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Proposed Changes to Payment Services Act 2019 to Address New AML/CFT Risks and Regulatory Issues with Stablecoins

On 23 December 2019, the Monetary Authority of Singapore ("**MAS**") published the following two Consultation Papers on the Payment Services Act 2019 ("**PS Act**").

- (i) **Proposed Amendments to the Act:** In this Consultation Paper, MAS proposes to amend the PS Act so that the anti-money laundering and countering the financing of terrorism ("**AML/CFT**") requirements for payment service providers providing payment services relating to digital payment tokens ("**DPT**") and cross-border money transfer are in line with the enhanced Financial Action Task Force ("**FATF**") Standards. The Consultation Paper also sets out proposals on other technical amendments to the PS Act.
- (ii) **Scope of E-money and Digital Payment Tokens:** MAS has observed that changes in the product development of e-money and DPT and the way in which the public has been using these modes of payment may be blurring the line between the e-money and DPT regimes under the PS Act. One such example is the emergence of stablecoins as a new class of cryptocurrencies. This Consultation Paper seeks views from the public, financial institutions including the payments industry, and academics on various issues arising from the emergence of stablecoins.

The consultation period for the above consultation papers ends on **28 January 2020**.

By way of background, the PS Act will come into force on 28 January 2020 (except three provisions setting out related amendments to other Acts), and will repeal the Payment Systems (Oversight) Act and the Money-changing and Remittance Businesses Act to consolidate the regulation of payment services under a single legislation. The PS Act will expand the scope of regulated payment services to keep up with new technological developments in payment services and the various risks they pose. It adopts a licence-based framework for payment service providers and a designation regime for payment systems.

(i) Consultation on the Payment Services Act 2019: Proposed Amendments to the Act

AML/CFT related amendments

All payment service providers licensed under the PS Act are subject to AML/CFT measures. MAS has issued AML/CFT Notices applicable to payment service providers providing payment services relating to account issuance, domestic money transfer, cross-border money transfer, money-changing and DPT. MAS intends to amend the PS Act to align the AML/CFT requirements for DPT service providers with

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those provided in the enhanced FATF Standards and introduce new requirements to mitigate the money laundering and terrorism financing ("ML/TF") risks arising from certain business models where entities broker remittance transactions between entities in two different countries. The proposed amendments include:

- **Expanding definition of "DPT service":** The enhanced FATF Standards require countries to regulate what it has termed as virtual asset service providers ("**VASPs**") for AML/CFT in light of the inherent ML/TF risks posed. Therefore, MAS proposes to amend the PS Act to expand the definition of "digital payment token service" to require entities performing the following activities to be licensed under the PS Act, and be subject to the AML/CFT requirements:
 - a) facilitating the transfer of DPTs;
 - b) providing service of safekeeping or administration of virtual assets or instruments and enabling control over virtual assets (custodial wallets) for or on behalf of customers; and
 - c) brokering of DPT transactions (without possession of money or DPTs by the DPT service provider).
- **Expanding definition of "cross-border money transfer service":** Currently, cross-border money transfer service providers who do not accept or receive moneys in Singapore are not regulated under the PS Act. However 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. MAS proposes to expand the definition of "cross-border money transfer service" in the PS Act to regulate services involving the brokering of cross-border money transfer services (without moneys accepted or received in Singapore by the payment service provider).
- **Proposal to regulate Singapore-incorporated VASPs providing DPT services outside Singapore:** Under the enhanced FATF standards, VASPs must be licensed or registered in the jurisdictions where they are created. As the business operations of many VASPs tend to be internet-based, and thus cross-jurisdictional in nature, this requirement is targeted at ensuring a VASP is regulated, supervised and subjected to AML/CFT requirements. In line with the FATF Standards, MAS proposes to introduce, as a new class of financial institutions, 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 on at a later stage.

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Other technical amendments

In addition, the Consultation Paper contains, among other things, the following technical amendments to the PS Act:

- A new provision to 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 providers, when necessary;
- A new provision to enable MAS to impose additional measures on prescribed DPT service providers by way of subsidiary legislation. This will enable MAS to adapt its regulations in a timely manner to address the characteristics, risks, and stage of development of specific DPT services, as MAS promotes innovation in the DPT space; and
- To widen the scope of the definition of "domestic money transfer service" so that customer money is protected under the PS Act for more types of payment transactions.

(ii) Consultation on the Payment Services Act 2019: Scope of E-money and Digital Payment Tokens

E-money and DPT are defined in the PS Act. However, recent innovations have led to the emergence of new payment instruments (e.g. stablecoins) that could blur the line between the e-money and DPT regimes under the PS Act. Some issues that are raised for feedback in this Consultation Paper include:

- **Regulation of stablecoins:** Stablecoins are a new class of cryptocurrencies designed to maintain a stable value relative to another asset (typically a unit of fiat currency or commodity) or a basket of assets. They could potentially perform the functions of money, especially if they were to gain widespread acceptance. Stablecoins could also vary in terms of accessibility (whether to retail or wholesale customers) and ability to be traded on the secondary market. Accordingly, stablecoins could present a challenge to the way e-money and DPT are currently distinguished for regulatory purposes. MAS seeks feedback on various issues relating to stablecoins when MAS considers how to delineate e-money and DPTs.
- **Definition of "e-money":** Currently, e-money is defined in the PS Act as any electronically stored monetary value that (a) is denominated in any currency or pegged by its issuer to any currency; (b) has been paid 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. MAS seeks comments on two aspects of the definition of "e-money" in the PS Act: (1) whether there are any implications of e-money being pegged to only one currency as opposed to more than one currency; and (2) whether a claim on the issuer should be a necessary defining characteristic of e-money.

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- **Distinguishing "e-money" from "DPT":** The current definition of DPT in the PS Act was drafted with reference to the characteristics of first-generation digital tokens like Bitcoin and Ether that were used for payments, commonly known as virtual currencies or cryptocurrencies. Two characteristics that differentiate e-money and DPT under the PS Act are (a) e-money is a digital representation of a single fiat currency, whereas DPT is simply a representation of value without necessarily any reference to fiat currency; and (b) e-money must represent a claim on the issuer, whereas DPTs need not. Feedback is sought on whether MAS should consider any other characteristics that will effectively distinguish e-money and DPT.

MAS clarified in the consultation paper that it is not proposing to amend the definition of e-money or DPT during this consultation, and is studying views received in the feedback to the consultation before assessing if it is necessary to amend the definitions.

- **Regulation of e-money based payment services and DPT services:** The PS Act was developed as a risk-focused, activity-based framework that enables MAS to regulate the provision of payment services according to the risks that the service poses. DPT services pose primarily ML/TF risks whereas e-money based payment services pose a range of risks and concerns, including user protection. Therefore, DPT services and e-money based payment services are regulated differently to mitigate different sets of risks. MAS seeks comments on whether the existing regulatory regime, including user protection measures and requirements, set out in the PS Act is relevant and appropriate going forward, taking into account new products like stablecoins with potentially global user reach and use.

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To read more about the key features of the PS Act and the changes to be introduced, please click [here](#) for our recent Client Update titled "Payment Services Act 2019 To Take Effect on 28 January 2020".

If you have any queries on the above or require any assistance in providing response to the public consultations, please feel free to contact our team below.

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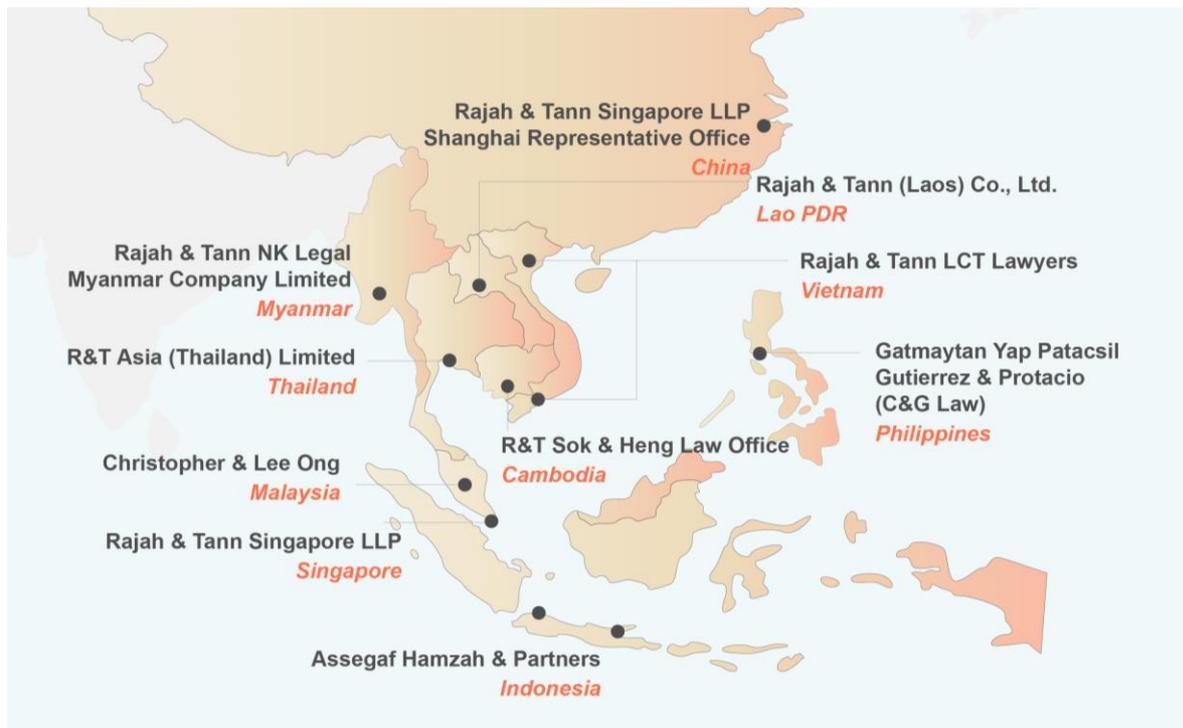
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