

**Public Response to MAS Consultation Paper:**

**Payment Services Act 2019**

Proposed Amendments to the Act

## CONTACT PERSONS



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Paul has over 25 years' experience as a lawyer in the Financial Services sector. Paul guides clients through new product development and launch, regulatory change, international surveys and transformational projects. He works with international and UK domestic clients from across the whole Payments ecosystem, from wholesale banks and infrastructure service providers to new non-bank market entrants, including account aggregators and marketplaces, electronic money and payment institutions and digital currency participants.

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Albert has represented clients in the technology, media, telecommunications, financial services, insurance, transport and logistics, energy, infrastructure, health, government, pharma, manufacturing and consumer and retail sectors.

Albert is recognised as a 'noteworthy contact' and top ranked 'Next Generation Lawyer' for IT & Telecoms in 2017, 2018 and 2019 in Australia by Legal 500 Asia Pacific and as a 'Best Lawyer' in Information Technology Law in Australia in 2018 and 2019 by Best Lawyers. Albert was also a Pro Bono Award Finalist in the Lawyers Weekly Australian Law Awards 2014.

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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.

<b>Consultation topic:</b>	Consultation on the Payment Services Act 2019: Proposed Amendments to the Act
<b>Name<sup>1</sup>/Organisation:</b> <small><sup>1</sup>if responding in a personal capacity</small>	OC Queen Street LLC
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<b>Confidentiality</b>	
I wish to keep the following confidential:	<i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity along with your whole submission to be kept confidential. Your contact information will not be published.)</i>

**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.**

We agree with the proposed amendments that seek to align the current PS Act with international standards of mitigating AML/CFT risks involved in the transfer of DPTs.

However, it may be onerous to require all entities who transfer DPTs to be regulated without considering the exact risks that underlies the DPT transfer. A deeper inquiry into the mechanism of such a transfer is necessary, as not all entities who transfer DPTs may pose sufficient or the same ML/FT threats that warrant the same treatment.

For example, we suggest that the proposed amendments should have granularity in distinguishing between DPT transfers that occur within permissioned and permissionless systems. According to the World Bank,<sup>1</sup> the key difference between a permissioned and a permissionless system is the ownership of network access control. In a permissionless system, the network access is not controlled by a central entity. On the other hand, a permissioned system usually has a principal administrator who enforces certain rules and protocols across the system.

DPT transfers that occur within permissionless systems may involve in its operation, technologies that can obfuscate the identity of the sender, recipient or holder of the DPT.<sup>2</sup> In such a case, regulative measures should be imposed on such an entity that carries out a transfer of DPTs without having the means to verify the identities of the parties enacting such a transfer.

However, entities who operate using permissioned systems may already comply with existing CDD requirements when onboarding or servicing its users. DPT service providers in permissioned systems may access information regarding the identity of its users and/or other necessary information. As such, a transfer of DPT in this context would not pose the same level of ML/FT risks that would warrant regulation under the PS Act.

The implication of taking a broad brush approach on all transfers of DPT, in both permissioned and permissionless systems, might hinder the growth of payment services in Singapore.

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<sup>1</sup> Natarajan, Harish; Krause, Solvej Karla; Gradstein, Helen Luskin. 2017. Distributed Ledger Technology (DLT) and blockchain (English). FinTech note; no. 1. Washington, D.C.: World Bank Group. <<http://documents.worldbank.org/curated/en/177911513714062215/Distributed-Ledger-Technology-DLT-and-blockchain>> accessed 23 January 2020

<sup>2</sup> The FATF Recommendation 15 identifies such technologies as anonymity enhancing cryptocurrencies ('AECs'), mixers, and tumblers as non-exhaustive examples.

**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.**

We agree with this proposed amendment, as entities that offer standalone custodial services for DPTs can be abused by bad actors to safe-keep illicit assets. During our Roundtable, 50% of our attendees also expressed their support for this amendment. However, we have three recommendations to make which may strengthen the regulatory intent of this amendment.

Firstly, we recommend that MAS should clarify the scope of the term 'control' as there appears to be a substantive overlap between a service provider's 'control' and 'possession' (in the context of facilitating the exchange) of a DPT.

The current PS Act requires an entity who comes into possession<sup>3</sup> of a DPT, when facilitating an exchange, to be licensed as a DPT service provider. Such entities include DPT exchangers who offer custodial wallet services.

Now, this proposed amendment intends to regulate standalone custodial wallet service providers who may not facilitate an exchange of DPTs, but nonetheless, exert control over the DPT or control over the DPT instrument that is associated with the DPT. It follows that 'control' over such a wallet, on plain reading, would refer to the ability to execute a transfer or movement of the DPT from such a wallet.

Therefore, the definition of 'control' appears to be materially similar to possession, where the entity has the means to execute a transfer from the wallet. Further clarification on this term would be beneficial.

Secondly, we recommend that MAS should provide further guidance on the differences between (i) control over a DPT; and (ii) control over a DPT instrument.<sup>4</sup> During our Roundtable discussion, 64% of our attendees expressed that there should not be such a difference, in that it is sufficient that there is control over a DPT whether via a DPT instrument or otherwise. Further clarification as to how these two limbs are different would be useful.

Lastly, we recommend that MAS should provide further clarification on the definition of safeguarding and administering.<sup>5</sup> An attendee of our Roundtable noted that in the United Kingdom, an act of

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<sup>3</sup> Possession is mentioned in the definition of 'facilitating the exchange of' in the First Schedule of the Payment Services Act. For ease of reference, an act of 'facilitating the exchange of' in relation to any type of digital payment token, means establishing or operating a digital payment token exchange for that type of digital payment token, in a case where the person that establishes or operates that digital payment token exchange, for the purposes of an offer or invitation (made or to be made on that digital payment token exchange) to buy or sell that type of digital payment token in exchange for any money or any digital payment token (whether of that type or a different type), comes into possession of any money or any digital payment token, whether at the time that offer or invitation is made or otherwise.

<sup>4</sup> The proposed amendment to the definition of a 'digital payment token service provider' includes 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.

<sup>5</sup> We also note that MAS Notice PS02 (which applies AML/CFT requirements on DPT service providers) defines a 'custodian wallet service' conjunctively as one that involves both safekeeping **AND** administering. However, the proposed amendments to the PS Act adopts a disjunctive language which defines such an



'administering' a DPT transfer was not considered as a sufficient justification for AML/CFT regulation to apply. Attendees also expressed that an act of 'administering' is too broad. Further clarification on these two terms would also be helpful.

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activity as either safeguarding **OR** administering. We would like to seek clarification as to whether this difference in phraseology is intended.

**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.**

We agree with this proposed amendment. However, during our Roundtable, 57% of our attendees did not agree that the definition of a DPT service provider should include an act of inducing or attempted inducing of any person to enter an agreement to buy or sell DPT.

While the FATF standards (in which these proposed amendments are based on) state that virtual asset providers ought to be regulated if they 'actively facilitate' an activity, it appears that the PS Act's phraseology of 'inducing' has a different meaning from 'active facilitation' in the FATF. Furthermore, several of our Roundtable attendees expressed that the term 'inducing' is very much broader than a plain reading of active facilitation. Therefore, a clarification on the definition of 'inducing' would be helpful in determining the scope of such an activity.

**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).**

We have no comments.

**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.**

We agree that further user protection measures on certain DPT service providers may be appropriate. Furthermore, 92% of our Roundtable attendees agreed that such user protection measures should be imposed.

The PS Act currently places restrictions on holdings in e-money wallets. Although there are exceptions provided for in the Payment Services Regulations, it has been a perennial concern that wallet caps may slow down the growth of e-payments.<sup>6</sup>

These same concerns also apply to a DPT wallet. The proposed amendments contemplate giving MAS the power to impose user protection measures such as anti-comingling measures, ring fencing of customer assets, and the maintenance of customer assets and licensee assets amongst other protection measures. These measures may impede the adoption of DPTs for e-payments. While AML/CFT risks are always a primary concern, a successful payments system should enjoy a wide circulation.

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<sup>6</sup> *Singapore Parliamentary Debates, Official Report* (14 January 2019) vol 94. [The Payment Service Act]: “Alipay, Wirecard and Paypal have said that the caps will slow down the growth of e-payments. And this is understandable as these are reputable companies often dealing with high value goods and services as well as the remittance of large amounts of money and purchase of investment products. Transferwise and Revolut outright raised objections, saying that their business models would be affected.”

**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.**

We agree with the proposed amendments that may empower MAS to impose additional measures on DPT service providers. Such measures may include existing measures applicable to account issuance service providers (such as stock and flow caps). However, we reiterate the same concern that such measures may impede the adoption of DPTs for e-payments. While AML/CFT risks are always a primary concern, a successful payments system should enjoy a wide circulation.

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

We have no comments.

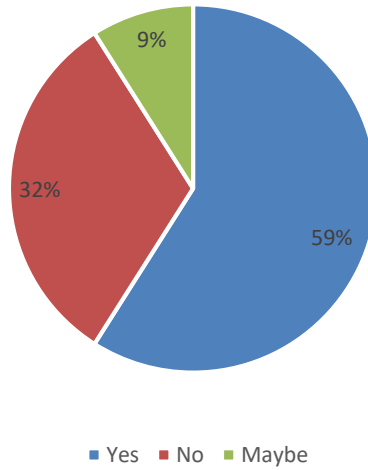
**Question 8. Amendments to the general duty to use reasonable care not to provide false information to MAS, and amendments to the safeguarding provision. MAS seeks views on the proposed amendments to section 94. MAS also seeks views on the proposed amendments to section 23.**

We have no comments.

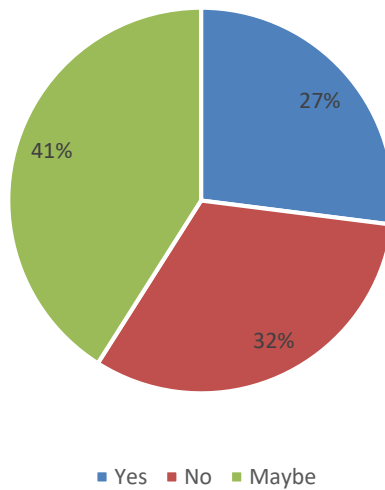
## APPENDIX A

### Voting Results

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

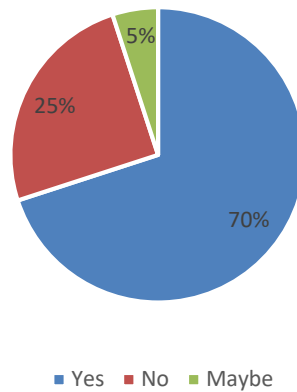


2. Should stablecoins receive the same regulatory treatment as e-money? (Number of responses: 22)

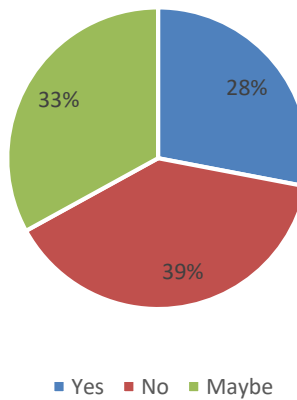




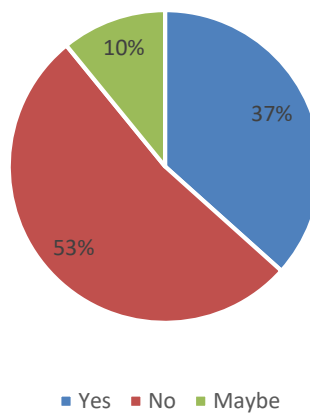
3. Is a claim on the issuer a necessary defining characteristic of e-money?  
(Number of responses: 20)



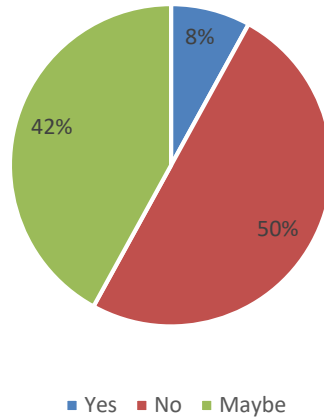
4. Do you agree with the current definition of digital payment token ("DPT")?  
(Number of responses: 18)



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



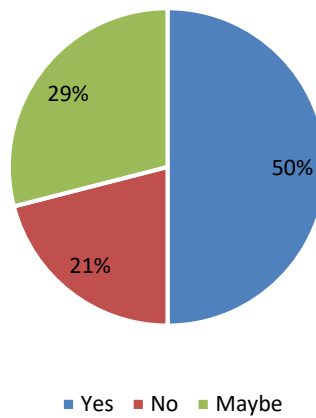
6. Is the current user protection framework for holders of e-money and DPTs still appropriate? (Number of responses: 12)



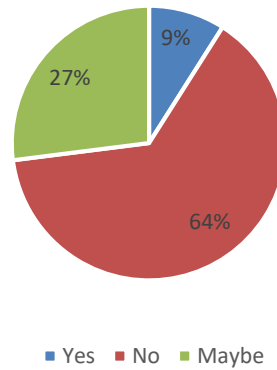
7. A "DPT service" should include the service of safeguarding or administering:

- 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.

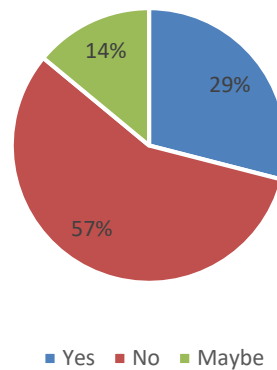
Do you agree? (Number of responses: 14)



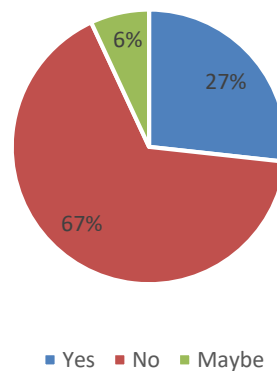
8. Should there be a difference between a service provider exercising control over a DPT and exercising control over a DPT instrument? (Number of responses: 11)



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)

