

Consultation topic:	Consultation on the Payment Services Act 2019: Proposed Amendments to the Act
Name¹/Organisation: ¹ if responding in a personal capacity	Global Digital Finance (GDF)
Contact number for any clarifications:	Malcolm Wright / Jack Gavigan
Email address for any clarifications:	malcolm@gdf.io / jackgavigan@electriccoin.co
Confidentiality	
I wish to keep the following confidential:	N/A <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 Your contact information will not be published.)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>



27 January 2020

Anti-Money Laundering Department
Monetary Authority of Singapore (“MAS”)
10 Shenton Way, MAS Building
Singapore 079117

VIA EMAIL:

AMLCFT_consult@mas.gov.sg

Re: Consultation on the Payment Services Act 2019: Proposed Amendments to the Act

To whom it may concern,

Global Digital Finance (“GDF”) support efforts by global standard setters, national authorities and regulators to consult and work with the nascent global digital / virtual asset industry.

To that end, we are hereby providing input to the MAS consultation (“Consultation”) on the proposed amendments to the Payment Services Act 2019.

The input has been drafted and led by the GDF Anti-Money Laundering Working Group. Contributors who wish to be named are listed at the end of this document.

About GDF

GDF is a not-for-profit industry body that promotes the adoption of best practices for crypto and digital assets, and digital finance technologies through the development of conduct standards, in a shared engagement forum with market participants, policymakers and regulators.

Established in 2018, GDF has convened a broad range of industry participants, with 300+ global community members—including some of the most influential digital asset and token companies, academics and professional services firms supporting the industry. GDF is proud to include Circle, ConsenSys, DLA Piper, Diginex, Hogan Lovells, Huobi and R3 as patron members.

The GDF Code of Conduct (the “Code”) is an industry-led initiative driving the creation of global best practices and sound governance policies. GDF is informed by close conversations with regulators and developed through open, inclusive working groups of industry participants, legal, regulatory and compliance experts, financial services incumbents and academia. The principles set out in the Code undergo multiple stages of community peer review and open public consultation prior to ratification.

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.

GDF supports the adoption by MAS of FATF’s definition of a VASP.

However, while we note that MAS intends to adopt FATF’s understanding of a virtual asset transfer, the phrasing “any services of arranging for the transmission of digital payment tokens” could be interpreted as covering purely technical activities such as blockchain mining or staking, the provision of access to a blockchain node to facilitate the sending of transactions or key management using non-custodial wallet software, or the creation of a smart contract whose functionality includes an escrow or the transfer of tokens from one party to another. Therefore, we recommend that language be included to make it clear that such activities are excluded from the scope of digital payment token services.

Having reviewed the requirements set forth in MAS Notice PSN02 in light of these proposed amendments, we recommend that MAS provide clarity on the following questions:

1. Is a payment service provider required to apply CDD measures to
 - a. the sender of a transaction received by a customer of the payment service provider when said sender is not a customer of the payment service provider, or

- b. the recipient of a transaction initiated by a customer of the payment service provider when said recipient is not a customer of the payment service provider?
2. May a payment service provider rely on an external service provider to provide services such as ID verification and blockchain analytics?

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.

GDF supports the proposed amendments. However, MAS may wish to consider ensuring there is a clear definition for what constitutes 'control' for the purposes of safeguarding or administration.

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.

The commentary regarding this question in the consultation document references "facilitating the exchange of digital payment token" (para 2.9) which indicates that this is intended to cover decentralized exchanges that do not take custody of the asset, but simply provide a market quotation and facilitate buyers and sellers to engage in direct transactions between them. This would cover services such as LocalBitcoins, where buyers and sellers use the service to discover one another and agree a price, but transact directly with each other.

However, the phrasing "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" could be interpreted as also covering a broad range of DPT-related marketing and promotion activities undertaken or facilitated by entities such as marketing agencies that do not engage in any of the activities by which FATF defines a VASP.

We assume that MAS does not intend this amendment to be interpreted as casting such a wide net, and recommend that narrower, more specific language is used to minimise the risk of misinterpretation.

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).

Having reviewed the Act’s definition of “cross-border money transfer service”, GDF understands that this amendment has no impact on the regulation of DPT service providers.

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.

GDF supports the proposal that MAS be granted the proposed power to impose user protection measures. In our view, doing so will help build and ensure trust and integrity in the new digital payment ecosystem. We are supportive of the measures noted as important customer protection measures:

- anti-comingling,
- ring-fencing, and
- storage of client and licensee's assets in secure storage mechanisms.

In order to provide clarity to the industry on the potential measures, we recommend that MAS establish a contact group or industry-regulator working group to proactively discuss the landscape of relevant consumer protection measures, and the circumstances in which they might be adopted.

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.

GDF recognises that the digital payment token landscape is evolving rapidly and, in order to ensure agility and flexibility, MAS should have the power to impose measures on certain DPT service providers through the use of subsidiary legislation.

This is a practice seen in other jurisdictions that have adopted specific legislation governing digital assets.

In our view, the following elements are necessary to ensure that additional measures imposed in such a manner are successful in achieving their goals:

- a cost-benefit analysis that includes public and industry feedback but also an entity similar to the aforementioned working group in an effort to obtain a balanced view on what is deemed to be “necessary” and “expedient”,
- timely communication and ample time for the public and industry to analyse and comment on any proposed subsidiary legislation, and
- adequate time to allow the prescribed DPT service providers to implement the necessary changes to achieve compliance with any new legislation.

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

Having reviewed the Act’s definition of “cross-border money transfer service”, GDF understands that this amendment has no impact on the regulation of DPT service providers.

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 agree with the proposed amendments to sections 94 and 23. We note that the proposed amendments to section 94 are in line with other provisions of the PS Act that create criminal offences, i.e. they apply both to individuals and other persons.

Consultation Response Contributors

The following table lists contributors to this response who wish to be identified. The full list of contributions from the GDF AML Working Group may be larger.

Name	Organisation
Malcolm Wright	CCO, Diginex AML Working Group Co-Lead, GDF
Jack Gavigan	Head of Regulatory Affairs, Electric Coin Company AML Working Group Co-Lead, GDF

Dominic Gee	Independent Contributor
David Carlisle	Head of Community, Elliptic
Wee Ming Choon	Counsel, ConsenSys