

Public Response to MAS Consultation Paper:

Payment Services Act 2019

Scope of E-money and Digital Payment Tokens

CONTACT PERSONS



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January 2020

Preface

It is encouraging to see MAS proactively reviewing the “fitness for purpose” of the Payment Services Act (“**PS Act**”), especially in response to global market developments such as the emergence of stablecoins. That said, setting the boundary and resolving perimeter issues are amongst the most difficult regulatory questions faced by regulatory bodies.

In the United Kingdom, the Financial Conduct Authority (“**FCA**”) has been demonstrably concerned with consumer protection – particularly in the crypto space – where businesses offer both unregulated and regulated products alongside each other (like a crypto-exchange, P2P or e-money). This makes the feat of consumer protection particularly challenging. While in Hong Kong, a less prescriptive approach is adopted towards virtual assets, where the primary question is whether such virtual assets fall under existing regulations. Although regulations in May 2019 came into effect to regulate stablecoins in Hong Kong, it is interesting to observe how the global regulatory regime of stablecoins will unfold.

The tenor of these two consultation papers (the scope of e-money and digital payment tokens; and the proposed amendments to the PS Act) reveal a regulatory concern: emerging digital assets should not fall between the cracks of MAS’s two current regimes on e-money and digital payment tokens (“**DPTs**”). However, being overly focused on specific legal conditions may detract from a more holistic, outcomes-based approach that is focused on the twin regulatory objectives of protecting consumers and encouraging innovation.

Moving from products to activities, it appears that the MAS is borrowing concepts traditionally used in the securities world (like arranging, administration, broking, inducing, etc.) to help define the boundary of regulation for digital assets and e-money. These concepts are difficult enough to apply to securities, *a fortiori*, the application of securities concepts to the digital payment regime requires careful consideration to ensure that boundaries are not too broad.

Concepts like “possession” and “control” are not straightforward in this emerging digital space, and regulators also grapple with the perennial question of jurisdictional reach. Since digital assets do not operate within geographical boundaries, this leaves regulators to apply their national regimes based on the location of the service provider or of the user, with the nature of the activity itself becoming less important.

On 21 January 2020, OC Queen Street held a Roundtable (the “**Roundtable**”) to discuss the two consultation papers on the PS Act issued by MAS on 23 December 2019. The Roundtable was

attended by persons from across a range of industries, including lawyers, bankers, academics, FinTech startups, consultants and those in the crypto industry.

At the Roundtable, attendees discussed the two consultation papers under Chatham House rules. A full list of the questions asked and their respective results can be found in Appendix A.

The responses given here are admittedly non-comprehensive. Given time constraints, we have sought to only advance one or two arguments per question. The arguments may not be entirely formulated as they may contain different views from different attendees.

In our submissions, we suggest that e-money be considered a subset of DPT. We also suggest a granular approach according to the purpose and effect of the DPT in question.

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:	Payment Services Act 2019: Scope of E-money and Digital Payment Tokens
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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>

Question 1. Defining characteristics

(a) Does it matter whether e-money is pegged to only one currency or more than one currency? Why or why not?

1 Response

1.1 It does not matter whether e-money is pegged to only one currency or more than one currency.

1.2 Currently, the PS Act defines “e-money” as any electronically stored monetary value that —¹

- (a) is denominated in any currency, or pegged by its issuer to any currency;
- (b) has been paid for in advance to enable the making of payment transactions through the use of a payment account;
- (c) is accepted by a person other than its issuer; and
- (d) represents a claim on its issuer,

but does not include any deposit accepted in Singapore, from any person in Singapore.

1.3 Under this definition, e-money must be pegged to a single currency, but not multiple currencies.² This means that stablecoins pegged to multiple currencies do not constitute e-money.³ Such stablecoins are further not DPTs,⁴ as they have been denominated in / pegged to at least one currency. As such, stablecoins pegged to multiple currencies are not currently regulated under the PS Act.

1.4 In this regard, it should be noted that the European Union (“EU”) definition of “electronic money” does not exclude electronically stored monetary value pegged to more than one currency.⁵

1.5 As stated by the MAS, a consumer purchases e-money from a business to enable him to make money transfers or purchase goods or services from participating individuals and merchants which accept such e-money.⁶ We suggest that stablecoins which fulfil the same function as e-money should be regulated as such.

¹ PS Act s2(1)

² MAS, “Consultation on the Payment Services Act 2019: Scope of E-Money and Digital Payment Tokens”, (23 December 2019) at [3.2]

³ Please see our response to Question 3 for a discussion on the different classes of stablecoins.

⁴ PS Act s2(1)

⁵ Directive 2009/110/EC Of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, art 2

⁶ MAS, “Frequently Asked Questions (FAQs) On the Payment Services Act (PS Act)”, (4 October 2019) at [13.2]

- 1.6 We recognise that including electronically stored monetary value which is denominated in / pegged to multiple currencies under the definition of e-money may result in confusion by consumers. That said, we suggest that the current definition of e-money is inherently confusing, especially with regard to the meaning of “pegging”. In economic terms, a fixed exchange rate “pegs” the value of a currency to another currency.⁷ “Pegging” is conceptually distinct from “backing”, which connotes a contractual promise.
- 1.7 This distinction is not apparent to the average consumer, who may assume that because e-money is pegged, the fiat equivalent of his e-money has been safeguarded in a trust account by the issuer. This shows that confusion may arise from the current definition of e-money, and not merely from whether it is pegged to more than one currency.
- 1.8 Digital value which falls outside the definitions of e-money and DPT will also fall outside the regulatory regime of the PS Act. We suggest that the denomination of value in currency or pegged value to currency appears to be a contrived way to distinguish e-money from DPTs. Stablecoins which have the purpose and effect of being used for payments should be regulated under the PS Act, regardless of whether they are “pegged” to multiple currencies or not.

⁷ Duttagupta, Fernandez, and Karacadag, “Moving to a Flexible Exchange Rate – How, When, and How Fast?” (IMF) (5 December 2005)

(b) Do you agree that a claim on the issuer is a necessary defining characteristic of e-money? If there is no claim on the issuer, then what other arrangements might be required to maintain confidence in the use of using e-money?

2 Response

2.1 A claim on the issuer is not a necessary defining characteristic of e-money.

2.2 In the past, money was a representation of the asset it could be exchanged for. In monetary systems using a gold standard, paper notes represented a “claim” to gold, and were convertible to gold on demand.⁸

2.3 Today, the gold standard has largely been abandoned by most countries. The United States ceased using the gold standard by 1933, and has replaced gold with the full faith and credit of the federal government.⁹ Yet once a currency no longer represents a claim to an asset or commodity, the exact nature of the claim becomes unclear.

2.4 As in the case of fiat currencies, the exact nature of the claim against an e-money issuer is unclear. We will consider three possible understandings of the claim:

- (a) as a debt;
- (b) as damages; and
- (c) on the basis of a trust.

2.5 According to Charles Proctor, money is a form of contractual claim, whether against the central bank in the form of banknotes issued or deposits accepted by such an institution, or against a credit institution, in the form of deposits accepted by it.¹⁰ By extension, money can therefore be understood as a claim in debt.

2.6 That said, the current definition of e-money extinguishes any claim in debt. The PS Act expressly excludes any deposit from being defined as e-money. It therefore follows that the claim against an e-money issuer is not a claim in debt. This is supported by the prohibition under the PS Act against an e-money issuer allowing its users to withdraw e-money and exchanging it for Singapore notes and coins.¹¹

⁸ Elwell, “Brief History of the Gold Standard in the United States”, (Congressional Research Service) (23 June 2011) at pg 1

⁹ Ibid. at pg 1, 10

¹⁰ Proctor, “Mann on the Legal Aspect of Money”, (OUP, 6th ed, 2005) at para 1.40

¹¹ PS Act s19(1)

- 2.7 Alternatively, the claim against an e-money issuer might be understood as a claim in damages. E-money is money paid in advance under a contract for the provision of a service.¹² On that basis, a breach of said contract would give rise to a claim in damages against the e-money issuer.
- 2.8 That said, an e-money issuer could disclaim liability under the contract. If the e-money issuer does so, no claim in damages can arise. If the customer no longer has a claim in damages against the e-money issuer, the e-money in question will no longer fit the definition of e-money under the PS Act, and therefore will not be subject to its regulatory framework.
- 2.9 Finally, the claim against the issuer might be understood on the basis of a trust. This is by virtue of the safeguarding requirements to which major payment institutions (“**MPIs**”) are subject. That said, the undertaking to be fully liable for customer moneys is given by the safeguarding institution, and not the MPI itself.¹³
- 2.10 In any event, only MPIs are subject to safeguarding requirements. If the claim against the issuer is to be understood from the perspective of a trust, it would only exist for customers of MPIs, if at all.
- 2.11 From the above, it can be seen that the nature of the claim against an e-money issuer remains unclear. If the nature of the claim cannot be established, all forms of electronically stored monetary value would fall outside the definition of e-money, and therefore outside the regulatory framework of the PS Act.
- 2.12 In any event, concerns were raised at the Roundtable that the requirement for a claim against the issuer would limit the classes of stablecoins captured under the definition of e-money. One attendee suggested that while stablecoins which were stabilised by collateral might potentially represent a claim against their issuer, stablecoins subject to some other form of stabilising mechanism would not.¹⁴
- 2.13 Another attendee suggested that the discussion should not be limited to the legal definition of a claim. Said attendee suggested that in determining whether to impose asset protection, finance regulators should consider whether investors believe they should be protected.

¹² MAS, “Frequently Asked Questions (FAQs) On the Payment Services Act (PS Act)”, (4 October 2019) at [13.2]; MAS, “Consultation on the Payment Services Act 2019: Scope of E-Money and Digital Payment Tokens”, (23 December 2019) at [3.5]

¹³ PS Act s23(2)(a)

¹⁴ Please see our response to Question 3 for a discussion on the different classes of stablecoins.

2.14 Given the difficulty in establishing the exact nature of the claim against the issuer, it is our view that a claim against the issuer is not a necessary defining characteristic of e-money. Further, requiring a claim against the issuer to be established would limit the classes of stablecoins regulated under the PS Act.

2.15 Despite our views concerning the definition of e-money, having a claim against the issuer remains important insofar as it ensures confidence in the payments system. As such, we suggest that regulations under the PS Act require e-money issuers ensure that their users have a claim against them. By making a claim a regulatory requirement for e-money issuers, the same confidence in the system is maintained, without the difficulty in establishing the exact nature of said claim.

Question 2. Other defining characteristics

Are there any other characteristics that will effectively distinguish e-money and DPT which MAS should consider? Should such characteristics be in lieu of or in addition to a reference to fiat currency and claim on the issuer?

3 Response

- 3.1 In our responses to Question 1, we have suggested that the use of a single currency peg should not be used to distinguish e-money from DPTs. We have also suggested that a claim against the issuer is not a distinctive feature of e-money.
- 3.2 As an alternative, we propose a regulatory framework determined by whether the electronically stored monetary value in question has the purpose and effect of being used for payments. This was echoed by one attendee of the Roundtable, who was concerned that a regulatory approach which placed emphasis on definitions would result in certain cryptocurrencies being unregulated. Said attendee favoured the approach by other jurisdictions such as Hong Kong, which determines the regulatory approach to virtual assets in the context of existing legislation.
- 3.3 Another Roundtable attendee noted examples of cryptocurrencies which did not seem to be covered by the PS Act. Said attendee gave the example of a cryptocurrency expressly stated by its issuer to be denominated in Singapore Dollars, but which is then issued to users for no payment. It was suggested that such a cryptocurrency would not constitute e-money as currently defined under the PS Act, as it would not have been paid in advance. It would also not constitute a DPT, as it had been denominated in Singapore Dollars.
- 3.4 In order to avoid regulatory inconsistencies, we suggest that the definition of e-money be reworked, such that it becomes a subset of DPT. This will allow for a granular approach to regulation, with a reduced regulatory burden applied to certain types of DPT. For example, all DPT services are currently subject to AML / CFT requirements, while some e-money activities are considered low risk, and do not attract AML / CFT requirements.¹⁵ In the event e-money is considered a subset of DPT, certain types of DPT will be considered low risk, and subject to a lighter regulatory framework.
- 3.5 The MAS has engaged extensively with the industry during its public consultations,¹⁶ and our proposed approach may have already been considered. Nonetheless, we appreciate the opportunity to respond to this consultation, and hope that the MAS reassesses its approach.

¹⁵ MAS, "Consultation on the Payment Services Act 2019: Scope of E-Money and Digital Payment Tokens", (23 December 2019) at pg 14

¹⁶ Minister for Education, "Second Reading of the Payment Services Bill", (14 January 2019)

Question 3. Regulation of stablecoins

If stablecoins fulfil the functions of money in the way e-money does, then do holders of stablecoins deserve the same regulatory protections as e-money, (e.g. float protection)? What other regulations should be introduced to maintain the stability of the value of a stablecoin, (e.g. how that stable value is determined, whether stablecoin holders have any right to redeem such value, who is liable to make good on such value if the stablecoin were to be redeemed by the holder)?

4 Response

- 4.1 We are of the view that stablecoins should be given the same regulatory protection as e-money if they possess the same characteristics and functions as e-money.
- 4.2 Stablecoins are digital units of value that rely on a set of stabilisation tools to try and minimise fluctuations in their price in such currencies.¹⁷ Stablecoins can therefore be classified according to the stabilising mechanism underpinning its function:¹⁸
- (a) Tokenised funds – stablecoins backed by funds, which an issuer or custodian needs to hold for safekeeping, implying a commitment to their full redeemability;
 - (b) Off-chain collateralised stablecoins – stablecoins backed by other traditional asset classes that require a custodian for their safekeeping and are in the possession of the issuer only as long as the user does not redeem the stablecoins, or what is left of them in the case of default;
 - (c) On-chain collateralised stablecoins – stablecoins backed by assets, typically crypto-assets, which can be recorded in a decentralised manner and do not need either an issuer or a custodian to satisfy any claim; and
 - (d) Algorithmic stablecoins – stablecoins backed by users' expectations about the future purchasing power of their holdings, which do not need the custody of any underlying asset, and whose operation is totally decentralised.
- 4.3 As represented above, stablecoins are a diverse form of digital value that only have the use of a stabilising mechanism in common. For example, tokenised funds represent existing currency units on a distributed ledger, and therefore mirror the traditional e-money approach to retail payments.¹⁹ In contrast, algorithmic stablecoins are not fully backed by the funds they are

¹⁷ Dirk Bullmann, Jonas Klemm, Andrea Pinna, "In search for stability in crypto-assets: are stablecoins the solution?", *European Central Bank* (August 2019) <<https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op230~d57946be3b.en.pdf>> accessed 5 January 2020

¹⁸ Ibid.

¹⁹ Ibid.

meant to represent.²⁰ Given the inherent differences between classes of stablecoins, it may not be appropriate to subject stablecoins to uniform regulatory treatment.

- 4.4 During the Roundtable, support was raised for the use of a purposive approach in regulating stablecoins. One suggestion was that the purpose for which a stablecoin was issued (whether for payments or otherwise) should determine the regulatory framework to be applied. Another attendee noted that since e-money was meant to mirror money, if the nature of the stablecoin fell further away from mirroring money, it should not be regulated under the PS Act. Also raised was the approach taken by other jurisdictions such as Hong Kong, where the only question is whether virtual assets are caught by existing regulations, such as those concerning securities.
- 4.5 It may therefore be unsatisfactory to apply the same regulatory treatment to all classes of stablecoins. Hesitation towards the absolute regulation of stablecoins under the PS Act was reflected during the Roundtable, where 41% of 22 attendees answered “maybe” to the question of whether stablecoins should receive the same regulatory treatment as e-money.
- 4.6 We are therefore of the view that holders of stablecoins deserve the same regulatory protections as e-money where the stablecoins in question possess the same characteristics and functions of e-money. Like e-money, stablecoins should be regulated in accordance with the particular stablecoin’s risk profile.

²⁰ *ibid.*

Question 4. Appropriate user protection measures

MAS seeks views on whether the user protection framework for holders of e-money and holders DPTs are still appropriate. Should holders of certain types of DPTs be afforded protection of their assets or the value of their assets in the same way that e-money holders are protected?

5 Response

5.1 We have no comments for Question 4.

Question 5. Thresholds for application of user protection requirements

Under the current PS Act, major payment institutions that issue e-money are required to safeguard customer money. Should DPT service providers that issue custody wallets be required to comply with user protection measures if the service providers hold DPTs above a certain threshold? What qualitative or quantitative thresholds would be appropriate?

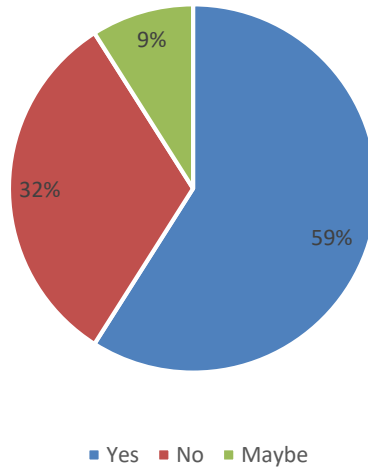
6 Response

6.1 We have no comments for Question 5.

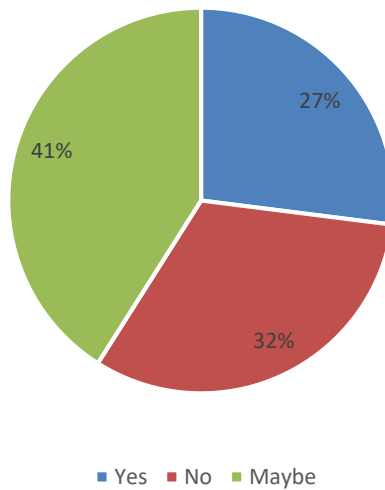
APPENDIX A

Voting Results

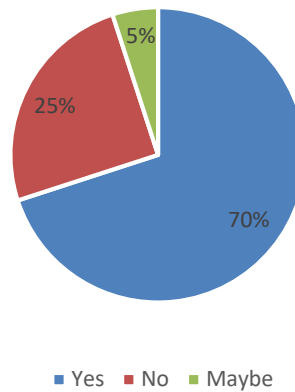
1. Does it matter whether “e-money” is pegged to only one currency or more than one currency? (Number of responses: 22)



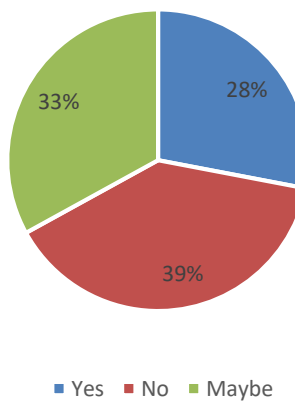
2. Should stablecoins receive the same regulatory treatment as e-money? (Number of responses: 22)



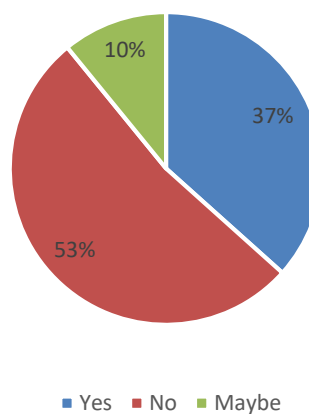
3. Is a claim on the issuer a necessary defining characteristic of e-money?
(Number of responses: 20)



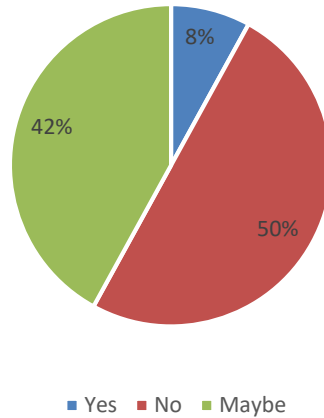
4. Do you agree with the current definition of digital payment token ("DPT")?
(Number of responses: 18)



5. Should regulations be introduced to maintain the stability of the value of the stablecoin?
(Number of responses: 19)



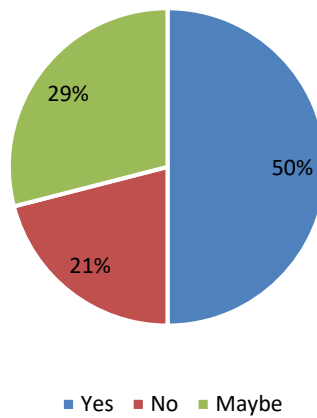
6. Is the current user protection framework for holders of e-money and DPTs still appropriate? (Number of responses: 12)



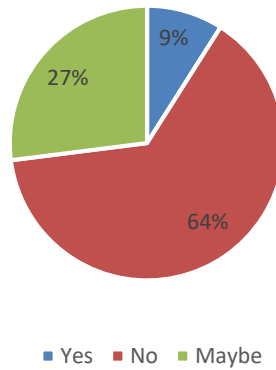
7. A "DPT service" should include the service of safeguarding or administering:

- i. a DPT, if the service provider has control over the DPT; and
- ii. a DPT instrument, where the service provider has control over the DPT associated with the DPT instrument.

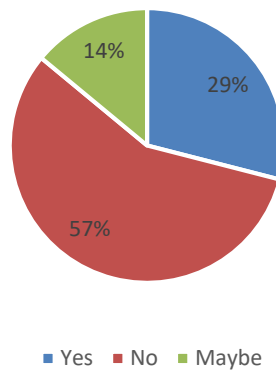
Do you agree? (Number of responses: 14)



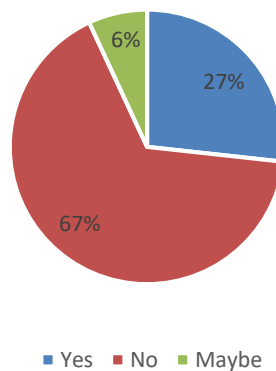
8. Should there be a difference between a service provider exercising control over a DPT and exercising control over a DPT instrument? (Number of responses: 11)



9. A "DPT service" should include any service of inducing, or attempting to induce, any person to buy or sell DPTs in exchange for money or other DPTs. Do you agree? (Number of responses: 14)



10. The activity of transferring moneys from one country to another (even when moneys are not accepted or received in Singapore) should be regulated. Do you agree? (Number of responses: 15)



11. Should the MAS have power to impose user protection measures on certain DPT service providers? (Number of responses: 13)

