would be collecting, as well as the frequency with which the information would be collected. The respondent cited that these factors have an impact on the cost of compliance. Another respondent suggested that a standardised data collection process could optimise cost-effectiveness.

#### MAS' Response

We agree with the comments. MAS is developing a formalised regular payment statistics collection framework to streamline the data collection process. The framework will be released for consultation with the payment industry in due course. For ad-hoc request of information, MAS will take into account the need to provide for reasonable time for the industry to comply, as we recognise that certain data may not be readily available.

#### **1.2 Information Relating to Cost or Pricing**

The draft Bill proposed to collect, among other information, the cost and pricing policies or data relating to the services provided by payment systems. A respondent suggested that MAS should reconsider whether collection of such information is necessary and appropriate, given the commercial sensitivity of such data.

#### MAS' Response

The promotion of safe and efficient payment systems are important objectives in MAS' oversight of payment systems. Cost or pricing information is integral to the assessment of the efficiency of payment systems, and is useful for general policy formulation. The collection of such information on payment systems is not peculiar to MAS. The Nederlandsche Bank, for instance, keeps track of the costs of settling domestic retail payments with the most frequently used instruments in the Netherlands. The Federal Reserve Board had also conducted a study which examined the cost of using cheque payment vis-a-vis that of other retail payment instruments.

## **COMMENTS RELATING TO OVERSIGHT OF DESIGNATED PAYMENT SYSTEMS**

### **2. Annual Fees**

The draft Bill proposed to levy annual fees relating to the oversight of designated payment systems.

A respondent asked why there was a need for annual fees. Another respondent was of the view that the resultant regulatory costs might be in conflict with MAS' role of safeguarding public interest and improving efficiency of payment systems in Singapore.

#### MAS' Response

Annual fees may be levied to recover the costs pertaining to the oversight of designated payment systems. MAS adopts a risk-focused approach in the oversight of payment systems in Singapore, as reflected in the proposed designation of systemic or system-wide important payment systems. The cost of regulating such systems is thus proportional to their risk profiles.

### 3. Exemptions for Non-designated Payment Systems

A respondent argued that non-designated payment systems should be given an explicit exemption from the provisions in the draft Bill in order to limit the unnecessary and undesirable uncertainty incurred by the participants of such systems arising from the potential of being designated in future. Several respondents highlighted that the broad powers in the draft Bill over designated payment systems might not be practical, especially in respect of international payment systems. The specific concerns raised included the applicability of the provisions relating to the approval and removal of the CEO and directors of a designated payment system, and the control of substantial shareholding in the operator of a designated payment system.

#### MAS' Response

We note the respondents' concerns. As mentioned in the consultation paper published on 16 April 2003, MAS will vary the intensity of the powers imposed on different payment systems, depending on the risk profiles of the systems. Given that payment systems are often unique in their operations and organisations, MAS will assess the feasibility of exemptions on a case-by-case basis. Prior to designating a payment system, MAS will engage the operator in consultation to determine the suitability of granting the operator exemptions from specific provisions in the Bill.

### 4. Formal Notification of Designation

A respondent suggested that in addition to the publication in the *Gazette* to publicise the designation of a payment system or the subsequent revocation of that designation, the operator of a payment system should be notified formally of either occurrences.

#### MAS' Response

We agree with the respondent's suggestion. MAS will issue formal notification to payment systems to inform them of their designated status or the subsequent revocation of that designation, in addition to the publication in the *Gazette*.

### 5. Determining Access to Designated Payment Systems

The draft Bill proposed to provide MAS powers to determine access regimes of designated payment systems. A respondent was of the view that access regimes could be better addressed under the Competition Act rather than the proposed Payment Systems (Oversight) Act given the difference in financial supervision and commercial considerations. Another respondent commented that MAS' power to impose access regimes would infringe on the discretionary right of the operator of a payment system to use access as an essential tool to conduct its payment business.

#### MAS' Response

MAS pursues the main oversight objective of promoting safety in payment systems in Singapore in recognition of the importance of payment systems for financial stability. At the same time, MAS also recognises the need to oversee payment systems with due consideration for efficiency to facilitate payment systems that are able to respond effectively to changing payment needs of users and are efficient for the economy. The power to regulate access is integral to the enhancement of safety and efficiency of designated payment systems. In regulating access, MAS takes into account the interests of the public, the operator and current participants, and the institutions that may require access to the designated payment system in future. These interests may not always be aligned with commercial considerations. Where regulating of access involves competition issues, MAS will consult and work closely with the Competition Commission of Singapore.

## COMMENTS RELATING TO STORED VALUE FACILITIES

### 6. \$30m Threshold for WA MPSVF

#### 6.1 Review of the \$30m Threshold

There were mixed views in respect of the proposed threshold. One respondent commented that the \$30m threshold defining a widely accepted multi-purpose stored value facility (WA MPSVF) was too high, and as a result, non-widely accepted multi-purpose stored value facility (NWA MPSVF) could hold a substantial amount of float without being regulated. Several other respondents, on the other hand, felt that the threshold should be set beyond \$30m, as potential operators of MPSVF that already have a wide existing customer base could quickly exceed the \$30m threshold. One respondent sought clarification on whether there would be a specific time-frame and process for the review of the \$30m threshold

#### MAS' Response

As explained in the response to public feedback on the policy consultation of the proposed Payment Systems (Oversight) Act in September 2003, the \$30m threshold balances MAS' concerns with protecting funds-at-risk and the developmental objective of promoting innovation in the NWA MPSVF market. The threshold captures the existing facilities operating nation-wide in Singapore (i.e. the ez-link card and the NETS CashCard), while providing sufficient space for innovation for potential NWA MPSVF. MAS will not be setting a specific time frame for the review of the \$30m threshold. In deciding whether to adjust the threshold, MAS will take into account industry feedback as well as the development of the SVF market in Singapore.

## **6.2 Provision of Grace Period**

The draft Bill provided for MAS to vary the threshold that defines a WA MPSVF. A respondent noted that a NWA MPSVF could suddenly become a WA MPSVF and hence rendered illegal if the threshold is reduced to a level that is lower than the amount of stored value accruing to the NWA MPSVF. The respondent suggested that the draft Bill provide for a grace period to enable such NWA MPSVF to fulfil the regulatory requirements of WA MPSVF.

### MAS' Response

We agree with the suggestion and we will provide for a grace period to cater to such situations.

## **7. Full Liability**

The draft Bill stated that a bank licensed in Singapore must be approved by MAS to be fully liable for the stored value of a WA MPSVF. A respondent sought clarification that the bank's full liability pertains only to users of the WA MPSVF and not to merchants involved in the WA MPSVF.

### MAS' Response

The Bill defines stored value to be the sum of money paid in advance for goods or services intended to be purchased through the use of the SVF. MAS will not be regulating the bank's other commercial obligations in respect of the SVF to merchants under the proposed Payment Systems (Oversight) Act.

## **8. Aggregation Policy Relating to SPSVF and WA MPSVF**

The draft Bill provided for the aggregation of stored value where a person holds the stored value in respect of different SVF, and where different holders have common control or are financially interdependent. A respondent noted that such a provision would potentially require the aggregation of the stored value of any other NWA MPSVF that a person issues with the stored value of the WA MPSVF that a bank has already undertaken to be fully liable for. The respondent suggested that the person in the above-mentioned scenario be considered for an exemption from the aggregation policy. Another respondent proposed that in aggregating the stored value held by a holder, stored value of SPSVF should be excluded.

### MAS' Response

We agree with the suggestion to exclude the stored value in respect of a WA MPSVF from the aggregation policy. The policy to aggregate the stored value of different SVF that a person or related persons are holding ensures that where a single risk exceeding the \$30m threshold exists, similar protection is given to the aggregated funds-at-risk as to that for WA MPSVF. Given that a WA MPSVF already has a bank that is fully liable for the stored value, it would not be necessary to aggregate the stored value of WA MPSVF with those of NWA MPSVF in determining whether a single risk of greater than \$30m exists. The stored value in respect of SPSVF will also be excluded from the aggregation policy as SPSVF will be exempted from regulatory requirements in the proposed Payment Systems (Oversight) Act until further review.

## **9. Additional Safeguards**

The draft Bill proposed that a bank approved by MAS must undertake to be fully liable for a WA MPSVF. Several respondents suggested putting in place additional safeguards for NWA MPSVF.

### **9.1 Measures to prevent SVF from becoming deposit collection instrument**

A respondent drew caution to the possibility of SVF being used as deposit collection instruments, and suggested that Section 4A of the Banking Act relating to the restriction of soliciting and taking deposits be inserted in the draft Bill.

## MAS' Response

We do not agree with the suggestion to include Section 4A of the Banking Act in the Bill. There is a clear distinction in the functionality of SVF versus deposits. Values are stored on SVF with the specific intent to purchase a predetermined range of goods or services while deposit accounts are not referable to any particular type or class of goods or services. Values stored on SVF are also generally limited in amount as operators of SVF often voluntarily enforce limits on the SVF that they issue due to safety concerns. This is in contrast to deposit accounts where banks accept unlimited funds. If a SVF engages in deposit-taking business, Section 4A of the Banking Act would apply.

### **9.2 Consumer Protection Measures**

A respondent proposed that MAS consider mandating the disclosure of basic information pertaining to the NWA MPSVF, such as whether terms and conditions may be varied, consumer liability for lost or stolen cards, expiration dates, etc. It was also suggested that the role of non-bank issuers of MPSVF in consumer education be instituted as a requisite business practice. Another respondent suggested that MAS mandate security standards and risk management processes to boost consumer confidence, in addition to mandatory deposit insurance to safeguard the public's funds, in case such NWA MPSVF services are terminated.

## MAS' Response

MAS considered these suggestions. While there is value to these proposed measures to protect the consumers, the benefits have to be weighed against the costs of such measures, as they may result in increased regulatory burden on NWA MPSVF.

We agree that some level of mandatory disclosure requirements on NWA MPSVF is useful for enhancing the public's awareness of such products. Hence, MAS has included a provision in the Bill that requires all holders of stored value in respect of NWA MPSVF to put up prominent caveats to notify the users that their NWA MPSVF are not subject to MAS' approval. This requirement has the benefit of alerting potential users of NWA MPSVF to the risks that they are buying into before they make the purchase.

## **10. Extra-territorial Application**

A respondent suggested that the provisions relating to stored value facilities in the draft Bill should also be applicable to operators of foreign stored value facilities to ensure a level playing field. Another respondent asked whether stored value held with foreign entities would be subject to the aggregation policy when determining the total stored value of a local entity.

## MAS' Response

For prudential considerations, MAS has included a non-solicitation provision in the Bill to prohibit holders outside of Singapore or their agents from soliciting stored value in Singapore.

## **11. Single-purpose Stored Value Facilities**

### **11.1 Exclusion of Single-purpose Stored Value Facilities (SPSVF)**

A respondent suggested that SPSVF be excluded from the provisions in the draft Bill, as they are not "payment systems" or "funds transfer systems that facilitate the circulation of money", and the risks associated with SPSVF are low given that values stored on SPSVF are not forwarded to other parties.

## MAS' Response

SPSVF schemes can be easily converted to MPSVF, given that most SVF technology now allows new functions and merchants to be easily added. MAS considers that there is a need to monitor SPSVF as part of the surveillance of the stored value facilities market in Singapore to ensure that the regulatory framework over MPSVF remains effective.

### **11.2 Uneven playing field between WA MPSVF and SPSVF**

A respondent commented that the fact that banks must undertake to be fully liable for WA MPSVF but holders of SPSVF exceeding the \$30 million threshold are not similarly liable creates an uneven playing field between WA MPSVF and SPSVF.

## MAS' Response

MAS will be monitoring the SPSVF market as part of the ongoing review of the regulatory framework for stored value facilities.

## **12. Penalties**

One respondent suggested that the penalties stated under Section 27(4) of the draft Bill for a breach of information-gathering requirements were too harsh, and proposed that the penalties needed to be commensurate with the gravity of the offence. The respondent added that this was especially pronounced for SPSVF, given that SPSVF were previously unregulated.

### MAS' Response

We do not agree with the suggestion. Information-gathering is a key activity of a payment system overseer and it is important to have timely access to accurate information for effective monitoring and general policy formulation. As MAS will be relying mainly on the information-gathering powers in the Bill to monitor and survey the payment system and SVF landscape in Singapore, it would be necessary to have the proposed penalties to deter non-compliance with information-gathering requirements.

## **COMMENT RELATING TO MISCELLANEOUS PROVISIONS**

### **13. Penalty for Misuse of Information**

A respondent commented that the penalty on MAS personnel or other relevant parties for the unauthorised disclosure or misuse of information obtained from the participants, operators or settlement institution of payment systems is unduly light compared to the heavier penalties applicable for non-compliance with the provisions in the draft Bill.

### MAS' Response

MAS' officers are subject to S14 of the MAS Act - "Preservation of secrecy" to preserve the confidentiality of information relating to the affairs of the Authority or of any person which he has acquired in the performance of his duties or the exercise of his functions. In addition, the misuse of secret information will also contravene the Official Secrets Act and may attract additional penalties. In view of these provisions, S40 in the draft Bill has been removed.

MONETARY AUTHORITY OF SINGAPORE  
21 November 2005

## **Appendix**

### **List of Respondents**

1. Clearing and Payment Services Pte Ltd
2. Network for Electronic Transfers (Singapore) Pte Ltd
3. Visa International Asia Pacific
4. Mastercard International
5. PayPal, Inc.
6. NTUC Club
7. Kopitiam Investment Pte Ltd
8. CLS Bank International
9. OCBC Bank
10. Hongkong and Shanghai Banking Corporation Ltd
11. United Overseas Bank Ltd
12. DBS Bank Ltd
13. Citibank Singapore Ltd
14. Maybank Singapore
15. RHB Bank Bhd Singapore
16. MobileOne Ltd
17. SingTel

- 18. Consumers Association of Singapore
- 19. Infocomm Development Authority of Singapore

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