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Digital Payment Token Service Providers to Comply with Enhanced Regulatory Measures from 2024

Introduction

In Singapore, cryptocurrencies are generally regulated as digital payment tokens ("**DPTs**") under the Payment Services Act 2019 ("**PS Act**"). Currently, DPT service providers ("**DPTSPs**") are regulated under the PS Act primarily for anti-money laundering and countering the financing of terrorism (AML/CFT) risks, and technology and cyber risks. Although DPTSPs are not regulated for consumer protection risks under the PS Act, the Monetary Authority of Singapore ("**MAS**") has consistently issued strong warnings to retail investors that speculative trading of DPTs (including cryptocurrencies) is not suitable for them. DPTSPs are required to provide a risk warning to their customers about trading in DPTs, and are subject to restrictions concerning the promotion of DPT services at public places.

To further reduce the risk of consumer harm in cryptocurrency trading, in October 2022, MAS issued the "[*Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services*](#)" ("**Consultation Paper**") to seek comments on its proposals, among other things, to introduce consumer access measures for retail customers of DPTSPs, business conduct measures and enhanced measures to manage technology and cyber risks for DPTSPs.

On 23 November 2023, MAS issued Part 2 of its response to feedback received on the proposals in the Consultation Paper that relate to consumer access, business conduct and management of technology and cyber risks by DPTSPs ("**Part 2 Response**"). This follows the earlier publication in July 2023 of Part 1 of MAS' response to feedback received relating to regulatory measures concerning segregation and custody of assets of customers of DPTSPs, prohibition against the lending and staking of retail customers' assets by DPTSPs, and prevention and detection of market abuse and unfair trading practices in the dealing of DPTs. For more information on the regulatory measures covered in Part 1 of the MAS response in July 2023, please refer to our Client Update titled "[*MAS Consults on Proposed New Requirements for Digital Payment Token Service Providers to Enhance Investor Protection and Market Integrity*](#)".

This Update provides a summary of the regulatory measures addressed in Part 2 Response which relate to:

- (1) Consumer access measures for retail investors of DPTSPs;

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- (2) Business conduct measures relating to the management of conflict of interests ("**COI**"), complaints handling and dispute resolutions with customers; and
- (3) Mandating the requirements in the MAS Notice of Technology Risk Management applicable to the other financial institutions ("**FIs**") to DPTSPs.

Additional implementation details of the regulatory measures on consumer access and business conduct measures will be set out in a set of new MAS Guidelines ("**MAS Guidelines**"), targeted to be released in mid-2024, with a nine-month transition period for implementation. Further, MAS will set out the new requirements to manage technology and cyber risks in MAS PSN05 on Technology Risk Management ("**PSN05**") in early 2024, with a nine-month transition period for implementation.

In view of these upcoming changes, DPTSPs should start preparing to implement these measures. Our specialist teams at Rajah & Tann are well-poised to help you with such preparation. Please feel free to contact our team members who will be happy to assist.

(1) Consumer Access Measures

- **Applicable to retail customers:** DPTSPs will be required to apply these new consumer access measures to a "retail customer", namely, a customer who is not an accredited investor ("**AI**") or institutional investor ("**II**"). The definitions of AI and II will be prescribed in the MAS Guidelines and be aligned with those in the Securities and Futures Act 2001 ("**SFA**"). DPTSPs who are not an AI or II will not be protected under the consumer access measures.
- **Applicable regardless of residency:** Given the cross-border nature of DPT services, MAS will require DPTSPs regulated in Singapore to apply the consumer access measures to all retail customers, regardless of their residency. This approach would reduce the risk of DPTSPs setting up in Singapore with the objective of serving foreign customers who are not subject to these new consumer access measures.
- **Opt-in regime for AIs:** By default, the consumer access measures in the MAS Guidelines will not apply to IIs. For AIs, just like under the SFA, the MAS Guidelines will provide for an opt-in regime. This means that a person will only be treated as an AI for the purpose of the consumer access measures if that person has opted to be treated by the counterparty as an AI in accordance with the procedures in the MAS Guidelines. Therefore, DPTSPs must treat all customers (except IIs) as retail customers unless a customer who meets the criteria of an AI opts to be treated as an AI. The MAS Guidelines will set out MAS' expectations in this regard.
- **Eligibility criteria for AI:** The criteria to be considered an AI under the SFA for individuals is net personal assets of S\$2 million or more. Considering feedback received on the Consultation Paper, MAS will allow DPTs to be included in determining a person's eligibility as an AI. However, due to the high volatility of DPT holdings, MAS will require DPTSPs to apply a haircut of a minimum of 50% to the DPTs' valuation, and will also apply an overall cap of S\$200,000 on the

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value of DPTs which may be taken into account DPTSPs and FIs may however apply a higher haircut or adopt their own valuation models that achieve the same or a more prudent outcome.

The imposition of the overall cap of S\$200,000 on the value of DPTs is intended to avoid an overreliance on the value of DPTs as well as to mitigate the possible situation of customers vacillating between being AI-eligible and not, given the highly volatile nature of DPTs.

The same treatment of DPTs will apply to the determination of AI eligibility under the SFA and will be addressed in the [MAS FAQs on the Definition of Accredited Investor and Opt-in Process](#).

MAS also clarified in the Part 2 Response that stablecoins which are regulated by MAS are treated as fiat. Therefore, the above treatment of DPTs (i.e. the requirement to apply a haircut and cap) will not apply to such stablecoins for the purpose of assessing a person's AI eligibility. For more information about MAS' regulatory framework for stablecoins in Singapore, please refer to our Client Update titled "[MAS Announces New Regulatory Framework for Stablecoins](#)".

- **Risk awareness assessment:** Retail customers will only be allowed to trade DPTs if they are fully aware of the risks associated with the products. Therefore, a DPTSP will be required to assess whether a retail customer has sufficient knowledge of the risks of DPTs and the DPT services before providing any DPT service to that customer. The risks that should be covered by DPTSPs are specified in the MAS Guidelines and they include:
 - sharp fluctuations in DPTs' prices and the risks of losing all monies put into DPTs;
 - a customer's inability to readily sell his/her DPTs;
 - a customer's loss of access to DPTs in the event of a technological or operational issue;
 - a customer's loss of DPTs in the event of fraud, theft, sabotage or cyber-attack;
 - business conduct risks arising from varying business models of DPTSPs (e.g. risks stemming from COI, custody of DPTs, etc.); and
 - limitations of regulatory protection, etc.

MAS emphasises that the risks highlighted in the MAS Guidelines are non-exhaustive and a DPTSP will be expected to include other risks which are specific to a customer and the DPT services provided by the DPTSP in conducting the risk awareness assessment of the customer. All DPTSPs will be required to establish internal policies and procedures to ensure a fair and robust assessment of their retail customers' knowledge of the risks associated with trading in DPTs.

When the MAS Guidelines take effect, all DPTSPs should conduct the risk awareness assessment for all retail investors prior to providing any DPT service.

- **Re-assessment of retail customers who have insufficient knowledge of risks:** DPTSPs will be allowed to conduct re-assessment for retail customers who have been assessed to have insufficient knowledge of the risks associated with trading in DPTs and for such retail customers

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to re-take the risk awareness assessment. There should be appropriate policies and procedures to facilitate and encourage these retail customers to build their understanding and knowledge of the risks involved (e.g., through provision of reliable, clear and independent educational material that explain the nature of activities and the associated risks involved in those activities) before they are re-assessed. DPTSPs should also ensure that subsequent assessments remain equally robust (e.g. having a sufficiently diverse question bank and system to generate different questions for subsequent assessments). MAS is of the view there is no need to impose a cooling-off period between re-assessments of retail customers who have been assessed to have insufficient knowledge of the risks if the re-assessment measures are implemented well.

- **Validity period of risk awareness assessment:** MAS will not impose a validity period on the risk awareness assessment of a retail customer or require DPTSPs to re-assess retail customers at regular intervals. Instead, DPTSPs will be expected to put in place internal processes to review and update the risk awareness assessment administered on a retail customer and assess if he/she is required to undertake an updated risk awareness assessment, or a part thereof.
- **Prohibition against offering of incentives:** DPTSPs should not offer any incentives (monetary or non-monetary) to: (1) any retail customers for participating in a DPT service; or (2) any person (e.g., an existing customer or a celebrity) for referring a DPT service to retail customers.
- **Restrictions on debt-financed and leveraged DPT transactions:** DPTSPs will not be allowed to:
 - provide to a retail customer any credit facility (whether in the form of fiat currencies or DPTs) to help the retail customer purchase, or continue holding, the DPTs; or
 - enter into any leveraged DPT transaction with a retail customer, or facilitate a retail customer's entering into any leveraged DPT transaction (e.g. margin trading, DPT futures, options and other derivative transactions) with any other person.
- **Prohibition against using Singapore-issued credit card and charge card for payments:** DPTSPs will be prohibited from accepting any payments made by a retail customer using a credit card or charge card, in connection with the provision of any DPT service. MAS has however made concession for foreign-issued credit cards or charge cards on the basis that there are limited payment alternatives available for a foreign retail customer as compared to a retail customer in Singapore.

(2) Business Conduct Measures: Managing COI

- **Policies and procedures to identify and disclose COI:** To address COI which may arise from the situation where DPTSPs conduct multiple activities, including operating a trading platform, providing broker-dealer services and trading for their own or related accounts, MAS will require DPTSPs to:

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- establish and implement effective policies and procedures to identify and address COI; and
 - disclose to their customers the nature of the activities and sources of COI and the relevant measures and controls which the DPTSPs have put in place to mitigate the COI.
- **Mitigation measures of COI in specified combinations of DPT activities conducted by a DPTSP or with its related entities:** MAS is of the view that the potential for consumer harm is acute when a DPTSP conducts combinations of certain types of DPT activities, whether within the DPTSP or with its related entities. MAS has recommended the following mitigation measures in these circumstances.

Types of combined DPT activities	Mitigation measures
<ul style="list-style-type: none"> • DPTSP operates a market (DPT trading platform) • DPTSP and its related entities transact on their own account on markets 	DPTSP and its related entities must not trade on markets that they operate, unless for the purposes of matched principal trading.
DPTSP operates a market and acts as a broker	DPTSP should (1) set up separate legal entities with separate management teams such that the two functions are independent of one another; and (2) provide clear client disclosures.
DPTSP acts as a broker and transacts on its own account	DPTSP should (1) establish proper functional segregation and effective Chinese walls; and (2) provide clear client disclosures so that the customer is aware of the capacity and manner in which the DPTSP is executing the customer order.
<ul style="list-style-type: none"> • DPTSP or its related entity issues its own or related token and/or has proprietary holding of tokens • DPTSP or its related entity lists these tokens on its market 	DPTSP should make the following disclosures in relation to the listing and trading of all DPTs: <ul style="list-style-type: none"> • potential conflicts and risks arising from its own or related token listings; • specific steps and measures that have been put in place to effectively address the risks and COI; and • its proprietary holdings of any tokens at the point of token listing.

DPTSPs will be expected to regularly assess the effectiveness of the mitigating measures to address any potential COI. DPTSPs must adopt a prudent approach if the measures are assessed to be inadequate to effectively address COI. Further, DPTSPs must closely monitor their employees' trading activities and their access to material non-public information to safeguard clients' interests.

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- **Disclosure of DPT listing and governance policies:** DPTSPs operating a trading platform should disclose their listing and governance policies, procedures and decision-making process for selecting a DPT for listing on their platform in a clear, legible and concise manner. They should assess whether they have provided sufficient and understandable information to allow their customers to make informed decisions about how they have applied their evaluation criteria (e.g., track record, market capitalisation, liquidity, volatility, technical security) before making a DPT available for trading on the DPT trading platform.

Business Conduct Measures: Complaints Handling and Dispute Resolution

- **Complaints handling policies and procedures:** DPTSPs will be required to put in place complaints handling policies and procedures. This will be broadly aligned with the scope and rules set out under the Financial Advisers (Complaints Handling and Resolution) Regulations 2021. DPTSPs will be expected to properly monitor and track complaints and complaints trends, handle and resolve customer complaints in a fair and timely manner, and provide information to MAS when requested. To prevent conflict of interest, the unit handling customer complaints should not be directly involved in the provision of DPT services.
- **Dispute resolution modes:** DPTSPs should resolve disputes with retail customers using any of the principal modes of dispute resolution available in Singapore, such as mediation, arbitration and litigation in the Singapore courts. While MAS does not require DPTSPs to subscribe to the services by Financial Industry Disputes Resolution Centre ("FIDReC"), MAS is supportive of industry associations coming together to discuss possible membership arrangements with FIDReC.

(3) Enhanced Measures Relating to Technology and Cyber Risk Management

Currently, DPTSPs are required to comply with cyber hygiene requirements set out in the MAS Notice on Cyber Hygiene and the MAS Technology Risk Management Guidelines which require FIs to establish sound and robust technology risk governance, and maintain cyber resilience.

To improve IT resilience, as well as maintain trust and confidence in DPT services, MAS will mandate the requirements in PSN05 for DPTSPs. Such requirements include, among other things:

- **Framework and process to identify critical systems:** DPTSPs will be required to establish a framework and process to identify critical systems. A "critical system" refers to a system, the failure of which will cause significant disruption to the operations of a DPTSP or materially impact the DPTSP's service to its customers. MAS emphasises that a DPTSP must assess and identify the type of threshold of such "severe and widespread impact" with reference to its operations.

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- **Keeping unscheduled downtime below the prescribed limit:** DPTSPs will be expected to ensure that the maximum unscheduled downtime for each critical systems does not exceed a total of four hours within any period of 12 months.
- **Prescribed recovery time objective ("RTO"):** DPTSPs will be required to establish a RTO of not more than four hours for each critical system. This four-hour RTO will not apply to the underlying public blockchain of DPTs.
- **Prompt notification of system malfunction or IT security incident:** DPTSPs will be required to notify MAS upon the discovery of a system malfunction or IT security incident which has a severe and widespread impact on its operations or materially impacts its service to its customers. The notification must be made as soon as possible, but not later than one hour after the discovery of the incident. A root cause and impact analysis report must be submitted to MAS within 14 days. This ensures that MAS has sufficient lead time to assess the wider impact of the incident on the industry and the public, as well as to coordinate with the DPTSPs to provide responses to the stakeholders. DPTSPs will be required to notify MAS of IT incidents under PSN05, as well as to notify the Personal Data Protection Commission of any data breaches under the Personal Data Protection Act 2012.
- **Controls to protect customer information:** DPTSPs will be required to implement IT controls to protect customer information from unauthorised access or disclosure.

Our Comments

The new requirements to manage technology and cyber risks are expected to be set out in PSN05 in early 2024, with a nine-month transition period for implementation. The MAS Guidelines which will prescribe the implementation details of the regulatory measures on consumer access and business conduct measures are targeted to be released in mid-2024, with a nine-month transition period for implementation.

DPTSPs should study the MAS's regulatory positions detailed in Part 2 Response and start reviewing and adapting their current operations to comply with these new requirements. Notably, DPTSPs should:

- (1) start developing frameworks to assess the risk awareness of their retail customers and the re-assessment and education of customers who are assessed to have insufficient risk awareness;
- (2) develop policies and procedures to identify non-retail customers and obtain opt-in from AI customers where relevant;
- (3) restrict the use of incentives for the referral of DPT services to retail customers, the offering of leveraged or debt-financed DPT transactions, or the use of local credit or charge cards as a payment method;
- (4) develop policies and procedures to identify COI and apply mitigation measures thereto, including the specific mitigation measures identified by MAS;

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- (5) if they operate a trading platform, develop listing and governance policies for the listing of DPTs on their platform, which should also be disclosed to their customers;
- (6) develop complaints handling and dispute resolution policies and processes that align with MAS' expectations and requirements; and
- (7) start updating their technology risk management policies to additionally meet the requirements that are set out in PSN05.

Should you have any queries on the above developments, please feel free to contact our team members below who will be happy to assist.

Further Information

Please click on the links below to access the following documents made available on the MAS website (www.mas.gov.sg) relating to the above developments:

- [MAS press release dated 23 November 2023 titled "MAS Strengthens Regulatory Measures for Digital Payment Token Services"](#)
- [MAS Response to Public Consultation on Proposed Regulatory Measures for DPT Services \(Part 2\) issued on 23 November 2023](#)
- [Annex B to MAS Response – Submissions from Respondents to Questions 1-5, 11-14, and 17 of the Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services issued on 23 November 2023](#)

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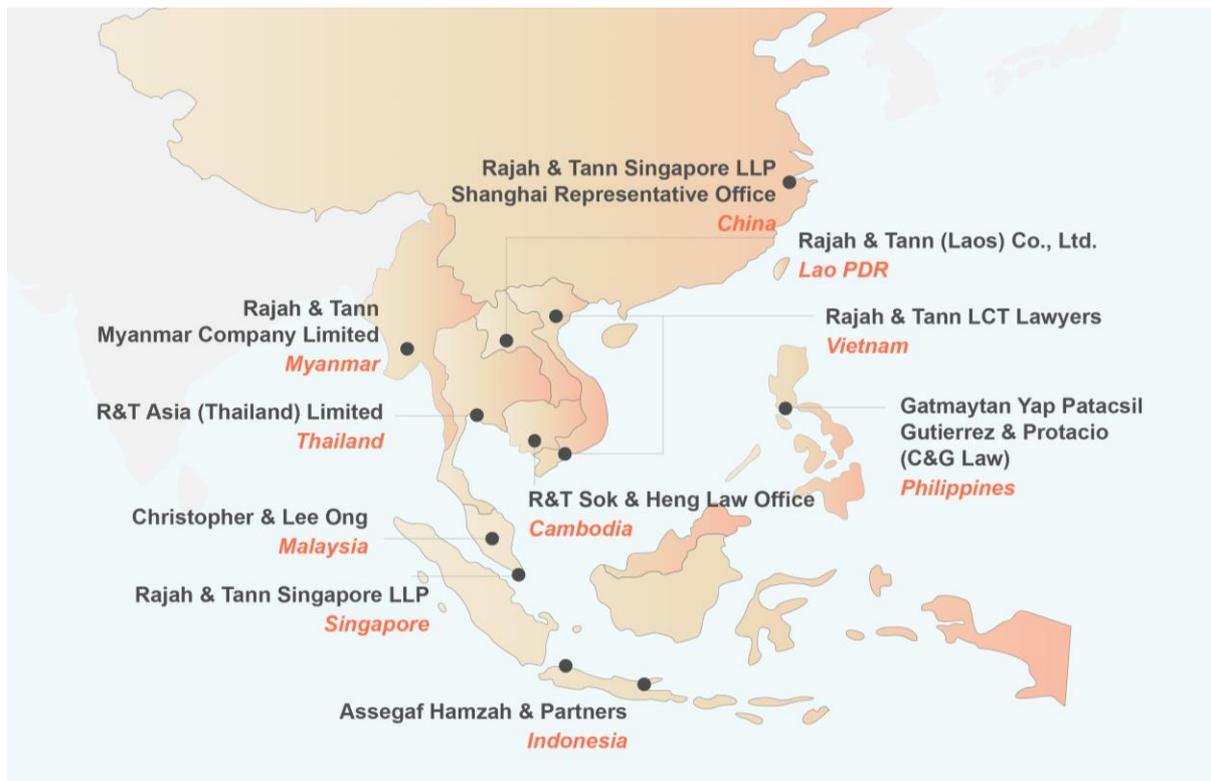
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