

Singapore: MAS publishes consultation paper on proposed regulatory approach for digital token service providers under the FSMA

In brief

On 4 October 2024, the Monetary Authority of Singapore (MAS) published the Consultation Paper on Proposed Regulatory Approach, Regulations, Notices and Guidelines for Digital Token Service Providers issued under the Financial Services and Markets Act 2022 (P010-2024) ("**Consultation Paper**").

The Consultation Paper, which includes a number of Annexes, sets out the MAS' proposed new regulatory framework for digital token service providers (DTSPs) that will be regulated under Part 9 of the Financial Services and Markets Act 2022 (FSMA). The MAS' key proposals for the new regulatory framework for DTSPs center around licensing requirements, anti-money laundering and countering the financing of terrorism (AML/CFT) compliance, financial obligations and governance requirements. We provide further details on each area below.

We expect that the Consultation Paper will be of most interest to currently unlicensed DTSPs that may expect to be regulated under Part 9 of the FSMA.

If you have any feedback or comments for the MAS in relation to the proposals relating to the new regulatory frameworks for DTSPs, please reach out to the MAS via this [link](#). The consultation will close on 4 November 2024.

Alternatively, if you have any questions on how this may impact your business or operations, please feel free to reach out to us.

In this issue

- Overview – Scope of FSMA licensing
- Licensing Process and Criteria for DTSPs
- Ongoing Regulatory Expectations for DTSPs
- Conclusion

Overview – Scope of FSMA licensing

Part 9 of the FSMA contains the legislative framework for the licensing and regulation of DTSPs, which refer to the following:

- Individuals and partnerships who, from a place of business in Singapore, carry on a business of providing a digital token service ("**DT Service**") outside Singapore; and
- Singapore corporations that carry on a business, whether from Singapore or elsewhere, of providing a DT Service outside Singapore.

Such DTSPs will need to obtain a license. However, these licensing requirements would not be applicable to persons that are required to:

- Be licensed, approved or recognized, or exempted from licensing, approval or recognition, under the Securities and Futures Act 2001, in respect of a business in capital markets product regulated activity;
- Be licensed or exempted from licensing under the Financial Advisers Act 2001, in respect of a business of providing a financial advisory service; or
- Be licensed or exempted from licensing under the Payment Services Act 2019, in respect of a business of providing any digital payment token service.

A "DT Service" refers to any of the following:

- Any service of dealing in digital tokens (other than any such service that the MAS may prescribe);
- Any service of facilitating the exchange of digital tokens (other than any such service that the MAS may prescribe);

- (c) Any service of accepting (whether as principal or agent) digital tokens from one digital token account (whether in Singapore or elsewhere), for the purposes of transmitting or arranging for the transmission of the digital tokens to another digital token account (whether in Singapore or elsewhere);
- (d) Any service of arranging (whether as principal or agent) for the transmission of digital tokens from one digital token account (whether in Singapore or elsewhere) to another digital token account (whether in Singapore or elsewhere);
- (e) 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 tokens in exchange for any money or any other digital tokens (whether of the same or a different type);
- (f) Any service of safeguarding a digital token, where the service provider has control over the digital token;
- (g) Any service of carrying out for a customer an instruction relating to a digital token, where the service provider has control over the digital token;
- (h) Any service of safeguarding a digital token instrument, where the service provider has control over one or more digital tokens associated with the digital token instrument;
- (i) Any service of carrying out for a customer an instruction relating to one or more digital tokens associated with a digital token instrument, where the service provider has control over the digital token instrument;
- (j) Any service relating to the sale or offer for sale of digital tokens that involves: (i) providing advice, either directly or through publications or writings, and whether in electronic, print or other form, relating to any digital tokens; or (ii) providing a advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, relating to any digital tokens,

but excludes:

- (i) Any service provided by any technical service provider that supports the provision of any DT Service, but that does not at any time enter into possession of any money or digital token under that DT Service, such as: (i) the service of processing and storing data; (ii) any information technology security, trust or privacy protection service; (iii) any data and entity authentication service; (iv) any information technology service; (v) the service of providing a communication network; and (vi) the service of providing and maintaining any terminal or device used for any digital token service;
- (ii) Any DT Service that is provided, in respect of any central bank digital token, by any central bank or financial institution;
- (iii) Any digital payment token service that is provided in respect of any limited purpose digital payment token.

Licensing process and criteria for DTSPs

A high-level overview of the proposed licensing regime for DTSPs is as follows:

PROCEDURAL AND OPERATIONAL REQUIREMENTS	
How to apply	<p>The FSM Regulations contain details on the license application (including forms), license fees and the circumstances in which a DTSP license will lapse.</p> <ul style="list-style-type: none"> • As at 14 October 2024, the application forms do not appear to have been published yet on the MAS website. • DTSP licenses will be granted on a perpetual basis under Part 9 of the FSMA, with fees payable upon application and annually thereafter. The proposed Schedule to the FSM Regulations sets out the timeline and methodology for payment of such fees.
Transitional arrangements	<p>There are no transitional arrangements. Once Part 9 of the FSMA comes into force, all DTSPs would be required to suspend or cease operations, unless they obtain a license from the MAS or are otherwise exempt from licensing.</p> <p>However, the MAS plans to publish a commencement notification for Part 9 of the FSMA, alongside finalized versions of the FSM Regulations, notices and guidelines at least four weeks prior to the commencement of the regime.</p>

CRITERIA FOR LICENSING	
General approach	The MAS has advised that it expects DTSP licenses to be granted in "extremely limited circumstances" under the FSMA, given the AML/CFT risks associated with the internet-based, cross-border services provided by DTSPs.
Financial requirements	The FSM Regulations set out initial and ongoing financial requirements that will apply to DTSPs to ensure that they are sufficiently resourced to conduct services under the DTSP license. The MAS has proposed the following minimum initial and ongoing requirements for DTSPs: <ul style="list-style-type: none"> (a) Companies – base capital of not less than SGD 250,000 (b) Partnerships or limited liability partnerships – total capital contribution of not less than SGD 250,000 (c) Individuals – maintain with the MAS security in the form of a cash deposit of not less than SGD 250,000
Other relevant criteria that the MAS will take into account	The MAS will consider applications for a DTSP license on a case-by-case basis, factoring in whether the applicant meets the following criteria (to be included in the Guidelines on Licensing for DTSPs): <ul style="list-style-type: none"> (a) The applicant has a business model that makes economic sense and can provide the MAS with valid reasons for not providing DT Services in Singapore, despite operating in or being formed or incorporated in Singapore. (b) The applicant does not operate in a manner that is of concern to the MAS and is already regulated and supervised for compliance with relevant internationally agreed standards. (c) The MAS does not have concerns with the business structure of the applicant, for example with respect to its ability to comply with regulatory obligations. (d) There are other relevant criteria determined by the MAS.
Ongoing business conduct requirements	The MAS will expect an applicant to fulfil the following licensing criteria: <ul style="list-style-type: none"> (a) Corporations must appoint at least one executive director who is a resident in Singapore, while partnerships or limited liability partnerships must respectively appoint at least one partner, or partner or manager, who is resident in Singapore. There is no explicit requirement for this director, partner or manager (as the case may be) to be a Singapore citizen or Singapore permanent resident. (b) Applicants must satisfy the MAS that they are fit and proper, in line with the Guidelines on Fit and Proper Criteria. (c) Applicants must have a permanent place of business in Singapore. (d) Applicants should perform a penetration test of its proposed DT Services, remediate all high-risk findings identified, and conduct independent validation of the effectiveness of the remediation actions. (e) Applicants should have adequate compliance arrangements commensurate with the scale, nature and complexity of their operations, such as an independent compliance function in Singapore, compliance support from a holding company or overseas related entity, or other appropriate compliance management arrangements. (f) Applicants should have in place adequate independent audit arrangements to regularly assess the adequacy and effectiveness of their procedures, controls and regulatory compliance. (g) Applicants should be able to demonstrate that they are able to meet annual audit requirements as further detailed in the FSMA. <p>Once licensed, DT licensees will be required to notify the MAS on an ongoing basis of any changes to the circumstances included in the application, and/or changes in their operations and business model that would result in the licensee no longer meeting the requirements.</p> <p>In addition, the FSM Regulations will also impose, in addition to auditing requirements, duties with respect to CEOs, directors or partners of the licensee.</p>

Ongoing regulatory expectations for DTSPs

The MAS also proposes the following ongoing requirements to apply to DT licensees:

ANNEX D - FSM-N27 - NOTICE TO DIGITAL TOKEN SERVICE PROVIDERS ON PREVENTION OF MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM

Overview	This Notice includes the MAS' proposed AML/CFT requirements, which will include the following non-exhaustive requirements for licensees: <ul style="list-style-type: none"> (a) Taking appropriate steps to identify, assess and understand their money laundering or terrorist financing (ML/TF) risks (b) Developing and implementing policies, procedures and controls to enable them to effectively manage and mitigate the risks identified, including customer due diligence (CDD) measures, transaction monitoring, screening, suspicious transaction reporting, and record keeping (c) Monitoring the implementation of those policies, procedures and controls, and enhancing them if necessary (d) Performing enhanced measures if higher ML/TF risks are identified
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	<p>The requirements that will apply to DTSPs are largely similar to the AML/CFT requirements set out in MAS Notice PSN02 Prevention of Money Laundering and Countering the Financing of Terrorism - Digital Payment Token Service ("PSN02"), which applies to digital payment token service providers under the Payment Services Act 2019, save for the scoping in of pre-licensing customers into the Notice (as further discussed under "Existing customers" below).</p>
Existing customers	<p>Under this Notice, licensees will be required to perform CDD measures on all customers with whom they have established business relations prior to obtaining the DTSP license and who continue to be customers. Such measures will need to be completed within a specified time period after obtaining the DTSP license.</p>
Reliance on third parties	<p>Licensees will be able to rely on a third party to perform CDD measures, provided certain requirements are met, particularly the following:</p> <ul style="list-style-type: none"> (a) The licensee is satisfied that the third party is subject to and supervised for compliance with AML/CFT requirements, consistent with the Financial Action Task Force (FATF) standards, and has adequate AML/CFT measures in place. (b) The licensee takes appropriate steps to identify, assess and understand the ML/TF risks in particular jurisdictions where the third party operates. (c) The third party is not one that the licensee has been specifically precluded by the MAS from relying upon. (d) The third party is able and willing to provide, upon the licensee's request, data, documents or information with respect to the measures applied on the licensee's customer. <p>At present, financial institutions cannot rely on third parties that are holders of a payment services license under the Payment Services Act 2019 (or equivalent licenses issued by foreign authorities), due to discrepancies between the AML/CFT controls. Similarly, the MAS intends to exclude DTSP licensees (and holders of equivalent licenses issued by foreign authorities) from the definition of "third party" under the Notice.</p> <p>Further and based on the same reasoning, the MAS also intends to exclude DTSP licensees from the definition of "third party" in similar provisions in the AML/CFT Notices applicable to other types of financial institutions (as set out in Annex B of the Consultation Paper).</p>
Correspondent account services	<p>This Notice will also impose requirements upon licensees who act as intermediaries for other DTSPs or financial institutions. In particular, where licensees provide correspondent account services to another financial institution operating in or outside Singapore, or where licensees engage a financial institution that is not a bank or merchant bank in Singapore operating in or outside Singapore to provide or facilitate the provision of correspondent account services, the licensee will be subject to the FATF standards on correspondent banking.</p> <p>The MAS has accordingly proposed requirements in line with these standards, namely, to oblige licensees to perform risk mitigation measures when providing such services, in addition to performing CDD. By way of example, the risk mitigation measures include the following:</p> <ul style="list-style-type: none"> (a) Assessing the suitability, adequacy and effectiveness of the financial institution by considering its AML/CFT controls (b) Understanding and documenting the AML/CFT responsibilities of the licensee and the other financial institution (c) Obtaining approval from the licensee's senior management before providing correspondent account services (or similar) to a new financial institution, or before receiving such services <p>These measures are aligned with the equivalent requirements in PSN02.</p>
Bearer negotiable instruments and cash payouts	<p>The MAS considers that bearer negotiable instruments and cash payouts pose particular ML/TF risks, given their anonymity. As such, the Notice includes the following proposals designed to mitigate such risks:</p> <ul style="list-style-type: none"> (a) A prohibition on licensees issuing bearer negotiable instruments (b) A prohibition on licensees paying cash in an amount equal to or exceeding SGD 20,000 (c) A requirement for licensees to use cheques to make payments of SGD 20,000 and above, subject to conditions <p>These measures are aligned with the equivalent requirements in PSN02.</p>
Value transfer	<p>When licensees effect, receive or arrange for the value transfer of one or more digital tokens, they will need to comply with certain requirements under this Notice, depending on what type of institution the licensee is. For example:</p> <ul style="list-style-type: none"> (a) A licensee that is an ordering institution must: <ul style="list-style-type: none"> (i) Identify the value transfer originator and take reasonable measures to verify the originator's identity (ii) Record adequate details of the value transfer so as to enable its reconstruction, including the date, and type and value of digital token(s) transferred (iii) Collect and document information on the originator and beneficiary, which is immediately and securely submitted to the beneficiary institution (b) A licensee that is a beneficiary institution must: <ul style="list-style-type: none"> (i) Take reasonable measures, including monitoring, to identify value transfers that lack the required originator or beneficiary information (c) A licensee that is an intermediary institution must: <ul style="list-style-type: none"> (i) Retain all information accompanying a value transfer (ii) Implement appropriate internal risk-based policies, procedures and controls to determine when to execute, reject or suspend a value transfer lacking the required originator or beneficiary information, and the appropriate follow-up action

These measures are aligned with the equivalent requirements in PSN02.

ANNEX E - FSM-N28 - NOTICE ON REPORTING OF SUSPICIOUS ACTIVITIES AND INCIDENTS OF FRAUD

Overview Licensees will be required to make certain reports to the MAS under this Notice, upon the discovery of any suspicious activities or incidents of fraud that are material to the safety, soundness or reputation of the licensee. This reporting requirement is broadly aligned with the equivalent requirement in MAS Notice PSN03 Notice on Reporting of Suspicious Activities and Incidents of Fraud ("**PSN03**"), which applies to digital payment token service providers under the Payment Services Act 2019.

ANNEX F - FSM-N29 - NOTICE ON SUBMISSION OF REGULATORY RETURNS

Overview Further reporting requirements arise under this Notice in relation to the MAS' ongoing supervision of DTSPs. For example, this Notice requires licensees to periodically submit information relating to their DT Services. This would involve the provision on a monthly basis of information on account statistics, transactions values or volumes, the value of digital tokens held for safeguarding or administration, and other matters. In addition, the MAS intends to collect other information to enable it to understand and monitor the profile of the licensee's DT Services, including detail on matters such as transactions involving higher risk customers or jurisdictions, the jurisdictions in which such services are provided, service providers of the licensee, and transactions involving anonymity enhancing technologies that pose higher ML/TF risks. There is a similar reporting requirement for digital payment token service providers licensed under the Payment Services Act 2019, although the exact scope of reporting differs.

ANNEX G - FSM-N30 - NOTICE ON TECHNOLOGY RISK MANAGEMENT

Overview The MAS intends to impose a variety of requirements for licensees relating to the management of technology risks under this Notice, namely as follows:

- (a) Put in place a framework and process to identify critical systems
- (b) Ensure that the maximum unscheduled downtime for each critical system does not exceed a total of four hours within any 12-month period
- (c) Establish a recovery time objective of not more than four hours for each critical system
- (d) Notify the MAS as soon as possible, but not later than one hour, upon the discovery of a system malfunction or IT security incident that has a severe and widespread impact on the licensee's operations or that materially impacts its service to customers, in addition to submitting a root cause and impact analysis report to the MAS within 14 days
- (e) Implement IT controls to protect customer information from unauthorized access or disclosure.

The above requirements are broadly aligned with the equivalent requirement in MAS Notice FSM-N13 Notice on Technology Risk Management ("**FSM-N13**"), which applies to digital payment token service providers under the Payment Services Act 2019.

ANNEX H - FSM- N31 - NOTICE ON CYBER HYGIENE

Overview This Notice will impose further requirements aimed at addressing the management of technology risks. In particular, licensees will be required to carry out the following:

- (a) Secure administrative accounts against any unauthorized access or use
- (b) Establish security standards
- (c) Implement security patches in a timely manner
- (d) Put in place network perimeter defense and malware protection
- (e) Implement multi-factor authentication for administrative accounts of critical systems, and all system accounts used to access customer information through the internet

The above requirements are broadly aligned with the equivalent requirement in MAS Notice FSM-N14 Notice on Technology Risk Management ("**FSM-N14**"), which applies to digital payment token service providers under the Payment Services Act 2019.

ANNEX I - FSM-N32 - NOTICE ON CONDUCT

Overview This Notice details conduct requirements for licensees, including a requirement for at least one person to be present at the licensee's permanent place of business for at least 10 days a month, for at least eight hours on each of those days during its normal business hours, in order to respond to any queries or complaints from digital token service users.

ANNEX J - FSM-N33 - NOTICE ON DISCLOSURES AND COMMUNICATIONS

Overview In this Notice, the MAS has set out proposed disclosure and communications requirements for DTSP licensees. For example, licensees will be required to provide their customers with a specified risk warning statement to ensure that customers understand that they are exposed to the risk of the licensees losing their value.

The scope of regulation of a licensee under the FSMA will also need to be accurately represented (including by third parties), to ensure that the public correctly understands the extent of the licensee's regulation.

ANNEX K - FSG-G01 - GUIDELINES ON FIT AND PROPER CRITERIA

Overview Following the commencement of the DTSP regime, the Guidelines on Fit and Proper Criteria will be amended to apply to all DTSP licensees as well.

APPROACH TO OTHER GUIDELINES

Overview Other guidelines that apply to all financial institutions (for example, the Guidelines on Business Continuity Management) will apply to all DTSP licensees without amendment.

Further to Notices FSM-N30 and FSM-N31 above, licensees will also be required to comply with MAS Guidelines on Risk Management Practices – Technology Risk. These Guidelines require financial institutions to establish sound and robust technology risk governance while also maintaining cyber resilience.

In addition, Annex B contains proposed amendments to other AML/CFT Notices, which principally relate to the definition of a "Foreign FI" (i.e., foreign financial institution).

Conclusion

The Consultation Paper, as well as the proposed regulatory framework that it introduces, is a clear indication that the MAS is progressing towards the coming into force of Part 9 of the FSMA. Hence, existing unlicensed entities that are incorporated or operating in Singapore but providing DT Services elsewhere should consider if they need to be licensed under the FSMA and, if so, whether they are prepared to meet the licensing requirements.

If you think you may be affected by or have feedback or questions on these proposals, please contact us.

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