

THE PAYMENT SERVICES ACT 2019 (“PS Act”)

PREP FRAMEWORK FOR THE INITIAL LEGAL MEMO (“ILM”)

A. THE SERVICE - IS IT REGULATED BY THE PS ACT?

1. Identify the proposed service to be provided and determine whether it is regulated under the PS Act

- State details of the proposed service to be provided. To state that this is a memorandum in relation **ONLY** to the regulatory aspects of the proposed business activities in the context of the PS Act under Singapore laws and **NOT** in relation to any other laws. It is not a legal opinion and while it may identify other Singapore laws that may also be applicable, this memo will not address them in detail.
- Identify and explain if the proposed service constitutes a payment service regulated under the PS Act, as specified under Part I of the First Schedule, or is excluded under Part 2 of the First Schedule.
- This ILM is only for the benefit of the client/ entity and may not be circulated to, disclosed to, or relied upon by any other person without prior written consent of the law firm.

2. Whether the proposed service or activity may be excluded from or exempted under the PS Act

- Identify and explain if the proposed service or activity is covered by any other exclusion or exemption under the PS Act, including the general exemption under s100 of the PS Act.
- Whether the entity has been granted any exemptions under an existing Act and whether these exemptions still continue to apply under the PS Act.
- **Assessment**

Time-based considerations (Part 10 of the PS Act and the Payment Services (Exemptions for a Limited Period of Time) Regulations)

Are the transitional provisions available and is the entity still within the deadline for the exemptions under the transitional provisions?

Activity-based (Part 2 of First Schedule and Part 6 of the Payment Services Regulations)

The background information provided by the client will be important, so as to determine if the proposed activity can come under an exemption (eg. such as issue of limited purpose e-money).

Nature of client (Part 2 of First Schedule and sections 13 and 100)

Is the entity already regulated by MAS such that it is exempted under the PS Act?

Has MAS prescribed any exemptions for certain classes of persons?

Other considerations

To highlight that MAS may prescribe new activities that constitute payment services or exempt existing services or service providers that may come into effect after this ILM.

- **If no exclusions or exemptions are applicable, proceed to considering what licence the entity may require in Part B below.**

B. THE SERVICE PROVIDER - DOES IT REQUIRE A LICENCE?

1. Whether the entity intending to provide the proposed service will be required to hold a licence under the PS Act. If so, to identify the type of licence required.

- Identify and explain if the entity requires a licence under s 5(1) of the PS Act to provide the proposed service or activity. This part will be the substance of the ILM for entities that need to be licensed as:
 - the entity is not an exempt payment service provider under s 13 or s.100 of the PS Act;
 - the entity is not exempt from holding a licence, including under s 123 of the PS Act; or
 - the entity is not deemed to hold any licence, including under s 122 of the PS Act.
- **If the entity is an exempt service provider under the PS Act, or is otherwise exempted from holding or deemed to hold a licence under s122 & s123 of the PS Act (collectively “Exempt Service Provider”), proceed to Part C below.**
- If the entity needs to apply for a licence, state the type of licence required under s 6 of the PS Act (i.e money-changing licence, standard payment institution licence, or major payment institution licence?)
- Set out scope of licence
 - any restrictions? For e.g. standard payment institution licensees cannot provide payment services above a specified transaction value or e-money float threshold.

2. If the entity needs to apply for a licence, set out the applicable licensing requirements.

Set out the applicable licensing requirements for the type of licence required under the PS Act, including general requirements applicable to all licensees and requirements that are specific to the entity’s payment service. These may include:

- i. The actual licensing process and the specific requirements in respect of base capital, appointment of auditors etc...
- ii. Shareholding restrictions for all licensees; and
- iii. Conduct of business, especially for MPIs.

3. Post ILM considerations and checklist (not included in ILM)

- Provide overview of post ILM considerations and work: Drafting of Business Terms; disclosures; contractual documents; policy manuals, internal process handbooks; compliance aspects etc.
- Clarify that post ILM considerations and work are outside the scope of ILM fees, such considerations may include:
 - i. Compliance manuals and policies/procedures that comply with the applicable MAS notices and guidelines and/or embrace best practices. These could include topics such as:
 - a. AML/CFT obligations
 - b. Business continuity management
 - c. Outsourcing to third parties
 - d. Anti-bribery and corruption considerations
 - e. Complaints handling
 - f. Whistleblowing
 - g. Risk management
 - h. Fit and proper criteria
 - i. Conduct of business
 - j. Conflicts of interest
 - k. Information management
 - l. Record keeping obligations
 - m. Regulatory reporting
 - n. Misconduct/disciplinary procedures
 - o. Code of conduct
 - p. Gifts and entertainment
 - q. Surveillance and use of email/other communication and training;
 - ii. Terms of Use of Website (if applicable) and Privacy policy (e.g. personal data protection policy and procedures);
 - iii. Terms of sale of digital payment tokens (if applicable);
 - iv. General service level agreements; and
 - v. Taxation matters.

C. THE EXEMPT SERVICE PROVIDER - FURTHER CONSIDERATIONS

- Where a service provider is exempted under s.13(1) of the PS Act, it would still have to fulfil certain exemption conditions.
 - Eg. under section 3.1 of the Notice to Payment Services Providers (Specified Payment Services) on Prevention of Money Laundering and Countering the Financing of Terrorism ("PS Notice 01"), such an exempt service provider will still have to comply with the said PS Notice 01 if it offers a "specified product".
- To consider whether there may be any other aspects to take note of if the service provider is exempted under s.13(1) or s.100 (eg. the conditions set out under s.100(2) and (3)).
- Where a service provider is exempted from holding a licence under s 122 of the PS Act, or is deemed to hold a licence under s 123 of the PS Act, to advise on specific matters or requirements in relation to s 122 and s 123 of the PS Act.

- i. If the entity is already regulated under the PSOA and MCRBA, to assess if there are any existing regulatory requirements under the PSOA and MCRBA and also its current compliance status, and advise on the “upgrades” that may be necessary, including for AML/CFT obligations; and
- ii. Advise on transitional provisions, if still applicable.