
SINGAPORE REGULATIONS APPLICABLE TO DIGITAL ASSET CUSTODY BUSINESSES

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INTRODUCTION

Under the Securities and Futures Act (“SFA”), “providing custodial services” is a regulated activity in relation to securities, specified securities-based derivatives contracts or units in a collective investment scheme (collectively, “specified products”). On the contrary, the Payment Services Act 2019 (the “PS Act”) does not inherently require a license for providing custodial services (assuming such term has the same definition as it has under the SFA) in relation to e-money or digital payment tokens (each as defined in the PS Act respectively).

In this article, we will explore the licenses potentially required (if any) to operate a digital asset custody business in Singapore and the type(s) of custody business which may be unregulated under the PS Act.

THE DIGITAL ASSET UNIVERSE

For purposes of this article, we have assumed the digital asset universe to consist of:

- digital payment tokens;
- e-money;
- limited purpose digital payment tokens (as such term is defined in the PS Act);
- limited purpose e-money (as such term is defined in the PS Act),
- other digital assets including the digital tokens described in Case Study 1 of “A Guide to Digital Token Offerings” (the “Guide”) published by the Monetary Authority of Singapore (the “MAS”); and
- “security tokens” (tokens which constitute specified products and/or capital markets products under the SFA),¹
 - custody of security tokens is regulated under the SFA; therefore, we will not discuss them.

THE MEANING OF “CUSTODY”

The PS Act does not explicitly regulate “custodial services”, unlike the SFA which does. Under the SFA, “providing custodial services”:

“means, in relation to specified products, providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person (the customer), possession or control of the specified products of the customer and carries out one or more of the following functions for the customer:

- (a) *settlement of transactions relating to the specified products;*
- (b) *collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the specified products;*
- (c) *paying tax or other costs associated with the specified products;*
- (d) *exercising rights, including without limitation voting rights, attached to or derived from the specified products;*
- (e) *any other function necessary or incidental to the safeguarding or administration of the specified products,*

but does not include —

- (i) *the activities of a corporation that is a Depository as defined in section 81SF;*

- (ii) *the provision of services to a related corporation or connected person, so long as none of the specified products in respect of which such services are provided is —*
 - (A) *held on trust for another person by the related corporation or connected person;*
 - (B) *held as a result of any custodial services provided by the related corporation or connected person to another person; or*
 - (C) *beneficially owned by any person other than the related corporation or connected person;*
- (iii) *the provision of services by a nominee corporation that are solely incidental to the business of the nominee corporation; and*
- (iv) *any other conduct the Authority may, by order, prescribe.”*

Neither the SFA nor the PS Act defines the term “possession”, although both statutes use the term.² The necessary and sufficient fact pattern that will be deemed to constitute possession or control of e-money or a digital payment token for purposes of the PS Act is unclear at this time.

Notwithstanding this uncertainty, we will consider a custodian to have possession of e-money or a digital payment token for the purposes of this article if the custodian possesses a private cryptographic key required to transfer a digital asset.³

REGULATED ACTIVITIES UNDER THE PS ACT

The regulated activities under the PS Act are:

- an account issuance service,
- a domestic money transfer service,
- a cross-border money transfer service,
- a merchant acquisition service,
- an e-money issuance service,
- a digital payment token service, and
- a money-changing service.

Under the PS Act, the definition of “money” excludes any digital payment token. Therefore, of the seven regulated activities only digital payment token services apply to digital payment tokens. In addition, providers of regulated activities for limited purpose digital payment tokens or limited purpose e-money are exempted from having to comply with the PS Act.

The definitions of “limited purpose digital payment token” and “limited purpose e-money” under the PS Act are set out below:

“limited purpose digital payment token” means any non-monetary customer loyalty or reward point, any in-game asset, or any similar digital representation of value that —

- (a) *cannot be returned to its issuer, transferred or sold in exchange for money; and*
- (b) *may only be used —*
 - (i) *in the case of a non-monetary customer loyalty or reward point — for the payment or part payment of, or in exchange for, goods or services, or both, provided by its issuer or any merchant specified by its issuer; or*
 - (ii) *in the case of an in-game asset — for the payment of, or in exchange for, virtual objects or virtual services within an online game, or any similar thing within, that is part of, or in relation to, an online game;*

“limited purpose e-money” means any of the following types of electronically stored monetary value:

- (a) *any electronically stored monetary value that is, or is intended to be, used only in Singapore for any of the following purposes:*
- (i) *the payment or part payment of goods or services (or both) provided by the issuer of the electronically stored monetary value;*
 - (ii) *the payment or part payment of goods or services (or both) provided by any member of a limited network of providers of goods or services, being a network that has a commercial arrangement with the issuer of the electronically stored monetary value for every member of the network to accept the electronically stored monetary value as payment or part payment for goods or services (or both) provided by the member;*
 - (iii) *the payment or part payment of goods or services (or both) provided by any person within any one or more physical premises owned, operated or managed by the issuer of the electronically stored monetary value, or any related corporation or associated company of that issuer, in a case where all of the following conditions are satisfied:*
 - (A) *the user of the electronically stored monetary value is not contractually entitled to receive any refund of any unused portion of the electronically stored monetary value in any currency;*
 - (B) *if the electronically stored monetary value exceeds \$100 (or its equivalent in a foreign currency), any unused portion of the electronically stored monetary value cannot be refunded to the user of the electronically stored monetary value in any currency, unless the issuer identifies and verifies the identity of that user;*
 - (C) *the electronically stored monetary value cannot be withdrawn by the user of the electronically stored monetary value, from any payment account maintained for that user, in exchange for any currency;*
 - (D) *the amount of electronically stored monetary value contained in any payment account maintained for the electronically stored monetary value cannot exceed \$1,000 (or its equivalent in a foreign currency);*

The following table⁴ summarises the indicative application of the PS Act to various forms of digital assets:

Activity under the PS Act	Type of digital assets				
	Digital Payment Token	Limited Purpose Digital Payment Token	E-Money	Limited-Purpose E-Money	Other Digital Assets
Account Issuance	No	No	Yes	No	No
Domestic Money Transfer	No	No	Yes	No	No
Cross-Border Money Transfer	No	No	Yes	No	No
Merchant Acquisition	No	No	Yes	No	No
E-Money Issuance	No	No	Yes	No	No
Digital Payment Token	Yes	No	No	No	No
Money Changing	No	No	Yes	No	No

CUSTODY OF DIGITAL PAYMENT TOKENS

With respect to digital payment tokens, a custody business would be regulated under the PS Act if the custodian (1) deals in digital payment tokens or (2) facilitates the exchange of digital payment tokens.

The definitions of “dealing in”, “facilitating the exchange of digital payment tokens” and “digital payment token exchange” under the PS Act are set out below:

“dealing in digital payment tokens” means the buying or selling of that digital payment token in exchange for any money or any other digital payment token (whether of the same or a different type), but does not include any of the following:

- (a) *facilitating the exchange of digital payment tokens;*
- (b) *accepting any digital payment token as a means of payment for the provision of goods or services;*
- (c) *using any digital payment token as a means of payment for the provision of goods or services;*

“facilitating the exchange of digital payment tokens” means establishing or operating a digital payment token exchange, in a case where the person that establishes or operates that digital payment token exchange, for the purposes of an offer or invitation (made or to be made on that digital payment token exchange) to buy or sell any digital payment token in exchange for any money or any digital payment token (whether of the same or a different type), comes into possession of any money or any digital payment token, whether at the time that offer or invitation is made or otherwise;

“digital payment token exchange”

- (a) *means a place, or a facility (whether electronic or otherwise), where —*
 - (i) *offers or invitations to buy or sell any digital payment token in exchange for any money or any other digital payment token (whether of the same or a different type), are regularly made on a centralised basis;*
 - (ii) *those offers or invitations are intended, or may reasonably be expected, to result (whether directly or indirectly) in the acceptance of those offers or in the making of offers to buy or sell digital payment tokens in exchange for money or other digital payment tokens (whether of the same or a different type), as the case may be; and*
 - (iii) *the person making any such offer or invitation, and the person accepting that offer or making an offer in response to that invitation, are different persons; but*
- (b) *does not include a place or facility (whether electronic or otherwise) that is used*

exclusively by one person to do only either or both of the following things:

- (i) *to make offers or invitations to buy or sell any digital payment token in exchange for any money, or any digital payment token (whether of the same or a different type);*
- (ii) *to accept any offer to buy or sell any digital payment token in exchange for any money, or any digital payment token (whether of the same or a different type);*

From a plain reading of the PS Act, it would appear that, *prima facie*, the provision of custody services in relation to digital payment tokens would not constitute (1) dealing in digital payment tokens or (2) facilitating the exchange of digital payment tokens so long as the custodian does not operate a digital payment token exchange.

CUSTODY OF E-MONEY

With respect to e-money, a custody business is likely to be regulated under the PS Act unless the service does not constitute:

- an account issuance service,
- a domestic money transfer service,
- a cross-border money transfer service, or
- a merchant acquisition service.

Below we analyse each activity and consider whether there is a scope of custodial service that would not fall within the applicable regulated activity.

Account issuance service

The definitions of “account issuance service”, “payment account”, “payment order” and “payment transaction” under the PS Act are set out below:

“account issuance service” means any of the following services:

- (a) *the service of issuing a payment account to any person in Singapore;*
- (b) *any service relating to any operation required for operating a payment account, including —*
 - (i) *any service (other than a domestic money transfer service or a cross-border money transfer service) that enables money to be placed in a payment account; or*
 - (ii) *any service (other than a domestic money transfer service or a cross-border money transfer service) that enables money to be withdrawn from a payment account;*

“payment account”

- (a) *means any account, or any device or facility (whether in physical or electronic form), that —*
 - (i) *is held in the name, or associated with the unique identifier, of any person, and is used by that person for the initiation of a payment order or the execution of a payment transaction, or both; or*
 - (ii) *is held in the names, or associated with the unique identifiers, of 2 or more persons, and is used by any of those persons for the initiation of a payment order or the execution of a payment transaction, or both; and*
- (b) *includes a bank account, debit card, credit card or charge card.”*

“payment order means” an instruction to a payment service provider requesting for the execution of a payment transaction;

“payment transaction” means the placing, transfer or withdrawal of money, whether for the

purpose of paying for goods or services or for any other purpose, and regardless of whether the intended recipient of the money is entitled to the money;

Analysis

Because a payment transaction includes any placing, transfer or withdrawal of money, there appears to be no way to offer a custodial business for e-money without being regulated as an account issuance service.

Domestic money transfer service

Under the PS Act,

“domestic money transfer service” means the service of accepting money for the purpose of executing, or arranging for the execution of, any of the following payment transactions, each of which is between a payer in Singapore and a payee in Singapore, in any case where neither the payer nor the payee is a financial institution:

- (a) *a payment transaction executed from, by way of or through a payment account;*
- (b) *a direct debit (including a one-off direct debit) through a payment account;*
- (c) *a credit transfer (including a standing order) through a payment account;*
- (d) *accepting any money from any person for transfer to the payment account of a different person;*

Analysis

An e-money custodian that only allows a user to deposit and withdraw e-money and offers no other functionality would likely not be considered a domestic money transfer service.

Cross-border money transfer service

Under the PS Act,

“cross-border money transfer service” means either of the following services:

- (a) *any service of accepting money in Singapore, whether as principal or agent, for the purpose of transmitting, or arranging for the transmission of, the money to any person outside Singapore (other than any such service that the Authority may prescribe); or*
- (b) *any service of receiving any money from outside Singapore for, or arranging for the receipt of any money from outside Singapore by, any person in Singapore (other than any such service that the Authority may prescribe), whether as principal or as agent;*

Analysis

An e-money custodian that only allows a user to deposit and withdraw e-money within Singapore and offers no other functionality would likely not be considered a cross-border money transfer service.

Merchant acquisition service

Under the PS Act,

“merchant acquisition service” means any service of accepting and processing a payment transaction for a merchant under a contract between the provider of the service and the merchant, which results in a transfer of money to the merchant pursuant to the payment transaction, regardless whether the provider of the service comes into possession of any money in respect of the payment transaction, in a case where —

- (a) *the merchant carries on business in Singapore, or is incorporated, formed or registered in Singapore; or*
- (b) *the contract between the provider of the service and the merchant is entered into in Singapore;*

Analysis

An e-money custodian that only allows a user to deposit and withdraw e-money and offers no other functionality would likely not be considered a merchant acquisition service. In addition, an e-money custodian that accepts and processes payment transactions (i) for merchants that neither (x) carry on business in Singapore nor (y) are incorporated, formed or registered in Singapore and (ii) pursuant to contracts with merchants that are entered into outside Singapore, would likely not be regulated as a cross-border money transfer service.

CUSTODY OF LIMITED PURPOSE DIGITAL PAYMENT TOKENS, LIMITED PURPOSE E-MONEY OR OTHER DIGITAL ASSETS

Custody of these digital assets, including digital assets (commonly known as “utility tokens”) that fall within the example set out in Case Study 1 of the Guide, is likely not regulated under the SFA or PS Act. We note that there is uncertainty as to which utility tokens will be considered digital payment tokens for purposes of the PS Act. While the MAS has referred to Bitcoin as a digital payment token,⁵ the application of the definition to other utility tokens is unclear, particularly as to what constitutes “a section of the public” for purposes of the definition of digital payment token.

CONCLUSION

The details and nuances to any digital asset custodian’s business model must be carefully reviewed to ensure compliance with applicable law, particularly the PS Act.

If nothing else, this article (with all its caveats, defined terms and cautious conclusions), unequivocally demonstrates without a shadow of a doubt... that it’s a thrilling time to be advising on regulatory compliance.

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References

1. “Providing custodial services” for “security tokens” is regulated under the SFA; therefore, we will not discuss it further for purposes of this article.
2. Among other references, the PS Act uses “possession” in (i) the definition of “facilitating the exchange of digital payment tokens” with respect to someone who “Comes into possession of any money or any digital payment token” as well as (ii) the explanation of certain services that

are by law determined to not be payment services because such services do not “enter into possession of any money under that payment service” (see Paragraph 2(j) of the First Schedule of the PS Act).

3. For a general background information as well as helpful descriptions of how digital custodians may operate in practice, see Debevoise & Plimpton, “Custody of Digital Assets: Centralized Safekeeping of Decentralized Assets under the Investment Advisers Act” (17 December 2018), available at <https://www.debevoise.com/insights/publications/2018/12/custody-of-digital-assets>
4. Please note that the table has been completed for discussion purposes only, each type of digital asset and whether the activity(ies) require licensing or regulatory approval under Singapore laws, such as the PS Act, may differ on a case by case basis.
5. See Monetary Authority of Singapore, “A Guide to Digital Token Offerings” (5 Apr 2019), available at <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidanceand-Licensing/Guide-to-Digital-Tokens-Offering-last-updated-on-5-April-2019.pdf>

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