

PRACTICAL COMPLIANCE AND THE PAYMENT SERVICES ACT:

HOMEWORK BEFORE YOU APPLY FOR A LICENSE UNDER THE PAYMENT SERVICES ACT

2 JANUARY 2020 – HOLLAND & MARIE

Most of the relevant forms and guidelines for the Payment Services Act (the “PS Act”), including the main license application form (“Form 1”) ¹ have now been published by the Monetary Authority of Singapore. Over the coming weeks, we intend to publish a series of articles considering various practical issues relating to applying for a license under or complying with the PS Act.

INTRODUCTION

Many payment service providers (“PSPs”) are preparing to apply for a license under the PS Act. However, the decision to apply for a license triggers significant expense in terms of management time, financial cost and general operational flexibility. As a result, below we discuss some of the issues PSPs should consider prior to taking the licensing plunge.

POTENTIAL CONSIDERATIONS

Why is the Singapore market important to you? How does Singapore fit in terms of your global strategy?

In a famous essay written by the economist Milton Friedman, he argued that business’ sole purpose is to generate profit for shareholders. Even if you disagree with that hypothesis, it is more than reasonable to say that profitability is a proper metric for a business to consider. To that end, we recommend that PSPs applying for a license under the PS Act review their business model and understand how their businesses’ profitability will be affected.

For example, imagine a PSP in Japan that has a minor customer base in Singapore. Yes, that PSP can apply for a license. It could also drop the minor customer base in Singapore and thus would probably not be eligible for licensing under the PS Act. It is also important to remember that a license under the PS Act covers a PSP’s operations in Singapore. It does not provide assurance that the PSP can offer its services in any other jurisdiction.

Have you run the numbers?

In Question 7.23 of Form 1, the MAS requires a PSP to provide projected revenue and profitability figures as well as certain operational projections. If losses are anticipated, you are required to explain how the losses would be funded. We recommend doing this exercise prior to deciding to apply for a license, because the exercise could establish that it is not financially viable for the PSP to operate the licensed business.

Do you understand what it means to be licensed? Have you spoken to someone who has operated a licensed business in Singapore?

Being a licensed entity in Singapore is a serious undertaking. If you have not operated in a regulated environment previously, we recommend finding someone in your network who has so he or she can tell you about it. Among other things, operating a regulated business involves committing to various policies and procedures which can be onerous and restrictive.

Do you understand what is required as part of applying for a license?

Are you aware the potential letter of responsibility you may need to obtain from your parent company? Are you aware of the Singapore legal opinion you will need regarding the tokens you deal with if you operate a digital payment token service? Are you prepared to disclose the unregulated businesses

¹ See <https://www.mas.gov.sg/-/media/MAS/Sectors/Forms-and-Templates/Form-1---Application-for-a-Payment-Service-Provider-Licence.pdf>

that the PSP will operate? Are you prepared to make the necessary disclosures about your controlling shareholders?

Do you realize that you may spend considerable time, effort and money applying for a license only to not have it approved in the end?

No one can guarantee your license application will be approved, within a specific period of time or at all.

CONCLUSION

At Holland & Marie, our experience is not simply in advising clients on their licensing requirements. We are one of the few firms that can say members of their team have had roles as Head of Compliance, General Counsel, Chief Operating Officer and/or Chief Executive Officer of a regulated firm. Due to our unique experience, we are positioned to advise clients on what operating as a licensed firm is like from the inside... and it's not for everyone. Therefore, we encourage prospective clients to soberly review the questions we have highlighted before deciding to apply for a license.

If you consider all the questions and still want to apply, that's when you let Holland & Marie buy you a coffee and explore how we can help.

For further information, contact:

Chris Holland: Partner | Holland & Marie | 201802481R
7 Straits View, Marina One East Tower, #05-01 Singapore 018936
Chris.holland@hmcompliance.com
www.hmcompliance.com

Disclaimer: The material in this post represents general information only and should not be relied upon as legal advice. Holland & Marie Pte. Ltd. is not a law firm and may not act as an advocate or solicitor for purposes of the Singapore Legal Profession Act.