RESPONSE TO FEEDBACK RECEIVED

February 2022

Consultation Paper on a New Omnibus Act for the Financial Sector

Monetary Authority of Singapore

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1 Preface

1.1 On 21 July 2020, MAS issued a consultation paper on the introduction of a new omnibus Act ("new Act") for the financial sector. The consultation sought views on:

(a) the harmonised and expanded power to issue prohibition orders;

(b) the regulation of virtual asset service providers created in Singapore, for anti-money laundering and countering of financing of terrorism purposes;

(c) the harmonised power to impose requirements on technology risk management; and

(d) the provision of statutory protection from liability to mediators, adjudicators and employees of an operator of an approved dispute resolution scheme.

1.2 The consultation period closed on 20 August 2020, and MAS would like to thank all respondents for their contributions. The list of respondents is in Annex A and the submissions are provided in Annex B.

1.3 MAS has considered carefully the feedback received and has incorporated them where it has agreed with the feedback. Comments that are of wider interest, together with MAS' responses are set in the following sections:

Section 2: Harmonised and Expanded Power to Issue Prohibition Orders;

Section 3: Regulating Virtual Asset Service Providers Created in Singapore or Carrying on Business of Providing Digital Token services from a Place of Business in Singapore for Anti-Money Laundering and Countering of Financing of Terrorism (AML/CFT) Purposes;

Section 4: Harmonised Power to impose requirements on Technology Risk Management;

Section 5: Provide Mediators, Adjudicators and Employees of an Operator of an Approved Dispute Resolution Scheme with Statutory Protection from Liability.

2 Harmonised and Expanded Power to Issue Prohibition Orders

2.1 MAS sought feedback on the harmonised and expanded power to issue prohibition orders ("**PO**") against persons who are not fit and proper, from engaging in any activity regulated by MAS or performing any of the key roles or functions in the financial industry that are prescribed, in order to protect an FI's customers, investors or the financial sector. An overview of the PO framework to be introduced in the new Act is set out in the table below:

Table 1: Overview of the Harmonised and Expanded Power to Issue POs

Scope of persons who can be issued with a PO	Any person.
Grounds for issuing a PO	The person is not fit and proper to carry out the Roles, Activities or Functions defined below.
Scope of PO	The person can be prohibited from any or all of the following: (a) Becoming a substantial shareholder (or if already a substantial shareholder, from acquiring further shareholding) of, acting as a director, partner, manager of, or taking part, directly or indirectly, in the management of, a financial institution ("**FI**") (each a "**Role**", and collectively, the "**Roles**"); (b) Carrying out any activity or business, or providing any service, which is regulated by an MAS-administered Act (each an "**Activity**", and collectively, the "**Activities**"); (c) Performing the following key functions of a FI, in relation to an activity, business or service mentioned in paragraph (b) above: ○ Handling of funds and assets; ○ Risk-taking; ○ Risk management and control (including AML/CFT and audit functions); ○ Critical system administration; ○ Any other function critical to the integrity or functioning of FIs, which MAS may prescribe for the purpose of protecting trust or deterring misconduct in the financial industry, (each a "**Function**", and collectively, the "**Functions**").
Effect of PO	The person must comply with the PO. An FI must not employ or enter into any arrangement with a prohibited person, or use a prohibited person's service, for any Role, Activity or Service which the person is prohibited from undertaking.

	An FI who contravenes this prohibition shall be guilty of an offence, unless is indirectly engaging a prohibited person through an outsourcing arrangement and it proves that it had taken all reasonable steps to ensure compliance with the prohibition, and after doing so, believed on reasonable grounds that it would not be breaching the prohibition.

2.2 Compared to MAS' current powers to issue POs[1], the proposed harmonised and expanded PO power broadens the categories of persons who may be subject to POs, rationalises the grounds for issuing POs (from a list of specific criteria into a single fit and proper ("**F&P**") test as set out in the Guidelines on Fit and Proper Criteria) and widens the scope of prohibition to cover functions that are critical to the integrity and functioning of FIs.

2.3 The respondents are broadly supportive of the harmonised and expanded PO power, acknowledging that it is necessary to keep unsuitable persons out of Singapore's financial industry. However, some respondents raised concerns on specific components of the PO power and asked whether there are safeguards to ensure that MAS would exercise the PO power in a risk-proportionate manner. We have addressed these issues below.

Scope of persons who can be issued with a PO

Power to issue a PO to "any person" is too wide

2.4 25 respondents observed that the power to issue a PO to any person could be too wide, and raised the following issues:

(a) the power may be disproportionately wide for MAS' intended purpose of protecting FIs;
(b) there are few cases of serious misconduct by FI employees who do not conduct regulated activities, and any such cases can be managed by FIs through employment terms;

[1] MAS' current PO powers reside only in the Securities and Futures Act, the Financial Advisers Act and the Insurance Act, and can only be exercised on specific grounds. This means that MAS cannot issue POs to persons outside the scope of the PO powers in these Acts even if they have committed serious misconduct in the financial industry. The existing PO powers also do not effectively address risks as they only prohibit the subject from carrying out a limited scope of regulated activities.

(c) persons who are not employees of an FI would be caught, including service providers, persons overseas and persons outside the financial sector who may have no intention of entering it.

2.5 Some respondents suggested narrowing the "any person" formulation to persons carrying out MAS-regulated activities, persons in senior management, decision-making positions, or to former, existing or prospective participants in the financial industry.

MAS' Response

2.6 MAS notes the concerns that the proposed power to issue a PO to "any person" would be too wide. However, the proposed provisions should be considered holistically. While a PO can be issued against "any person", the PO can only be issued if MAS has assessed that such a person is not fit and proper to undertake Roles, Activities or Functions in the financial industry which are specified in the PO.

2.7 As is the case with the existing PO powers, the purpose of the new PO power is to protect the financial industry, customers and investors against persons who have demonstrated by their misconduct that they are unsuitable to take up the Roles, Activities or Functions in the financial industry. Thus, a PO will generally be issued only if the person has a former, existing or prospective nexus to the financial industry.

2.8 MAS recognises that POs can materially affect individuals' livelihoods. The new PO power will be used judiciously, and will be exercised in a risk-proportionate manner which takes into account the nature and severity of the misconduct, and its potential and actual impact on the financial industry. MAS will issue guidelines to provide greater clarity on how the power will be used.

2.9 The PO power will also continue to be subject to existing checks and balances, including the following:

(a) Persons are informed of MAS' intention to issue POs against them and are given the opportunity to make representations to MAS before the POs may be issued; and

(b) Persons have the right to appeal to the Minister against MAS' decision to issue POs against them.

MAS being able to issue a POs to service providers ("SPs") of FIs

2.10 30 respondents observed that the new power would give MAS the ability to issue POs to SPs. The respondents did not object to this expanded power but sought to clarify the scope of MAS' regulatory purview over SPs. They also queried on practical matters, namely, whether all SPs could potentially be issued with POs, what FIs are reasonably expected to do to ensure that their SPs are not hiring persons who are subject to a PO, and potential difficulties in terminating and replacing SPs who are found to be hiring persons who are subject to a PO.

MAS' Response

2.11 MAS recognises that FIs' outsourcing arrangements are becoming increasingly prevalent and complex. Given that SPs may undertake Functions for or on behalf of FIs, MAS must be able to issue POs to such SPs who have demonstrated by their misconduct that they have the potential to cause harm in the financial industry.

2.12 It is in FIs' interest to ensure that they appoint fit and proper SPs to undertake key roles, functions and activities. Minimally, FIs should check that their SPs' relevant employees who directly or indirectly undertake the Functions for or on behalf of FIs have not been issued with POs prohibiting them from doing so. This is in line with developments to ensure that FIs enhance their oversight of outsourcing arrangements, such as MAS' Guidelines on Outsourcing and the recent Banking Act amendments to enhance MAS' supervisory oversight of banks' outsourcing arrangements.

2.13 MAS acknowledges the potential difficulties that FIs may face in being able to ensure that their SPs are not hiring prohibited persons in the Functions from which they are prohibited. To address these difficulties, MAS will introduce a defence such that an FI will not be liable for indirectly engaging a prohibited person through an outsourcing arrangement if it can show that it took all reasonable steps to ensure compliance with the prohibition, and after doing so, believed on reasonable grounds that it would not be breaching the prohibition. For the FI to avail itself of this defence, the FI must minimally show that it ensured that due diligence checks have been performed on the employees of its SPs, including checking the Enforcement Actions page on the MAS website to determine if a person has been issued a PO. For example, in practice, FIs can rely on their SPs, or a third party, to conduct due diligence checks on the staff of the SPs and confirm to the FIs that these staff have not been issued with a PO. These checks should be done

with reference to the minimum standards of assessment set out in paragraph 5.4.4 of the Guidelines on Outsourcing[2].

2.14 In terms of minimising disruptions to the FI due to an SP's employee being prohibited from performing a Function, the FI can arrange with the SP to ensure that the prohibited person is not serving the FI's needs. If this is not feasible and a change of SP is ultimately needed, the FI should inform MAS of its challenges in complying with the PO in a timely manner, and propose a reasonable time for the FI to find an alternative SP to minimise service disruptions to the FI for MAS' consideration.

Grounds for issuing a PO

Application of F&P test when assessing misconduct

2.15 34 respondents said that the F&P test could be too broad for the proposed PO power or suggested narrower variations of the F&P test. For example, some respondents thought that the criteria of financial soundness may not always be directly applicable to persons involved in the "critical systems administration" or "risk management and control" functions, and that certain aspects of the F&P test (e.g. financial soundness) may not directly relate to personal misconduct.

2.16 22 respondents also asked how MAS will assess when to issue POs, including how MAS would apply the F&P test and how the power to issue POs interacted with MAS' other enforcement powers.

MAS' Response

2.17 MAS will retain the F&P test as the basis for issuing a PO, as it is consistent with the purpose of the proposed PO power, namely to protect the financial industry, customers and investors against persons who have demonstrated by their misconduct

[2] The FI should ensure that the employees of the service provider undertaking any part of the outsourcing arrangement have been assessed to meet the FI's hiring policies for the role they are performing, consistent with the criteria applicable to its own employees. The following are some non-exhaustive examples of what should be considered under this assessment: (a) whether they have been the subject of any proceedings of a disciplinary or criminal nature; (b) whether they have been convicted of any offence (in particular, that associated with a finding of fraud, misrepresentation or dishonesty); (c) whether they have accepted civil liability for fraud or misrepresentation; and (d) whether they are financially sound. Any adverse findings from this assessment should be considered in light of their relevance and impact to the outsourcing arrangements.

that they are unsuitable to take up key Roles, Activities or Functions in the financial industry.

2.18 The F&P test will also allow MAS to carry out a holistic and balanced assessment of the circumstances in each case. To address the industry's feedback, we will add express wording in the Act that a person's fitness and propriety will be considered with reference to Roles, Activities or Functions. In each case, a PO will only prohibit a person from the Roles, Activities or Functions that MAS assesses the person is not fit and proper to engage in, and for an appropriate duration of time depending on the severity of the misconduct and its impact on the financial industry. This is in line with MAS' current assessment practice.

2.19 While the proposed amendments will give MAS an expanded power to issue prohibition orders, the industry can expect a large degree of continuity in the way MAS exercises its power.

2.20 MAS has a wide range of enforcement tools that enable appropriate action to be taken against persons who have committed misconduct, ranging from warnings to POs. In each case, MAS will calibrate the action chosen according to the circumstances, including the severity and effect of the misconduct. MAS will continue its practice of exercising this power only in cases of serious misconduct.

2.21 As mentioned above, MAS will issue guidelines to provide greater clarity on how the power will be used.

Scope of PO

Four additional prescribed Functions to which a PO may apply are too broad

2.22 28 respondents commented that the additional four Functions were too broad, with most of these respondents suggesting that POs could be targeted at senior managers, material risk personnel and persons with authority to make material decisions on behalf of the company.

MAS' Response

2.23 MAS will retain the four additional Functions that a person can be prohibited from. These are functions that are in MAS' view critical to the integrity and functioning of FIs, and MAS has issued clear requirements and standards for these Functions. Furthermore, under the PO power, a person will only be prohibited from performing the Functions which are in relation to MAS-regulated activities, businesses or services.

2.24 MAS will not limit the applicability of the PO power to senior managers, material risk personnel and persons with authority to make material decisions on behalf of the company. This is because employees who do not fall within these categories, such as non-managerial staff, may still be able to cause significant harm to customers or FIs, if they perform any of the four additional Functions.

Refine the criteria for MAS' power to prescribe additional functions

2.25 Respondents did not have any objections to MAS' proposed power to prescribe additional functions from which a person can be prohibited.

2.26 15 respondents suggested that the power to do so "for the purpose of protecting trust or deterring misconduct in the financial industry" could be narrowed to allow MAS to add functions which are "critical to the integrity and functioning of the financial institution which the MAS may prescribe".

2.27 14 respondents requested that MAS provide sufficient notice prior to prescribing the additional functions in order to enable FIs to implement appropriate measures and controls.

MAS' Response

2.28 MAS will limit the additional functions which can be prescribed, by specifying in the Act that such functions must be critical to the integrity and functioning of FIs. MAS will engage the industry before adding any new functions by way of regulations and will provide FIs with sufficient time to implement any new measures or controls.

Feedback on Implementation Issues

	Summary of Feedback	MAS' Response
1.	52 respondents asked for clarification on the specific roles that would fall within the four specified functions.	MAS will provide a non-exhaustive list of examples of the types of roles that would fall within each Function in guidelines.
2.	28 respondents asked whether FIs will be expected to assess and monitor all employees, unregulated staff and SPs for compliance with the F&P test, if so, whether the F&P test would apply	Under the harmonised PO framework, POs can be issued to prevent persons who are not fit and proper from carrying out the Roles, Activities or Functions for or on behalf of an FI. To this end, the assessment of such persons' fitness and propriety will be carried out by MAS. Currently, the F&P test applies to relevant persons carrying out activities regulated by the MAS. The use of the F&P test

	Summary of Feedback	MAS' Response
	retrospectively and what happens if FIs suspect a breach of the F&P test.	as the ground for issuing a PO does not mean that FIs will be expected to assess and monitor all employees, unregulated staff and SPs for compliance with the F&P test. Rather, FIs must ensure that they do not employ, enter into an arrangement with or use the services of persons who are the subject of POs to carry out the activities that the latter have been prohibited from carrying out.
3.	20 respondents asked what checks an FI is required to carry out on whether a person is subject to a PO, and whether the onus to ensure compliance with a PO should lie with the prohibited person rather than FIs	An FI must determine if the person it intends to employ, enter into an arrangement with or use the services of is the subject of a PO and ensure that such person would not be carrying out any Roles, Activities or Functions from which he is prohibited under the PO. The onus to ensure compliance with a PO lies with both the subject of the PO, and the FIs who seek to hire them. This has been the case even for existing PO powers.[3] It is also in the interests of the FIs to do their due diligence to hire fit and proper persons who are not subject to a PO.
4.	19 respondents asked how the PO framework interacts with the Individual Accountability and Conduct ("**IAC**") framework, and if the scope of the PO framework could be aligned with the IAC framework to be limited to only senior management.	The Guidelines on Individual Accountability and Conduct issued on 10 September 2020 ("**IAC Guidelines**") focus on the measures that FIs should put in place to promote the individual accountability of senior managers, strengthen oversight over material risk personnel, and reinforce standards of proper conduct among all employees. The PO framework is intended to rationalise and enhance MAS' powers to prevent undesirable people from carrying out activities in the financial industry that may potentially affect customers, investors and the financial sector. The PO framework will enable MAS to prohibit a person from taking on roles in the financial industry that are covered by "core management functions" and "material risk personnel" under the IAC Guidelines. However, given the purpose of the PO framework, it is intended to be wider in scope and enable MAS to prohibit a person from Roles, Activities and Functions, regardless of the seniority of the person. To comply with a PO, FIs must ensure that they do not hire or continue to engage the services of the person who has

[3] See section s 101B(2) of the SFA, section 60(2) of the FAA and section 35V(5) of the IA.

	Summary of Feedback	MAS' Response
		been issued with the PO to undertake the prohibited Roles, Activities and Functions in any capacity or seniority.
5.	17 respondents asked how much time MAS will give FIs to implement the PO after it is issued.	POs take immediate effect from the date specified within the order. As per current practice, FIs will be notified as MAS publishes information on POs on the Enforcement Actions page of the MAS website and on MASNET. If an FI faces extenuating circumstances that affect its ability to immediately comply with the PO, it may write to MAS to explain its challenges, which MAS will consider on a case-by-case basis.
6.	16 respondents asked how the PO will apply to prospective participants.	There are persons currently outside the industry who have committed serious misconduct, who have sought to enter the financial industry in Singapore. The proposal aims to enable MAS to bar such unsuitable prospective participants from entering the financial industry in sufficiently egregious cases.
7.	16 respondents asked how the proposed PO regime under the new Act would interact with the existing PO regime under the SFA, FAA and IA.	The PO provisions under the new Act will replace the existing PO provisions in the SFA, FAA and IA, which will be repealed when the new PO provisions in the Act come into force. MAS will provide sufficient notice for FIs to implement any changes necessary to comply with the new PO provisions, before bringing the provisions into effect.
8.	9 respondents asked whether POs apply overseas, and whether SPs in Singapore would be unfairly penalised compared to overseas SPs.	POs can be issued to persons regardless of whether they are located within or outside Singapore. FIs are increasingly moving their middle and back-end functions offshore, and technology has also enabled such activities, businesses or services to be undertaken remotely for FIs in Singapore. Confining the issuance of POs to persons located within Singapore will therefore severely hamper MAS' ability to protect the financial industry in Singapore. Accordingly, where appropriate, MAS may issue a PO to an overseas SP, if the SP had committed misconduct while undertaking Functions for or on behalf of FIs in Singapore. While there may be practical difficulty in enforcing a PO issued to a person overseas, the effect of a PO which has been issued to an overseas person is that it would be an offence for an FI in Singapore to engage such a person to undertake the prohibited Roles, Activities or Functions, even if the prohibited person is based overseas. Such a PO would still achieve the intended effect of prohibiting FIs in Singapore from engaging the person to perform the Roles, Activities or Functions that are prohibited under the PO,

	Summary of Feedback	MAS' Response
		thereby protecting the Singapore financial industry from such persons.
9.	7 respondents asked whether POs will be published, how FIs would be notified of the POs, and how long a PO would remain public for.	MAS will directly notify the person who is subject to the PO, as well as his current employer, of the PO which has been issued. Compliance is expected from the date specified within the order. All POs are published on the Enforcement Actions page of the MAS website and on MASNET. Information on POs will remain on the Enforcement Actions page for five years from the date of publication, except for POs which are still in force after five years, which will remain on the page until they stop being in force. If the person against whom the PO is made is a representative under the SFA or FAA, the public register of representatives will also reflect that such a PO has been issued. FIs may, as part of background checks, obtain records (if any) of POs previously issued against a person from MAS, upon payment of a fee.
10.	4 respondents asked how far back MAS would look in determining whether to issue a PO.	No specific lookback period will be prescribed because multiple factors determine when misconduct comes to light e.g. active concealment of misconduct by the person. Nevertheless, MAS does and will continue to take into account the recency of the misconduct when considering whether enforcement action is warranted and if so, what enforcement action to take.
11.	3 respondents asked whether the "risk management and control" function includes the audit function.	The audit function is included within the "risk management and control function". To make this clear, the definition of "risk management and control" will be revised to include audit functions.
12.	3 respondents asked how the obligation for persons who have received a PO to keep representatives and appointees informed applies to individuals and SPs	The requirement for persons who have been issued POs to notify their representatives and appointees is intended to ensure that where an entity has been issued a PO, it notifies all persons who perform the functions or carry out the activities specified in the PO on its behalf. Where the subject of a PO is an individual, there would ordinarily be no such persons to inform. Where an entity has concerns that it would not be feasible for it to inform the necessary persons of the PO, the entity should write to MAS in a timely manner to inform MAS of its challenges, which MAS will consider on a case-by-case basis.

	Summary of Feedback	MAS' Response
13.	1 respondent asked how a PO would impact the roles which an individual can take up.	Depending on the circumstances of each case, MAS can prohibit a person from all or a specified range of Roles, Activities or Functions. In all cases, MAS will assess, based on the circumstances of each case, which Roles, Activities or Functions the individual's misconduct renders him not fit and proper to perform and this would be specified in the PO. MAS will also stipulate the period of prohibition in the PO. During this period, the individual would not be allowed to take up a role in or for any FI only for the Roles, Activities or Functions set out in the PO. The PO does not apply to roles, activities, business or functions that are not prohibited by the PO, and an FI may hire an individual in such non-prohibited roles, activities, businesses or functions if the FI is satisfied that it has no concerns about the individual performing them.

3 Regulating Virtual Asset Service Providers Created in Singapore or Carrying on Business of Providing Digital Token Services from a Place of Business in Singapore for Anti-Money Laundering and Countering of Financing of Terrorism (AML/CFT) Purposes

General Comments

3.1 MAS proposed a regulatory regime for persons created in Singapore or carrying on business of providing digital token services from a place of business in Singapore, that carry on a business of providing virtual assets ("**VA**") activities outside of Singapore, to be licensed under the Financial Services and Markets Bill 2022 ("**FSMA**"). The comments received were generally supportive of this regime. Several respondents asked about the scope of activities caught under the FSMA and whether there were exclusions for existing FIs licensed by MAS, for example, under the Payment Services Act ("**PS Act**"), Securities and Futures Act ("**SFA**") or Financial Advisers Act ("**FAA**"). One respondent also asked how the obligations under the FSMA would interact with existing AML/CFT-related regulations (e.g. Corruption Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act ("**CDSA**"), Terrorism (Suppression of Financing) Act ("**TSOFA**"), United Nations or MAS Regulations).

3.2 Two respondents asked what "outside of Singapore" meant, and whether this referred to where the potential digital token ("**DT**") service licensees' customers were located. There were some concerns over conflicting or competing regulatory requirements should the FSMA-regulated entity be regulated in more than one

jurisdiction. There were also some questions about addressing technology risks and the consequential reputational risk to Singapore.

3.3 Finally, several respondents asked about the regulation of "crypto-derivatives" holistically, to create a level playing field.

MAS' Response

3.4 A person will require a licence under the FSMA if it is an individual or partnership providing DT service outside of Singapore and carrying on business of providing DT service from a place of business in Singapore, or if it is a Singapore corporation[4] carrying on the business of providing DT service outside Singapore. This would include individuals or partnerships who from a place of business in Singapore, carry on a business of providing DT services, but the DT services are provided overseas, and such services are provided by someone other than the individual or partnership in Singapore.

3.5 However, there are some exclusions. Where the entity is already licensed, exempted from licensing or required to be licensed under the relevant provisions in the SFA, FAA or PS Act for the provision of DT services outside of Singapore, such an entity does not need to be licensed under FSMA. For example, this includes entities that are performing DT services both inside and outside of Singapore and are subject to licensing requirements under section 82 read with section 339 of the SFA.

3.6 FIs should seek legal advice on the interpretation and compliance with the CDSA, TSOFA and relevant MAS Regulations.

3.7 MAS does not seek to regulate persons that carry on:

(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 DT under that DT service, such as:

a. the service of processing and storing data;

b. any information technology security, trust or privacy protection service;

c. any data and entity authentication service;

[4] A Singapore corporation would mean a body corporate formed or incorporated in Singapore and includes a limited liability partnership.

d. any information technology service;

e. the service of providing a communication network;

f. the service of providing and maintaining any terminal or device used for any DT service;

(ii) any DT service that is provided, in respect of any central bank DT, by any central bank or financial institution;

(iii) any DT service that is provided in respect of any limited purpose digital payment token.

3.8 In response to the query on what "Outside of Singapore" means, MAS views "Outside of Singapore" as referring to the provision of the DT service outside of Singapore. Such persons would be required to be licensed under the FSMA. Persons who provide DT services "in Singapore" would be required to be licensed, exempted from licensing or already licensed under the SFA, FAA and the PS Act and will be excluded from the ambit of the FSMA.

3.9 Where a person is required to comply with AML/CFT requirements under the FSMA, and is also regulated in other jurisdictions, the person will have to comply with the AML/CFT requirements under the FSMA as well as the laws and requirements in the other jurisdictions.

3.10 We also note the feedback in relation to technology risks. It is our intention to extend MAS' Technology Risk Management and Cyber Hygiene requirements to DT services licensees.

3.11 MAS has taken steps to address the risks posed by crypto-derivatives.[5] We will continue to study and assess the money laundering and terrorism financing (ML/TF) risks posed by crypto-derivatives, and will take necessary steps to mitigate these risks.

Definition of DT

3.12 We received queries on the existing scope of definitions under the PS Act and SFA, in particular in relation to stablecoins. There were several respondents that asked

[5] Please refer to https://www.mas.gov.sg/news/parliamentary-replies/2020/reply-to-parliamentary-question-on-regulation-of-crypto-derivatives-on-approved-exchanges for MAS' response on the regulation of crypto-derivatives.

about whether utility tokens would be scoped in. There was also a suggestion to scope in the proposed DT activities into the PS Act or SFA instead of FSMA. Two respondents commented that the scope of FSMA appeared to be broader than what was currently adopted by the Financial Action Task Force ("**FATF**").

3.13 Several respondents asked for clarifications on the scope of a "capital markets product" token, such as its characteristics and whether certain specific products would qualify. One respondent asked MAS to clarify the limb "satisfies such other characteristics as MAS may prescribe". Several respondents also asked for examples of such tokens (and what falls within FSMA and out of FSMA), and to provide guidance on expectations for customer due diligence and monitoring. Several respondents also asked about the scope of an "excluded digital token".

3.14 More generally, we received a few clarifications on the scope of DT tokens, such as whether asset- backed tokens and commodity-linked tokens would be caught.

MAS' Response

3.15 For the purposes of FSMA, DT tokens will include: (i) a digital payment token; or (ii) a digital representation of a capital markets product which – (a) can be transferred, stored or traded electronically; and (b) satisfies such other characteristics as MAS may prescribe. This scope is aligned with international standards set by the FATF. The FATF Standards (i.e. revised Recommendation 15) are intended to capture persons that operate as VASPs, and FIs performing existing financial services and activities need not be separately regulated if they are already subject to AML/CFT obligations elsewhere under the existing FATF Standards. Consistent with the FATF Standards, our intention is to make sure that as new business models emerge and evolve, where ML/TF risks are assessed to be present, such persons are subject to AML/CFT obligations.

3.16 With a wide range of business models that can change quickly, the limb where a digital capital markets product "satisfies additional characteristics as MAS may prescribe" gives MAS the ability to act in a timely way to impose AML/CFT requirements that is commensurate with these new and emerging ML/TF risks. It is intended that these characteristics will be communicated clearly and ahead of time, and consultations will be held, where possible and where necessary.

3.17 As regards whether certain products will be caught under the definition of a DT, the intention is to align the scope to DPTs under the PS Act and a digital representation of a capital markets product under the SFA. For specific products, respondents may wish to refer to these definitions, and seek legal advice where necessary. Any DT that is to be

excluded from the scope of the definition will be prescribed by MAS. At this point, we do not intend to exclude any DT, but we will continue to assess this as this space evolves.

3.18 If a digital asset-backed token falls within the definition of a DPT or digital representation of a capital market product, it would fall within the scope of FSMA. This would capture certain asset-backed tokens that are for example, structured as a security. However, other types of tokens such as digital representation of physical products, which are neither digital payment tokens nor digital representation of capital markets products, are not scoped-in.

3.19 Respondents should refer to the MAS Guide to Digital Token Offerings for general guidance on the application of securities laws relevant to the offers or issues of DTs in Singapore. On the scope of e-money and digital payment tokens (DPTs), and the issue of stablecoins, respondents should refer to the separate consultation paper MAS issued (https://www.mas.gov.sg/publications/consultations/2019/consultation-on-the-payment-services-act-2019---scope-of-e-money-and-digital-payment-tokens).

DT Services

3.20 Several respondents raised clarifications on the scope of the regulation of DT services. One respondent asked whether the DT services would scope in advertising and marketing activities. Two respondents asked for guidance on "inducing or attempting to induce". Several respondents also asked about the scope of safeguarding or administration of DT or DT instrument, in particular the approach on determining "control" of a DT.

3.21 Two respondents also asked whether the scope of DT services should be expanded to include technical or blockchain services. Other respondents asked for guidance on the AML/CFT obligations of existing FIs regulated by MAS, who might have customers that would be caught within the scope of FSMA (i.e. a customer that carries on a business relating to DT services, outside of Singapore).

3.22 Several respondents had questions on the scope of advisory services relating to the offer or sale of DTs. One respondent asked whether a DPT would be considered an investment product under the FAA. Another asked about whether the provision of advisory services to issuers of DTs would be caught. One respondent also asked whether the activities of compliance consultancy firms, public relations, marketing or technology firms would be caught under the scope of advisory services.

3.23 There were several clarifications raised over the scope of fund management activities involving DTs, and whether collective investment schemes (CIS) where the

underlying investment are DTs would be caught. One respondent also asked whether fund management companies that manage client funds individually (rather than pooled) would be caught.

MAS' Response

3.24 MAS has assessed that DT services present inherently higher ML/TF risk and should be subject to licensing and AML/CFT requirements. The scope of activities that MAS intends to regulate is aligned with the definition of VASPs under the FATF standards. Whether an activity falls under MAS' regulation under the FSMA, PS Act, SFA or FAA is dependent on the facts and circumstances of each case. Persons should note that licensed DT service providers are prohibited from carrying out certain business including the granting of any credit facility to any person in Singapore. As reiterated, FSMA is intended to scope in activities where the person carries on a business that facilitates the buying or selling of DT for any money or other forms of DTs and includes the case where the entity does not have possession of the moneys or DTs.

3.25 A DT service provider will have "control" of a DT if for example it has the ability to control the access to the DT or to execute transactions involving the DT. In the same vein, the service provider is caught if it carries out any service of safeguarding a DT instrument, and has control over the DT instrument, for instance a private cryptographic key, that is associated with any DT. The control of the DT or DT instrument need not be absolute or exclusive and can be indirect, for example, a service provider will be caught within scope as long as it has control over one of the private keys of a multi-signature wallet. The approach on control is consistent with international best practices, such as that adopted by the FATF.[6] Whether a person is caught for safeguarding a DT or DT instrument is therefore a determination of fact, taking into consideration in particular whether it has "control" of the DT or DT instrument.

3.26 In general, MAS does not seek to regulate persons that are solely involved in technical activities (e.g. the activity of blockchain mining, or function of validator nodes) or development of software applications, where such services fall under Part 2 of the First Schedule to the FSMA.

3.27 Where a person carries on the business of providing DT service in Singapore that is a financial advisory service in relation to capital markets products, such person will

[6] https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets-2021.html

need to be licensed and regulated under the FAA. In line with the policy intent of the DT service regulatory regime under FSMA, only persons which are created in Singapore or carry on a business of providing DT services from a place of business in Singapore but the DT service is provided outside of Singapore (subject to certain exclusions stated above) will be caught under the FSMA. We envisage that in most cases, the provision of financial advisory services in relation to DTs that constitute capital markets products in Singapore will be regulated under the FAA. On the provision of advisory services to issuers of DTs, a service provider that provides advice either directly or through publications or writings, or by issuing or promulgating research analyses or research reports, concerning the issuance of DTs will be caught under the FSMA, unless excluded[7]. It is not MAS' intention to scope in 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 DT under that DT service.

3.28 For persons carrying on a business of fund management in Singapore, they will be regulated under the SFA. Under the FSMA, the service of "dealing in DTs" relates to the buying and selling of DTs, and this would include the buying or selling of DTs incidental to the conduct of fund management activities, with DTs as underlying.

Licensing and ongoing requirements on DT service providers

3.29 Given the virtual operations of these technology-based firms, several respondents asked to clarify the meaning of a "permanent place of business", and whether the requirements under PS Act could be aligned with FSMA instead.

3.30 Several respondents raised non-AML/CFT-related suggestions, such as ensuring interoperability of DTs across various platforms. A few had also asked whether DT services providers would have to comply with cyber security-related controls.

3.31 Some respondents raised personnel-related clarifications, such as whether MAS will prescribe the requirement for a designated person to handle compliance matters of the company. One respondent asked whether MAS would reconsider the requirement for a resident executive director. One respondent asked for MAS to set out guidance and expectations on how DT service licensees can put together a compliance function in Singapore.

[7] See section 137(5) and Part 2 of the First Schedule of the FSMA.

3.32 Several respondents raised clarifications on the duration of record keeping requirements. Two respondents commented that it would be challenging for the DT service providers to keep records of all transactions, since such firms would typically record transactions on a distributed ledger.

3.33 Several respondents asked about the difference between the licensing requirements of DT service licensees and PS Act licensees and how the FSMA regime will interact with existing PS Act licensees. One respondent asked about the prescriptive amount of paid-up capital for DT service licensees under FSMA.

3.34 Finally, one respondent asked to clarify whether s5(1) of Annex C should refer to a person that "wishes to carry on a business of providing any type of DT service outside Singapore".

MAS' Response

3.35 The scope and capture of licensees under the PS Act and FSMA differ. PS Act licensees perform DPT services in Singapore and are required to have either a permanent place of business or a registered office. Potential licensees under the FSMA are required to have a permanent place of business in Singapore. As these persons provide services outside of Singapore, the requirement for a permanent place of business in Singapore becomes more pertinent. The permanent place of business is a fixed location used for carrying on its business, regardless whether the business is carried on within a single building or at a single business address, to ensure meaningful presence in Singapore. This would also allow MAS and other authorities in Singapore to contact these DT service licensees at that location, where necessary. An example of a permanent place of business is having a dedicated, segregated space where records of transactions, customer risk assessments, and documentation of mitigation measures can be kept securely and readily accessible, including to MAS and other relevant Singapore authorities.

3.36 MAS will regulate DT service providers for the ML/TF risks they present, and also apply the technology risk management and cyber hygiene requirements to these persons. We will continue to monitor whether further regulatory measures are required.

3.37 On a designated person to handle AML/CFT matters of the DT services licensee, this will be further set out in the subsidiary legislation under the FSMA. There needs to be a meaningful operating presence in Singapore, even where DT services licensees provide DT services outside of Singapore. Where the corporation is required to be licensed in Singapore, it should have a place of operation in Singapore and at least one executive director, who is knowledgeable and involved in managing the company's business activities, must be resident in Singapore. There are corresponding requirements

for individuals and partnerships. The need for remote working arrangements does not conflict with this residency requirement.

3.38 For reference on the possible requisite compliance function, respondents can refer to existing Guidelines on licensing for payment service providers (https://www.mas.gov.sg/regulation/guidelines/ps-g01-guidelines-on-licensing-for-payment-service-providers). In relation to the compliance function, MAS requires that the prospective applicant ensures that it has adequate compliance arrangements commensurate with the scale, nature and complexity of its operations. This may take the form of:

- An independent compliance function - The applicant should put in place an independent compliance function in Singapore with staff who are suitably qualified. Compliance staff may perform other roles such as that of an in-house legal counsel;

- Compliance support from holding company or overseas related entity - The applicant may obtain compliance support from a separate compliance resource at its holding company, or at an overseas related entity, provided that it is able to demonstrate that there is sufficient oversight into the adequacy and effectiveness of the compliance support;

- Appropriate compliance management arrangements – The applicant should put in place appropriate compliance management arrangements, including at least, the appointment of a suitably qualified compliance officer based in Singapore, at the management level. This individual is expected to have sufficient expertise and authority to oversee the compliance function of the applicant, although he may be assisted by other staff in day-to-day operations.

3.39 Meeting the requirements set out above and having policies and procedures in line with all relevant MAS' AML/CFT Notice requirements (which will be aligned with existing PS-N02) are relevant criteria which MAS will consider prior to the granting of a license. The applicant should note that regardless of the arrangement chosen, the sole-proprietor, partners, or directors and CEO, and compliance officer of the applicant are ultimately responsible for all compliance and regulatory matters and must maintain adequate oversight over the arrangements. MAS will consult on the measures it requires in respect of the compliance function in due course and will also consider whether further guidance is helpful to set out expectations of establishing meaningful presence, based on the operating models of DT service providers.

3.40 MAS does not intend to provide a transitional arrangement for DT service providers. This means that once in force, DT service providers that may have been operating would be required to suspend or cease operations, until they obtain a licence from MAS.

3.41 The record keeping requirements on DT service providers will be aligned to MAS' requirements on existing FIs, which is for a period of five years. DT service providers are able to determine the manner in which the records are kept so long as it is appropriate to their operating model, but such records should be promptly accessible and retrievable from the permanent place of business, when requested for by the authorities.

3.42 PS Act licensees are regulated for a wider range of measures, e.g. user protection, interoperability as they have operations in Singapore and offer services to customers in Singapore. DT service licensees present ML/TF and reputational risks as they are created in Singapore or carry on a business of providing DT services from a place of business in Singapore, although they provide DT services outside of Singapore. Hence, DT service licensees are proposed to be regulated for AML/CFT and technology and cyber risks. We will prescribe the base capital required for DT service licensees in Regulations. Preliminarily, we are considering a base capital amount of S$250,000, but this will be consulted upon in due course.

AML/CFT requirements imposed on DT service providers

3.43 Most respondents raised concerns over the value transfer requirements that will be imposed on DT service licensees, similar to PS Act. One respondent raised the challenge of complying with the requirements as there is currently no technical solution yet.

3.44 The anonymity, speed and cross-border nature of DPT transactions mean that such activities have a higher risk of abuse for illicit activity, including for ML/TF. As such, AML/CFT requirements which are similar to those set out in Notice PS-N02 will apply to DT service providers. For instance, DT service providers should assess the risks of the jurisdictions which it has operations in, and take a risk-based approach in applying the requirements, including performing enhanced customer due diligence measures in higher risk scenarios.

3.45 The FATF Standards in relation to the transmission of wire transfer information (commonly known as the "Travel Rule") are intended to mitigate the risks posed, by obligating regulated entities to obtain, transmit, retain, and screen wire transfer information against relevant ML/TF information sources to ensure that bad actors

cannot freely utilise DT services to launder illicit funds or for other illicit financing. MAS is aware of the challenges that DPT service providers have faced in complying with the Travel Rule. However, some progress has been made by the private sector in this regard since the implementation of this requirement. This includes the development of messaging standards and the launch of several technological solutions to facilitate compliance with the Travel Rule. DT service providers should evaluate the different technical solutions available and assess if they are suitable for use in complying with the Travel Rule. MAS has also issued further guidance for the DPT sector on the supervisory expectations in relation to AML/CFT requirements, including the value transfer requirements and measures that a DPT service provider should adopt if it requires more time to implement the value transfer requirements.[8]

4 Harmonised Power to impose requirements on Technology Risk Management

Penalty amount and factors used in deriving composition amount

4.1 Respondents opined that the maximum penalty amount of $1 million was too high and that alternative enforcement actions should be considered.

4.2 Respondents also sought clarifications on the factors that MAS would use to derive the composition amount and asked for MAS to publish such details. Suggested factors included the financial health of the FI (e.g. revenue) and severity of breach (e.g. impact on customers, duration of outage).

4.3 Additionally, some respondents raised concerns on how the proposed powers will affect incumbent FIs' willingness to work with financial technology ("**Fintech**") companies who typically have small operations and may not have adequate funding to invest in building layered cyber security defences.

MAS' Response

4.4 The $1 million quantum is proposed to signal the importance of technology risk management ("**TRM**") given that incidents that lead to disruptions to systems, data leaks, and fraud can impact large numbers of retail and corporate customers. The

[8] The guidance paper on "Strengthening AML/CFT Controls of Digital Payment Token Service Providers" is available on the MAS website: https://www.mas.gov.sg/regulation/guidance/strengthening-amlcft-controls-of-digital-payment-token-service-providers.

proposed quantum is the maximum penalty which would be imposed in the case of the most serious types of breaches. The quantum was derived after considering comparable existing penalty regimes of other Singapore government agencies[9].

4.5 As in the case of other MAS-administered Acts, any proposed composition framework will take into account factors such as the severity and impact of the breach, as well as the frequency of non-compliance or whether the breach is a continuing breach.

4.6 In accordance with MAS' current practice, in determining the enforcement actions to be taken in the event of a breach of a Notice, MAS will assess the extent to which the FIs had implemented the necessary controls to meet the requirements of the Notice. Alternative enforcement actions that could be considered are reminders, supervisory warnings or reprimands.

4.7 In relation to how the proposed powers will impact incumbent FIs' willingness to engage with the Fintech sector, as with any third party arrangement, FIs are expected to perform the necessary due diligence to be satisfied that any third party it engages does not result in the risk management, internal control, business conduct or reputation of the FI being compromised or weakened.

Related regulatory requirements from domestic and international authorities

4.8 Respondents were concerned that a single incident could result in multiple authorities imposing penalties under powers of different Acts (e.g. Cybersecurity Act, Personal Data Protection Act).

4.9 Respondents also looked to MAS to deconflict/harmonise potential overlapping requirements with other authorities (e.g. requirements on data protection, system availability), locally (e.g. Personal Data Protection Commission) and internationally (e.g. IOSCO's Principles for Financial Market Infrastructures).

[9] Under section 8(1)(ii) of the Telecommunications Act (Cap 323) a financial penalty of $1 million can be imposed for any contravention under section 8(1) of the Telecommunications Act. Under section 48J(1) read with section 48J(2) and 48J(3) of the Personal Data Protection Act 2012, the Commission may, if it is satisfied that an organisation has intentionally or negligently contravened any provision of Part III, IV, V, VI, VIA or VIB of the Act, require the organisation to pay a financial penalty of up to $1 million (if the breach of the provision is not an offence under the Act).

MAS' Response

4.10 In the event an FI's breach of regulations or directions made under the proposed power also results in a breach of regulations in Acts administered by other local government agencies, MAS will work with the relevant agencies and with the Attorney General's Chambers, when relevant, to determine an appropriate course of action.

4.11 When a new Notice is to be issued or new regulations are to be made pursuant to these powers, the MAS would take existing relevant domestic and international regimes into consideration. FIs and the public would be able to provide feedback through consultation exercises that are typically conducted prior to the requirements coming into force.

Scope of systems and activities

4.12 Respondents sought clarity on what systems would be caught given that the proposed powers include activities performed by the FI which are not regulated. Respondents suggested to exclude air-gapped systems, and to narrow the scope of systems to critical systems, systems that support regulated activities, and/or systems that contain customer information.

MAS' Response

4.13 MAS expects FIs to implement relevant security measures for all systems, regardless if they are air-gapped, critical systems or systems that do not directly support regulated activities.

4.14 As cyber threat actors exploit every possible entry point and move laterally within the FI's network to perform malicious activities, it is inadequate to secure a subset of systems (e.g., critical systems) while leaving the rest (e.g., those used for accounting or human resource management) vulnerable to attack.

Grace period for compliance

4.15 Respondents asked if there will be a grace period for compliance to the proposed powers.

MAS' Response

4.16 The proposed powers by themselves do not impose specific requirements. The existing Notices on TRM and Cyber Hygiene will be re-issued under the new powers. As these are existing notices, there will not be any grace period for compliance following

their re-issuance. Where a new Notice is to be issued, amendments are made to existing Notices, or new regulations are to be made pursuant to these powers, a public consultation exercise would typically be conducted to gather feedback on the proposed requirements and timeline for issuance/compliance.

5 Provide Mediators, Adjudicators and Employees of an Operator of an Approved Dispute Resolution Scheme with Statutory Protection from Liability

5.1 MAS sought feedback on the provision of statutory protection to mediators, adjudicators and employees of an operator of an approved dispute resolution scheme from liability for any act or omission done with reasonable care and in good faith. This was intended to strengthen the confidence and autonomy of the dispute resolution operator's mediators, adjudicators and employees in carrying out their duties, and bring the level of protection accorded to them in line with that of other public dispute resolution bodies. Respondents were generally supportive of the proposal.

5.2 A few respondents sought clarification on the protection conferred, in particular, what would constitute "reasonable care and in good faith". Two respondents suggested extending the statutory protection to negligent acts to accord even greater protection to persons who perform duties for the dispute resolution operator. Another respondent was of the view that the statutory protection should not apply to a mediator, adjudicator or employee where there is apparent bias on his or her part. One respondent suggested that the independence of the Financial Industry Disputes Resolution Centre Ltd's ("**FIDReC**") employees, mediators and arbitrators from the regulator should be made evident.

MAS' Response

5.3 In view of the broad support received, MAS will proceed with the proposal to provide statutory protection to mediators, adjudicators and employees of an approved dispute resolution operator. The requirement for acts or omissions to be carried out with reasonable care and in good faith seeks to ensure that the adjudicator, mediator or employee carry out their duties responsibly. This is also generally aligned with the standard of protection accorded to financial institutions, their officers or such other

persons in their compliance with certain obligations under the MAS Act.[10] Whether an act or omission is carried out with reasonable care and in good faith will have to be determined based on all the facts and circumstances of each case, and not based solely on any finding of (or lack of finding of) apparent bias.

5.4 On the independence of FIDReC from the regulator, while the MAS Act (or the new Act once introduced) empowers MAS to approve dispute resolution schemes for the resolution of disputes arising from the provision of financial services in Singapore, MAS does not intervene in the day-to-day operations of the scheme operator. FIDReC is set up as an independent organisation with its own management and Board of Directors which is responsible for overseeing its operations including the appointment of adjudicators and preserving the independence of its dispute resolution procedures. This is also made clear in FIDReC's Terms of Reference.

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[10] See for example section 27D(4), 40(8), 92(1), 124(1), 159(1) or 162(5) of the MAS Act.

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