

# CONSULTATION PAPER

P002 – 2020

21 July 2020

## Consultation Paper on a New Omnibus Act for the Financial Sector

MAS

Monetary Authority of Singapore

## Contents

1	Preface .....	3
2	Harmonised and Expanded Power to Issue Prohibition Orders .....	5
3	Regulating Virtual Asset Service Providers Created in Singapore for Anti-Money Laundering and Countering of Financing of Terrorism Purposes.....	8
4	Harmonised Power to impose requirements on Technology Risk Management.....	17
5	Provide Mediators, Adjudicators and Employees of an Operator of an Approved Dispute Resolution Scheme with Statutory Protection from Liability .....	19
6	Other Provisions in the new Act .....	20
Annex A	.....	21
Annex B	.....	23
Annex C	.....	33
Annex D	.....	88
Annex E	.....	89
Annex F	.....	90
Annex G	.....	98

## **1 Preface**

1.1 The powers of the Monetary Authority of Singapore (“MAS”) to regulate the financial sector by entity<sup>1</sup> and activity<sup>2</sup> are set out in various Acts administered by MAS. Over the years, the Monetary Authority of Singapore Act (Cap 186) (“MAS Act”) was amended to include new legislative provisions that applied to financial institutions (“FIs”) across the financial sector.

1.2 Recognising the increasing need for a financial sector-wide regulatory approach to complement MAS’ entity and activity based regulation in addressing the emerging risks and challenges that impact the financial sector, MAS intends to introduce a new omnibus Act (“new Act”) for the financial sector. With the introduction of the new Act, the provisions currently in the MAS Act that relate to MAS’ regulatory oversight of different FI classes will be moved to the new Act. The existing provisions that will be moved from the MAS Act to the new Act relate to the prevention of money laundering and terrorism financing, the control and resolution of FIs, and the oversight of financial sector dispute resolution schemes.

1.3 In addition, MAS intends to introduce new provisions on the following areas:

- (a) a harmonised and expanded power to issue prohibition orders;
- (b) a new Part to regulate virtual asset service providers created in Singapore for anti-money laundering and countering of financing of terrorism (“AML/CFT”) purposes;
- (c) a harmonised power to impose requirements on technology risk management; and
- (d) providing mediators, adjudicators and employees of an operator of an approved dispute resolution scheme with statutory protection from liability.

1.4 This Consultation Paper seeks feedback on the new provisions for the new Act. Annex A sets out a list of questions asked in this paper. Annexes B to G set out the proposed provisions for each part of the new Act.

1.5 MAS invites comments from participants in the financial industry and other interested parties.

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<sup>1</sup> For example, Banking Act.

<sup>2</sup> For example, Financial Advisers Act, Securities and Futures Act.

**Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:**

- (i) their whole submission or part of it (but not their identity), or**
- (ii) their identity along with their whole submission,**

**to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.**

1.6 Please submit written comments by 20 August 2020 to –

Legal Department  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117  
Fax: (65) 62203973  
Email: [legal\\_dept@mas.gov.sg](mailto:legal_dept@mas.gov.sg)

1.7 Electronic submission is encouraged. We would appreciate that you use [this suggested format](#) for your submission to ease our collation efforts.

## **2 Harmonised and Expanded Power to Issue Prohibition Orders**

2.1 MAS issues prohibition orders (“POs”) to bar persons from conducting certain activities or from holding key roles in FIs for a period of time. POs are issued in cases of serious misconduct, to preserve trust and deter misconduct in Singapore’s financial industry. MAS determines the duration and scope of each PO based on the facts of each case.

2.2 MAS’ current PO powers reside only in the Securities and Futures Act (Cap 289) (“SFA”), the Financial Advisers Act (Cap 110) (“FAA”) and the Insurance Act (Cap 142) (“IA”). This means that MAS cannot issue POs to persons regulated under other Acts administered by MAS<sup>3</sup> even if they have committed serious misconduct in the financial industry. The existing PO powers also do not comprehensively address risks as they only prohibit the subject from carrying out a limited scope of regulated activities.

2.3 MAS therefore proposes to introduce a harmonised and expanded power to issue a PO against any person who is not fit and proper to engage in regulated activities and identified roles and functions across the financial industry. This 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 test) and widens the scope of activities to which the prohibition may apply. This is similar to the approach taken in the UK and Australia.

2.4 We recognise that POs materially affect individual livelihoods. The new PO power will be exercised in a risk-proportionate manner that takes into account the nature and severity of the misconduct and its impact on the financial industry. In each case, MAS will assess the roles, activities and functions a person is not fit and proper to engage in. As with MAS’ current PO powers, the new PO power will also provide aggrieved individuals a right of appeal to the Minister.

2.5 The draft legislative provisions for the new PO power can be found in Annex B to this Consultation Paper.

### **Scope of persons who can be issued with a PO**

2.6 Under the proposed power, MAS may issue a PO against any person. In order to protect FIs and the wider financial industry, MAS needs to be able to keep out persons who have demonstrated by their misconduct that they have the potential to cause harm.

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<sup>3</sup> Banking Act, Business Trusts Act, Finance Companies Act, Payment Services Act and Trust Companies Act.

2.7 We envisage that persons who can cause harm would primarily be former, existing or prospective participants in the financial industry, including employees and service providers of FIs.

**Question 1.** MAS seeks comments on the proposal to be able to issue a PO to any person.

### Grounds for issuing POs

#### *The Fit and Proper Test*

2.8 MAS proposes to use the fit and proper criteria as the sole ground for which a PO should be issued. The fit and proper criteria is set out in MAS' Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01), and comprises the following elements:

- (a) Honesty, integrity and reputation;
- (b) Competence and capability; and
- (c) Financial soundness.

2.9 The fit and proper criteria is suitable and comprehensive for the purpose of assessing whether a person ought to be issued with a PO, and reflects MAS' current practice of assessment<sup>4</sup>. In each case, MAS will carry out a holistic and balanced assessment of the factors, including the nature and severity of the misconduct, the relevance of the misconduct to the financial industry, and the passage of time since the misconduct, in order to arrive at fair and balanced outcomes.

**Question 2.** MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO.

### Effect of POs

2.10 Currently, MAS can prohibit unsuitable persons from taking up specified positions (i.e. directorship, substantial shareholding, management) and conducting

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<sup>4</sup> Under the existing powers, grounds that MAS can rely on to issue POs are already factors that point towards a lack of fitness and propriety. These grounds include conviction of offences involving fraud or dishonesty, and breaches of the Act.

certain activities that are regulated under the SFA, FAA and IA. In addition to expanding the scope of the prohibition to Acts other than the SFA, FAA and IA, MAS proposes to add specified functions to the scope of prohibition under the POs. These are:

- (a) Handling of funds, including safeguarding or administration of a digital payment token (“DPT”) or digital payment token instrument;
- (b) Risk-taking;
- (c) Risk management and control; and
- (d) Critical system administration.

2.11 Each of these functions is critical to the integrity and functioning of FIs, and it is important that MAS is able to prohibit persons who are not fit and proper from performing these functions. MAS currently exercises regulatory oversight over these specified functions, and has set standards of practice for these functions through the issuance of regulations, notices and guidelines.

2.12 MAS recognises that a PO can materially affect a person’s livelihood. In each case, a PO will only prohibit a person from activities, roles and functions that MAS assesses that he is not fit and proper to engage in.

2.13 MAS proposes to also include a power to prescribe additional specified functions in subsidiary legislation, which would allow MAS to respond swiftly to include new functions as the financial industry develops and new risks emerge. The power to add new functions will be exercised for the purpose of protecting trust or deterring misconduct in the financial industry.

**Question 3.** MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA:

- (a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument;
- (b) Risk-taking;
- (c) Risk management and control; and
- (d) Critical system administration.

**Question 4.** MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry.

### **3 Regulating Virtual Asset Service Providers Created<sup>5</sup> in Singapore for Anti-Money Laundering and Countering of Financing of Terrorism Purposes**

3.1 The Financial Action Task Force (“FATF”) recently revised the FATF Standards (“Standards”) to require countries to regulate virtual asset service providers (“VASPs”)<sup>6</sup> to mitigate money laundering and terrorism financing (“ML/TF”) risks. MAS supports the revised Standards. Without regulation, the anonymity, speed and cross border nature of their activities make this sector highly vulnerable to criminal abuse. MAS will therefore align our AML/CFT regulation and supervision of VASPs with the Standards.

3.2 There are two key enhancements to the scope of the Standards. Firstly, FATF has defined 5 activities of VASPs that jurisdictions should regulate for AML/CFT<sup>7</sup>, and secondly, FATF has specified that the jurisdiction where a VASP is created must regulate and supervise it. In addition, other jurisdictions where the VASP has operations or customers in, may also choose to regulate that VASP.

3.3 On the first scope enhancement, MAS had in December 2019, consulted on our intent to expand the regulatory scope of the Payment Services Act 2019 (Act 2 of 2019) (“PS Act”), to cover the additional activities scoped into the Standards, which are applicable to DPT service providers (“December 2019 Consultation Paper”). You may refer to the Consultation Paper here: <https://mas.gov.sg/publications/consultations/2019/consultation-on-the-proposed-amendments-to-the-payment-services-act>.

3.4 The present consultation pertains to how we intend to implement the second scope enhancement to the Standards that require VASPs to be licensed or registered in the jurisdiction where they are created. This requirement by FATF is targeted at ensuring

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<sup>5</sup> As set out in FATF’s standards, reference to creating a legal person includes incorporation of companies or any other mechanism that is used.

<sup>6</sup> The FATF adopted the enhanced Recommendation 15 of its Standards in June 2019 to clarify how the FATF Standards apply to VASPs. A virtual asset is defined by the Financial Action Task Force as a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes (“VA”).

<sup>7</sup> The enhanced FATF Standards imposes AML/CFT requirements on VASPs when they carry out the following VA activities, which are assessed to pose significant ML/TF risks: (a) exchange between VAs and fiat currencies; (b) exchange between one or more forms of VAs; (c) transfer of VAs; (d) safekeeping and/or administration of VAs or instruments enabling control over VAs; and (e) participation in and provision of financial services related to an issuer’s offer and/or sale of VAs.



that every VASP will be regulated by at least one jurisdiction, regardless of where it conducts its businesses or where its customers are located. In the December 2019 Consultation Paper, MAS stated its intent to introduce, as a new class of FIs, entities that are created in Singapore, but which are carrying on a business of providing VA activities outside of Singapore. Such entities will be termed digital token (“DT”) service providers<sup>8</sup>, and will be regulated under the new Act.

### DT Service Providers

3.5 Under the enhanced Standards, VASPs must be licensed or registered in the jurisdiction(s) where they are created. Without imposing this requirement globally, regulatory arbitrage could occur where no single jurisdiction has sufficient regulatory hold over a specific VASP. This is because it is possible for VASPs to distribute operations across many jurisdictions since VASPs do not require sizeable operations or staff in any one location to operate, and they access their customers primarily through online channels. This FATF requirement is targeted at preventing regulatory ambiguity as VASPs’ operating models may not fall neatly within the substantial operations criteria that many jurisdictions use to determine regulatory capture. Instead, it provides a new bright line based on where the VASP is created, to determine which jurisdiction should regulate and supervise that VASP.

3.6 MAS’ current legislation would already capture an entity that carries on a business of conducting certain VA activities in Singapore, regardless of whether the entity is created in Singapore. In line with the enhanced FATF standards, MAS intends to regulate the carrying on of a business of providing VA activities outside of Singapore by DT service providers.

3.7 The draft legislative provisions for regulating VASP can be found in Annex C to this Consultation Paper.

**Question 5.** MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.

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<sup>8</sup> “DT service providers” means any of the following: (a) any individual operating from a permanent place of business in Singapore; (b) any corporation incorporated in Singapore; (c) any partnership or limited liability partnership formed in Singapore.

*DTs*

3.8 FATF terms virtual assets as a “digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes”.

3.9 For the purposes of regulating DT service providers under the new Act, MAS intends to align the definition of DTs to FATF as set out in paragraph 3.8. A DT is defined to mean (a) a DPT as defined in the PS Act or (b) a digital representation of a capital markets product<sup>9</sup> as defined in the SFA which (i) can be transferred, stored or traded electronically; and (ii) satisfies such other characteristics as MAS may prescribe.

**Question 6.** MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:

- (a) a digital payment token ; or
- (b) a digital representation of a capital markets product which –
  - (i) can be transferred, stored or traded electronically; and
  - (ii) satisfies such other characteristics as MAS may prescribe;but does not include an excluded digital token.

*Scope of DT Services*

3.10 The enhanced Standards imposes AML/CFT requirements on VASPs when they carry out VA activities.

3.11 Most entities that carry on the business of providing VA activities in Singapore are subject to current legislation. In some situations, current legislation with extraterritorial reach will also capture VA activities provided outside of Singapore<sup>10</sup>. Where the DTs are DPTs, such entities may be considered to be carrying on business of providing DPT service under the PS Act. Where the DTs are capital markets products, such entities may be considered to be carrying on business in any regulated activity<sup>11</sup>, or establishing or operating an organised market<sup>12</sup> under the SFA, or carrying on a business of providing financial advisory service<sup>13</sup> under the FAA. However, given the internet-based

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<sup>9</sup> “capital markets products” has the meaning given by section 2(1) of the SFA.

<sup>10</sup> Such as section 339 of the SFA and sections 6(2) and 90 of the FAA.

<sup>11</sup> “regulated activity” has the meaning given by section 2(1) of the SFA.

<sup>12</sup> “organised market” has the meaning given by Part I of the First Schedule to the SFA.

<sup>13</sup> “financial advisory service” has the meaning given by section 2(1) of the FAA.

nature of such operations, there may be entities created in Singapore that do not perform such services in Singapore, but offer such services outside of Singapore and that are not captured under current legislation. MAS intends to regulate such entities for ML/TF risks. As elaborated in the next section, they will be required to have a meaningful presence in Singapore such that MAS has sufficient supervisory oversight over them.

3.12 MAS intends to align the scope of DT services to the Standards. Specifically, each of the following is a DT service for the purposes of the new Act:

- (a) Dealing in DTs;
- (b) Facilitating the exchange of DTs;
- (c) Inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any DTs in exchange for any money or any other DTs (whether of the same or a different type);
- (d) Accepting DTs for the purposes of transferring, or arranging for the transfer of, the DTs or arranging for the transmission of DTs (where the service provider does not come into possession of the DTs);
- (e) Safeguarding or administration of a DT or DT instrument, where the service provider has control over the DT or the DT associated with the DT instrument;
- (f) Advisory services relating to the offer or sale of DTs.

3.13 In June 2019, the FATF clarified in its Guidance for VASPs that VASPs should be regulated where they “actively facilitate” the activity. It does not require the VASP to have possession of the virtual asset. Hence, it is MAS’ intention to capture the scenario where the DT service provider “actively facilitates” the activity, as set out in limbs (c) and (d) in the preceding paragraph.

3.14 To explain the scope of each proposed service, we have set out in Table 1 a brief explanation of each service, and the intention behind the capture of each service. Please refer to the First Schedule in Annex C for the full description of each regulated service, and the definitions used.

**Table 1: Brief explanation of DT services**

DT Service	Brief Explanation
Dealing in DTs <sup>14</sup>	<p>The service of buying or selling DTs. Examples may include, where relevant, (a) buying or selling of DTs incidental to the provision of brokering services; (b) buying or selling of DTs incidental to the conduct of fund management activities, with DTs as underlying; and (c) buying or selling of DTs incidental to the conduct of underwriting services related to the offer or sale of DTs.</p> <p>Such services can be exploited by bad actors, by layering the proceeds of illicit assets in DTs.</p>
Facilitating the exchange of DTs <sup>15</sup>	<p>The service of facilitating the exchange of DTs.</p> <p>Examples may include, where relevant, exchanges that facilitate the listing of the initial offer or sale of a DT.</p> <p>Such services can be exploited by bad actors, by layering transactions through exchanges, which convert proceeds of illicit assets to DTs.</p>
Inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any DTs in exchange for any money or any other DTs (whether of the same or a different type) <sup>16</sup>	<p>The service of inducing or attempting to induce any person to buy or sell DTs, even when the service provider may not take possession of the DT.</p> <p>Examples may include brokering services in relation to the buying or selling of DTs.</p> <p>Such services can be exploited by bad actors, by layering the proceeds of illicit assets in DTs.</p>

<sup>14</sup> This refers to the service in para 1(a) of Part 1 of the First Schedule in Annex C.

<sup>15</sup> This refers to the service in para 1(b) of Part 1 of the First Schedule in Annex C.

<sup>16</sup> This refers to the service in para 1(e) of Part 1 of the First Schedule in Annex C.

Accepting DTs for the purposes of transferring, or arranging for the transfer of, the DTs or arranging for the transmission of DTs (where the service provider does not come into possession of the DTs) <sup>17</sup>	<p>The service of:</p> <ul style="list-style-type: none"> <li>(a) Accepting DTs from one DT address or account, whether in Singapore or outside Singapore, as principal or agent, for the purposes of transferring, or arranging for the transfer of, the DTs to another DT address or account, whether in Singapore or outside Singapore; or</li> <li>(b) Arranging for the transmission of DTs from one DT address or account, whether in Singapore or outside Singapore, to another DT address or account, whether in Singapore or outside Singapore.</li> </ul> <p>Such services can be exploited by bad actors to move or layer the proceeds of illicit assets by transferring value in the form of DTs, from one person to another.</p>
Safeguarding or administration of a DT or a DT instrument, where the service provider has control over the DT or the DT associated with the DT instrument <sup>18</sup>	<p>The provision of safeguarding or administration services for DTs.</p> <p>They can be used to safekeep illicit assets or assets for illicit actors, and in some cases, act as an additional layer or front.</p>
Advisory services relating to the offer or sale of DTs <sup>19</sup>	<p>This limb relates to certain advisory services provided, in the offer or sale of DTs. Such DTs are usually used for investment purposes. We do not intend to include professional legal or accounting-related advisory services which are subject to their own AML/CFT requirements from their respective regulators.</p>

<sup>17</sup> This refers to the services in para 1(c) and para 1(d) of Part 1 of the First Schedule in Annex C.

<sup>18</sup> This refers to the service in para 1(f) of Part 1 of the First Schedule in Annex C.

<sup>19</sup> This refers to the service in para 1(g) of Part 1 of the First Schedule in Annex C.

	Bad actors may seek advisory services related to the offer or sale of DTs, which they use as a means to fundraise, or as a front, for illicit activity.
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**Question 7.** MAS seeks comments on:

- (a) The scope of DT services, which are in line with the FATF Standards for VASPs;
- (b) Whether there are other DT services that should be captured;
- (c) Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and
- (d) Specifically whether there are fund management activities involving DTs.

*Licensing and Ongoing Requirements for DT Service Providers*

3.15 MAS intends to apply licensing and ongoing requirements on DT service providers, to ensure that such entities have a meaningful presence in Singapore such that MAS has adequate supervisory oversight over them, even though they provide DT services outside of Singapore.

3.16 We propose to require that a DT service provider fulfil the following criteria at the point of admission:

- (a) The applicant must appoint at least one executive director<sup>20</sup> who is resident in Singapore;

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<sup>20</sup> An executive director is defined as a director who is concurrently a person who (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and (b) is concerned with or takes part in the management of the corporation on a day-to-day basis. This executive director will be responsible for discharging the duties or functions of his office, which will include ensuring the applicant's compliance with its written policies and with all relevant laws, and the identification, addressing and monitoring of ML/TF and proliferation financing risks associated with the business, amongst others. MAS will consult on

- (b) The applicant must be incorporated as a company in Singapore;
- (c) The applicant must have a permanent place of business in Singapore;
- (d) The applicant must satisfy such financial requirements as may be prescribed by MAS;
- (e) Each of the directors and chief executive officer, or equivalent persons, of the applicant is a fit and proper person<sup>21</sup>.

3.17 Once a DT service provider is licensed (“licensee”), we propose that it meet the following ongoing requirements:

- (a) The licensee must have a permanent place of business in Singapore;
- (b) The licensee must appoint at least one person to be present, on such days and at such hours as MAS may specify by notice in writing, at the licensee’s permanent place of business to address any AML/CFT related queries or complaints from any DT user that uses any DT service provided by the licensee or is a customer of the licensee;
- (c) The licensee must keep, or cause to be kept, at the licensee’s permanent place of business, books of all the licensee’s transactions in relation to any DT service provided by the licensee. Such books must be made available to authorities in a timely manner upon request;
- (d) The licensee must satisfy such financial requirements as may be prescribed or specified by MAS by notice in writing;
- (e) Each of the directors and chief executive officer, or equivalent persons, of the licensee is a fit and proper person<sup>22</sup>.

**Question 8.** MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers.

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subsidiary legislation that will be made under the new Act, setting out our further requirements, in due course.

<sup>21</sup> Pursuant to section 5(3) of Annex C read with paragraph 10 of the Guidelines on Fit and Proper Criteria.

<sup>22</sup> Pursuant to regulations to be prescribed for the purposes of section 37(2)(e) of Annex C.

## AML/CFT Requirements

### *AML/CFT Requirements to be imposed on DT Service Providers*

3.18 MAS considers all transactions relating to DT services to carry higher inherent ML/TF risks due to their anonymity and speed. MAS also treats all transactions involving DTs as cross-border in nature. These positions are aligned to the FATF Standards.

3.19 MAS intends to issue a Notice to Digital Token Service Providers on Prevention of Money Laundering and Countering the Financing of Terrorism (“FSM Notice”). MAS intends to regulate DT service providers primarily for ML/TF risks. To this end, the DT service provider must establish and staff an adequate AML/CFT compliance function in Singapore.

3.20 MAS will consult on the full FSM Notice in due course, but would like to seek comments on the general scope and AML/CFT requirements imposed. As the ML/TF risks posed are similar in nature, the AML/CFT requirements for DT service providers would be aligned with the requirements imposed on DPT service providers in MAS Notice PS-N02 Prevention of Money Laundering and Countering the Financing of Terrorism – Holders of Payment Service Licence (Digital Payment Token Service) (“PS Notice 02”)<sup>23</sup>, which was consulted on in June 2019<sup>24</sup> and issued on 5 December 2019.

3.21 Similar to PS Notice 02, we do not expect to have any low risk exemptions in respect of DT services and all DT service providers will be subject to the full set of AML/CFT requirements found in the FSM Notice. This will include cross border value transfers and requirements on occasional transactions, similar to PS Notice 02.

**Question 9.** MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS

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<sup>23</sup> Please refer to the following link to PS Notice 02: [https://mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Anti\\_Money-Laundering\\_Countering-the-Financing-of-Terrorism/PSN02-Prevention-of-Money-Laundering-and-Countering-the-Financing-of-Terrorism--Digital-Payment-Toke.pdf](https://mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Anti_Money-Laundering_Countering-the-Financing-of-Terrorism/PSN02-Prevention-of-Money-Laundering-and-Countering-the-Financing-of-Terrorism--Digital-Payment-Toke.pdf)

<sup>24</sup> Please refer to the following link for the response to the Consultation Paper: <https://mas.gov.sg/publications/consultations/2019/proposed-payment-services-notices-on-prevention-money-laundering-countering-financing-terrorism>



Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities.

#### *Existing FIs Providing DT Services*

3.22 Existing MAS-regulated FIs that are incorporated in Singapore, but carry on a business of providing DT service wholly outside of Singapore, will have to be licensed under the new Act, unless exclusions apply.<sup>25</sup> The purpose of this requirement is to ensure that all MAS-regulated FIs carrying out DT services wholly outside of Singapore will comply with the relevant AML/CFT obligations.

3.23 MAS intends to prescribe regulations to exempt existing DT service providers from the need to apply for a licence, for a specified period. MAS will consult on these regulations at a later stage.

3.24 In addition, to ensure parity and consistency of AML/CFT requirements imposed on MAS-regulated FIs carrying on a business of DT services in Singapore<sup>26</sup>, MAS intends to set out cross border value transfer requirements and occasional transactions requirements for DTs in all relevant AML/CFT Notices issued pursuant to the new Act. Such measures will apply if the MAS-regulated FI carries on a business of providing a DT service in Singapore. The amendments to the respective Notices will be set out and consulted upon at a later stage.

## **4 Harmonised Power to impose requirements on Technology Risk Management**

4.1 FIs today are highly reliant on technology to deliver services. As Singapore aims to be a smart financial centre where the use of information technology is pervasive, ensuring safety and soundness of the systems that support the delivery of financial services is key to maintaining confidence in our financial sector.

4.2 MAS has been updating its guidelines on technology risk management (“TRM”) regularly to take into account the evolving technological landscape, changes in TRM best practices globally, and the growing sophistication of cyber threats. MAS has issued Notices

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<sup>25</sup>Please see Section 4(3) of Annex C for details. In general, the exclusions relate to persons who carry on the business of providing DT service outside of Singapore that are regulated under existing MAS legislation or persons excluded from licensing as specified in the Third Schedule in Annex C.

<sup>26</sup>As clarified in para 3.22, existing FIs carrying on a business of DT services outside of Singapore will be subject to the new Act.

on Technology Risk Management and Notices on Cyber Hygiene (“Tech-Risk Notices”) which set out requirements on resilience of critical systems, incident reporting and cyber hygiene. The Tech-Risk Notices were issued to FIs pursuant to powers in the respective Acts under which the FIs are licensed.

4.3 MAS has relied on the powers in the respective Acts to specify its requirements on TRM for regulated activities. To facilitate MAS’ ability to impose TRM requirements on any FI or any class of FIs in relation to the FI’s system(s), irrespective of whether the system(s) supports a regulated activity, we propose to introduce powers to issue directions or make regulations on TRM under the new Act. This is because systems that do not support regulated activities can pose contagion cyber risk to systems that do due to inter-linkages.

4.4 Additionally, the current maximum penalties that can be imposed for breaches of Tech-Risk Notices across the various Acts administered by MAS such as the Banking Act (Cap 19), IA and SFA are not commensurate with the potential severity of a disruption to essential financial services and the potential impact to FIs’ customers. Given that disruptions to online financial services (e.g. ATM network failure, trading disruptions, etc.) can impact large numbers of retail and corporate customers, there is a need to establish a sufficiently high maximum penalty for breaches of requirements to signal the importance of TRM.

4.5 MAS intends to introduce a power to issue directions to or make regulations concerning any FI or class of FIs for the management of technology risks, including cyber security risks, the safe and sound use of technology to deliver financial services, and safe and sound use of technology to protect data.

4.6 To ensure the maximum penalty for breaches of Tech-Risk Notices or regulations is commensurate with the most serious types of breaches that can be committed by FIs, MAS proposes that the maximum penalty for breaches of regulations and Notices issued be S\$1 million. The quantum was derived after considering comparable existing penalty regimes of other Singapore government agencies<sup>27</sup>. As in the case of other MAS-administered Acts, MAS will use a composition framework that takes into account the severity of the breach to determine a composition amount.

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<sup>27</sup> Under section 8(1)(ii) of the Telecommunications Act (Cap 323) and section 29(2)(d) of the Personal Data Protection Act 2012, a financial penalty of \$1 million can be imposed for any contravention.

4.7 The draft legislative provisions for TRM can be found in Annex D to this Consultation Paper.

**Question 10.** MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches.

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

5.1 MAS requires FIs prescribed under the MAS (Dispute Resolution Scheme) Regulations 2007 to subscribe as members of an approved dispute resolution scheme. The objective is to provide consumers with an independent and affordable avenue for resolving disputes with their FIs. At present, the Financial Industry Disputes Resolution Centre Ltd operates the only approved dispute resolution scheme.

5.2 To strengthen the confidence and autonomy of an approved dispute resolution operator's mediators, adjudicators and employees in carrying out their duties, MAS intends to provide them with statutory protection from liability. The proposed amendment would bring the level of protection for employees, adjudicators and mediators of an approved dispute resolution scheme operator more in line with that of other public dispute resolution bodies<sup>28</sup>.

5.3 Under the new provision, a mediator, adjudicator or employee of an operator of an approved dispute resolution scheme will not be liable for an act or omission<sup>29</sup> done with reasonable care and in good faith. Mediators, adjudicators and employees will, however, continue to be liable for acts involving wilful misconduct, negligence, fraud or corruption.

5.4 The draft legislative provisions to provide for this statutory protection from liability can be found in Annex E to this Consultation Paper.

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<sup>28</sup> In particular, similar protection has been accorded to the Financial Ombudsman Service in the United Kingdom, as well as other dispute resolution bodies in Singapore such as the State Courts, Singapore International Arbitration Centre and the Community Mediation Centre.

<sup>29</sup> This is for acts or omissions committed in the course of or in connection with any mediation or adjudication of a dispute under the approved dispute resolution scheme.

**Question 11.** MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator.

## 6 Other Provisions in the new Act

6.1 As explained in Section 1 above, MAS intends to move over and/or replicate in the new Act, provisions in the MAS Act that apply across some or all FI classes in the new Act. In general, Parts IVA, IVB and VC, and certain provisions in Part IV, of the MAS Act will be moved over from the MAS Act to the new Act, while certain provisions in Part IV and VI of the MAS Act will be replicated in the new Act.

6.2 While most of the provisions will be moved over from the MAS Act unchanged, amendments will be made to some of the provisions.

6.3 MAS intends to set out all inspection powers under the new Act within the same Part of the new Act. These will include inspection powers currently set out in sections 27C to 27F of the MAS Act, with modifications to include inspections for the purpose of determining the extent of compliance by an FI with TRM-related directions and regulations described in section 4 of this paper, licensees described in section 3 of this paper, and persons exempt from licensing under the new Part described in section 3 of this paper. Please refer to Annex F for the new part on inspection powers.

MAS will also be inserting a new provision to impose a general duty to use reasonable care not to provide false information to MAS. Please refer to Annex G for the new provision.

**Annex A**

**LIST OF QUESTIONS**

- Question 1.** MAS seeks comments on the proposal to be able to issue a PO to any person.  
.....6
- Question 2.** MAS seeks comments on the proposal to apply the fit and proper test as the sole ground for issuing a PO. ....6
- Question 3.** MAS seeks comments on the proposal to be able to prohibit a person who is not fit and proper from engaging in the following four specified functions in addition to regulated activities under the SFA, FAA and IA: .....7
- (a) Handling of funds, including safeguarding or administration of a digital payment token or digital payment token instrument; ..... 7
  - (b) Risk-taking; ..... 7
  - (c) Risk management and control; and ..... 7
  - (d) Critical system administration. .... 7
- Question 4.** MAS seeks comments on the proposal to be able to prescribe additional specified functions in subsidiary legislation, for the purpose of protecting trust or deterring misconduct in the financial industry..... 7
- Question 5.** MAS seeks comments on the proposal to introduce a regulatory regime for entities created in Singapore that carry on a business of providing VA activities outside of Singapore.....9
- Question 6.** MAS seeks comments on the proposed definition of DTs as set out in section 2(1) of Annex C:.....10
- (a) a digital payment token ; or .....10
  - (b) a digital representation of a capital markets product which – .....10
    - (i) can be transferred, stored or traded electronically; and ...10
    - (ii) satisfies such other characteristics as MAS may prescribe;  
.....10
- but does not include an excluded digital token. ....10
- Question 7.** MAS seeks comments on: .....14
- (a) The scope of DT services, which are in line with the FATF Standards for VASPs; .....14
  - (b) Whether there are other DT services that should be captured; ....14

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(c)	Specifically whether there are advisory services provided by DT service providers, relating to the offer or sale of DTs that are used for payment purposes; and .....	14
(d)	Specifically whether there are fund management activities involving DTs. ....	14
<b>Question 8.</b>	MAS seeks comments on the proposed licensing and ongoing requirements to be imposed on DT service providers. ....	15
<b>Question 9.</b>	MAS seeks comments on our proposal to align proposed AML/CFT requirements to be imposed on DT service providers with the existing PS Notice 02 for DPT Service Providers, given the similar nature of ML/TF risks of both these activities. ....	16
<b>Question 10.</b>	MAS seeks comments on the proposed powers and the quantum of the maximum penalty for breaches. ....	19
<b>Question 11.</b>	MAS seeks comments on the provision of statutory protection from liability to mediators, adjudicators and employees of an approved dispute resolution scheme operator. ....	20

**Annex B**

**PROPOSED PROVISIONS ON HARMONISED AND EXPANDED POWER TO  
ISSUE PROHIBITION ORDERS**

**DISCLAIMER:** This Annex is draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

PART [X]

PROHIBITION ORDER

**Interpretation of this Part**

**1.** In this Part, unless the context otherwise requires —  
“administration of a digital payment token”, in respect of a function in a financial institution, means any function responsible for carrying out an instruction relating to a digital payment token, for a customer of the financial institution or for the financial institution's own account;

“administration of a digital payment instrument”, in respect of a function in a financial institution, means any function responsible for carrying out an instruction relating to a digital payment token associated with a digital payment token instrument, for a customer of the financial institution or for the financial institution's own account;

“appointee” in relation to a financial institution, or any other person who carries on a business or activity, provides a relevant service or performs a relevant function, means —

- (a) a person, by whatever name called, in the employment of, or acting for, or by arrangement with, the first-mentioned person, who carries on, provides or performs for or on behalf of the first-mentioned person, any activity, business, service or relevant function, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise; and
- (b) includes any officer of the first-mentioned person who carries on, provides or performs for or on behalf of the first-mentioned person, any activity, business, service or relevant function, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise,

but does not include a representative;

“appointed day” means the date of commencement of this Part;

“company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“critical system” in relation to a financial institution, means a system, the failure of which will cause significant disruption to the operations of the financial institution or materially impact the financial institution’s service to its customers;

“critical system administration” refers to the maintenance or operation of a critical system by persons granted privileged access to the system systems;

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;

“digital payment token” has the same meaning as in section 2(1) of the Payment Services Act 2019 (Act 2 of 2019);

“digital payment token instrument” has the same meaning as in Part 3 of the First Schedule to the Payment Services Act 2019;

“financial institution” means any person licensed, approved, registered or regulated by the Authority under any written law or any person who is exempted under the relevant law from being licensed, approved, registered or regulated;

“handling of funds”, in relation to a function of a financial institution, means any function that is responsible for the safekeeping or administration of customer funds belonging to the financial institution;

“officer”, in relation to a corporation, includes —

- (a) a director, secretary or an employee of the corporation;
- (b) a receiver or manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (c) the liquidator of the corporation appointed in a voluntary winding up;

“relevant function” means any one or more of the following functions in a financial institution, in respect of an activity, business or service, the conduct of which is regulated or authorised by the Authority —



- (a) handling of funds;
- (b) risk taking;
- (c) risk management and control;
- (d) critical system administration;
- (e) safeguarding or administration of a digital payment token;
- (f) safeguarding or administration of a digital payment token instrument; and
- (g) any other function which the Authority may prescribe for the purpose of protecting trust or deterring misconduct in the financial industry;

“relevant service”, in relation to a financial institution, means any service which the financial institution obtains or receives from another person, but shall not include a service provided in the course of employment by an employee of the financial institution or a service provided by a director, representative or an officer of that financial institution in the course of the director’s, representative’s or officer’s appointment;

“representative”—

- (a) in relation to a financial adviser under the Financial Advisers Act, has the same meaning as in section 2(1) of the Financial Advisers Act;
- (b) in relation to an authorised benchmark administrator, exempt benchmark administrator, authorised benchmark submitter, exempt benchmark submitter, designated benchmark submitter or a person who carries on business in any regulated activity, under the Securities and Futures Act (Cap. 289), has the same meaning as in section 2(1) of the Securities and Futures Act;

“risk taking”, in relation to a function in a financial institution, means a function that is responsible for taking actions that result in a financial institution undertaking any specified risk in the course of the business of the financial institution;

“risk-management and control”, in relation to a function in a financial institution, means any function that is responsible for:

- (a) the identification, assessment, monitoring and reporting of specified risks arising from the financial institution’s operations;

- (b) the development and implementation of policies and procedures intended to ensure compliance by the financial institution with the relevant legal and regulatory requirements in the jurisdictions that it conducts business in; or
- (c) the monitoring of and reporting on compliance with policies and procedures intended to ensure compliance by the financial institution with the relevant legal and regulatory requirements in the jurisdictions that it conducts business in;

“specified risk” means credit risk, asset risk, liquidity risk, market risk, operational risk, technology risk, market conduct risk, money laundering/terrorism financing risk, legal risk, reputational risk, regulatory risk, and any other risks as may be prescribed by the Authority;

“share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“system” means any hardware, software, network or other information technology component which is part of an information technology infrastructure;

“treasury share” —

- (a) in relation to a company has the same meaning as in section 4(1) of the Companies Act (Cap. 50); and
- (b) in relation to a corporation (other than a company), means any share equivalent to a treasury share in a company;

“voting share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

#### *Division 1 – General provisions on prohibition order*

### **Power of Authority to make prohibition orders**

2.—(1) The Authority may, by notice in writing, make a prohibition order against any person, if the Authority is satisfied that the person is not a fit and proper person in accordance with the Guidelines on Fit and Proper Criteria issued by the Authority.

(2) A prohibition order made under subsection (1) may prohibit the person, whether permanently or for a specified period, from any one or more of the following:

- (a) carrying on any one or more activities or businesses or providing any one or more services, the conduct of which is regulated or authorised by the Authority, or performing any one or more relevant functions;
- (b) taking part, directly or indirectly, in the management of, acting as a director, partner or manager of, of any financial institution;

- (c) becoming a substantial shareholder of, or acquiring any interest in any voting share in, any financial institution that is a corporation, if the person is a substantial shareholder of the financial institution.
- (3) A prohibition order made under subsection (1) may include a provision allowing the person, subject to any condition specified in the order —
  - (a) to do specified acts; or
  - (b) to do specified acts in specified circumstances,that the order would otherwise prohibit him from doing.
- (4) The Authority must not make a prohibition order against a person without giving the person an opportunity to be heard.
- (5) Any person who is aggrieved by the decision of the Authority to make a prohibition order against him may, within 30 days of the decision, appeal in writing to the Minister.
- (6) Where the Authority makes a prohibition order against any person who is an appointed, provisional or temporary representative under the Securities and Futures Act or an appointed or provisional representative under the Financial Advisers Act, it must indicate against his name in the public register of representatives under the Securities and Futures Act or the Financial Advisers Act, as the case may be, that fact, and the indication must remain in the register for the duration of the order.
- (7) The Authority shall keep, in such form as it thinks fit, records on persons against whom prohibition orders are made under this section.
- (8) The Authority may publish the records referred to in subsection (7), or any part of them, in such manner as the Authority considers appropriate.
- (9) For the purposes of this section, a person is a substantial shareholder of a financial institution that is a corporation if —
  - (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in the financial institution; and
  - (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in the financial institution.
- (10) For the purposes of this section, a person is a substantial shareholder of a financial institution that is a corporation the share capital of which is divided into 2 or more classes of shares, if —

- (a) he has an interest or interests in one or more voting shares (excluding treasury shares) in one of those classes; and
- (b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares (excluding treasury shares) in that class.

(11) For the purposes of this section, “partner” and “manager”, in relation to a financial institution that is a limited liability partnership, have the respective meanings assigned to them in section 2(1) of the Limited Liability Partnerships Act (Cap. 163A).

(12) Section 4 of the Securities and Futures Act (Cap. 289) shall, with the necessary modifications, apply for the purpose of determining whether a person has an interest in a voting share as if references to securities, securities-based derivatives contracts or units in a collective investment scheme is a reference to voting shares.

### **Effect of prohibition orders**

**3.—(1)** A person against whom a prohibition order is made must comply with the prohibition order.

(2) Where a prohibition order is made against a person (A) and notified to a financial institution, the financial institution must not employ or enter into any arrangement with A, or use A’s service, whether directly or indirectly:

- (a) to carry on any one or more activities or businesses or providing any one or more services, the conduct of which is regulated or authorised by the Authority; or
- (b) to perform any one or more relevant functions,

to the extent that the activity, business, service, or relevant function is prohibited by the order.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Any financial institution which contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(5) Any person against whom a prohibition order has been issued prohibiting it from:

(a) carrying on any one or more activities or businesses, or providing one or more services, the conduct of which is regulated or authorised by the Authority; or

(b) performing one or more relevant functions,

must immediately inform all its representatives or appointees who carry on such activities or businesses, provide such services or perform such relevant functions, by notice in writing, of such prohibition order and the duration of such prohibition order specified in the prohibition order.

(6) Any representative or appointee who is informed in accordance with subsection (5) must cease to carry on such activities or businesses, provide such services, or perform such relevant functions, during the period specified in the prohibition order.

(7) Any person who contravenes subsection (5) or (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part thereof during which the offence continues after conviction.

(8) A prohibition order shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement entered into by the person against whom the order is made, whether the agreement, transaction or arrangement was entered into before, on or after the issue of the prohibition order; or

(b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

#### **Variation or revocation of prohibition orders**

4.—(1) The Authority may vary or revoke a prohibition order, by giving written notice to the person against whom the order was made, if the Authority is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Authority made the order.

(2) The Authority may vary or revoke a prohibition order under subsection (1) —

(a) on its own initiative; or

(b) if the person against whom the order was made lodges with the Authority an application for the Authority to do so, accompanied by such document as may be required by the Authority or fee as the Authority may, by notification in the *Gazette*, prescribe.

(3) The Authority shall not vary a prohibition order made against a person under subsection (2)(a) without giving the person an opportunity to be heard.

(4) Any person who is aggrieved by the decision of the Authority to vary a prohibition order made against him under subsection (2)(a) may, within 30 days of the decision, appeal in writing to the Minister.

#### **Date of prohibition orders**

5. A prohibition order, or any variation or revocation of a prohibition order, shall take effect on the date specified in the order by the Authority.

#### **Power of Authority to publish information**

6. The Authority may, from time to time and in such form or manner as it thinks fit, publish information relating to the making of any prohibition order against any person under section 2, and any other information, as the Authority may consider necessary or expedient to publish in the interest of the public or section of the public or for the protection of investors.

### *Division 2 – Appeals on prohibition orders and miscellaneous*

#### **Appeals to Minister**

7.—(1) Where an appeal is made to the Minister under this Part, the Minister may confirm, vary or reverse the decision of the Authority on appeal, or give such directions in the matter as he thinks fit, and the decision of the Minister shall be final.

(2) Where an appeal is made to the Minister under this Part, the Minister shall, within 28 days of his receipt of the appeal, constitute an Appeal Advisory Committee comprising not less than 3 members of the Appeal Advisory Panel and refer that appeal to the Appeal Advisory Committee.

(3) The Appeal Advisory Committee shall submit to the Minister a written report on the appeal referred to it under subsection (2), and may make such recommendations as it thinks fit.

(4) The Minister shall consider the report submitted under subsection (3) in making his decision under this section but he shall not be bound by the recommendations in the report.

#### **Appeal Advisory Committees**

8.—(1) For the purpose of enabling Appeal Advisory Committees to be constituted under section 7, the Minister shall appoint a panel (referred to in this Part as the Appeal Advisory

Panel) comprising such members from the financial services industry, and the public and private sectors, as the Minister may appoint.

(2) A member of the Appeal Advisory Panel shall be appointed for a term of not more than 2 years and shall be eligible for re-appointment.

(3) An Appeal Advisory Committee shall have the power, in the exercise of its functions, to inquire into any matter or thing relating to the financial services industry and may, for this purpose, summon any person to give evidence on oath or affirmation or produce any document or material necessary for the purpose of the inquiry.

(4) Nothing in subsection (3) shall compel the production by an advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), of a document or material containing a privileged communication made by or to him in that capacity or authorise the taking of possession of any such document or material which is in his possession.

(5) An advocate and solicitor, or a legal counsel referred to in section 128A of the Evidence Act (Cap. 97), who refuses to produce any document or other material referred to in subsection (4) shall nevertheless be obliged to give the name and address (if he knows them) of the person to whom, or by or on behalf of whom, the privileged communication was made.

(6) For the purposes of this Part, every member of an Appeal Advisory Committee —

- (a) shall be deemed to be a public servant for the purposes of the Penal Code (Cap. 224); and
- (b) in case of any suit or legal proceedings brought against him for any act done or omitted to be done in the execution of his duty under the provisions of this Part, shall have the like protection and privileges as are by law given to a Judge in the execution of his office.

(7) Every Appeal Advisory Committee shall have regard to the interest of the public, the protection of investors and the safeguarding of sources of information.

(8) Subject to the provisions of this Part, an Appeal Advisory Committee may regulate its own procedure and shall not be bound by the rules of evidence.

### **Disclosure of information**

9. Nothing in this Act shall require the Minister or any public servant to disclose facts which he considers to be against the interest of the public to disclose.

### **Regulations for purposes of this Division**

**10.—**(1) The Minister may make regulations for the purposes and provisions of this Division and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) the appointment of members to, and procedures of, the Appeal Advisory Panel and Appeal Advisory Committees;
- (b) the form and manner in which an appeal to the Minister under this Part shall be made;
- (c) the fees to be paid in respect of any appeal made to the Minister under this Part, including the refund or remission, whether in whole or in part, of such fees;
- (d) the remuneration of the members of the Appeal Advisory Panel and Appeal Advisory Committees; and
- (e) all matters and things which by this Division are required or permitted to be prescribed or which are necessary or expedient to be prescribed to give effect to any provision of this Division.



**Annex C**

**PROPOSED PROVISIONS ON REGULATION OF VIRTUAL ASSET SERVICE  
PROVIDERS CREATED IN SINGAPORE FOR ANTI-MONEY LAUNDERING AND  
COUNTERING OF FINANCING OF TERRORISM PURPOSES**

DISCLAIMER: This Annex is draft form and is subject to clearance. It is also  
subject to review by the Attorney-General's Chambers.

Part [X]

DIGITAL TOKEN SERVICE PROVIDERS

*Division 1 – Preliminary*

**Interpretation**

**2.—(1)** In this Part, unless the context otherwise requires —

“5% controller”, in relation to a corporation (being a licensee), means a person that alone  
or together with the person's associates —

- (a) has an interest in at least 5%, but less than 12%, of the shares in the corporation;  
or
- (b) is in a position to control at least 5%, but less than 12%, of the votes in the  
corporation;

“12% controller”, in relation to a corporation (being a licensee), means a person that alone  
or together with the person's associates —

- (a) has an interest in at least 12%, but less than 20%, of the shares in the  
corporation; or
- (b) is in a position to control at least 12%, but less than 20%, of the votes in the  
corporation;

“20% controller”, in relation to a corporation (being a licensee), means a person that alone or together with the person’s associates —

- (a) has an interest in at least 20% of the shares in the corporation; or
- (b) is in a position to control at least 20% of the votes in the corporation;

“arrangement” includes any formal or informal scheme, arrangement or understanding, and any trust whether express or implied;

“Authority” means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

“book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“capital markets products” has the meaning given by section 2(1) of the Securities and Futures Act (Cap. 289);

“chief executive officer”, in relation to a corporation, means a person (however designated) who —

- (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) is principally responsible for the management and conduct of the business of the corporation;

“company” and “corporation” have the meanings given by section 4(1) of the Companies Act (Cap. 50);

“currency” means currency notes and coins that are legal tender in Singapore or a country or territory other than Singapore;

“digital token” means:

- (a) a digital payment token; or
- (b) a digital representation of a capital markets product which —

- (i) can be transferred, stored or traded electronically; and
- (ii) satisfies such other characteristics as the Authority may prescribe,

but does not include an excluded digital token

“digital payment token” has the meaning given by section 2(1) of the Payment Services Act 2019 (Act 2 of 2019);

“digital token service” has the meaning given by Part 1 of the First Schedule, but excludes any service that is specified in Part 2 of that Schedule;

“digital token service provider” means any person that provides a digital token service;

“digital token service user” means any person that uses a digital token service;

“director” has the meaning given by section 4(1) of the Companies Act;

“e-money” has the meaning given by section 2(1) of the Payment Services Act 2019 (Act 2 of 2019);

“employee”, in relation to an employer, includes an individual seconded or temporarily transferred to the employer from another employer;

“entity” means any body corporate or unincorporate, whether incorporated, formed or established in or outside Singapore;

“excluded digital token” means a digital token that is prescribed by the Authority as an excluded digital token;

“executive director” means a director who is concurrently an executive officer;

“executive officer”, in relation to a corporation, means any individual (however designated) who —

- (a) is in the direct employment of, or acting for or by arrangement with, the corporation; and
- (b) is concerned with or takes part in the management of the corporation on a day-to-day basis;

“financial regulatory authority”, in relation to a foreign country or territory, means an authority of the foreign country or territory exercising any function that corresponds to a regulatory function of the Authority under this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act;

“Guidelines on Fit and Proper Criteria” means the document (as revised from time to time) that is called by that title, issued by the Authority and published on the Authority’s website;

“indirect controller”, in relation to a corporation (being a licensee) —

- (a) means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in the corporation —
  - (i) in accordance with whose directions, instructions or wishes the directors of the corporation are accustomed or under an obligation, whether formal or informal, to act; or
  - (ii) that is in a position to determine the policy of the corporation; but
- (b) excludes any person —
  - (i) who is a director or other officer of the corporation and whose appointment has been approved by the Authority; or
  - (ii) in accordance with whose directions, instructions or wishes the directors of the corporation are accustomed to act by reason only that they act on advice given by the person in the person’s professional capacity;

“licence” means a licence granted under section 5;

“licensee” means a digital token service provider the licence of which is in force;

“limited liability partnership” has the meaning given by section 4(1) of the Limited Liability Partnerships Act (Cap. 163A);

“money” includes e-money but excludes any digital payment token and any excluded digital token;

“partner”, in relation to a limited liability partnership, has the meaning given by section 2(1) of the Limited Liability Partnerships Act;

“permanent place of business”, in relation to a person, means each fixed location in Singapore used by the person, for carrying on its business, regardless whether the business is carried on within a single building or at a single business address;

“place of business” in relation to a licensee, means any location (including a kiosk that can be moved from one location to another) in Singapore used by the licensee, for carrying on its business;

“registered office” means a registered office maintained under section 142(1) or 370(1) of the Companies Act;

“regulated financial institution” means a person that carries on a business, the conduct of which is regulated or authorised by the Authority or, if it is carried on in Singapore, would be regulated or authorised by the Authority;

“share” has the meaning given by section 4(1) of the Companies Act and includes an interest in a share;

“treasury share” has the meaning given by section 4(1) of the Companies Act;

“voting share” has the meaning given by section 4(1) of the Companies Act.

(2) In this Part, unless the context otherwise requires —

- (a) a person has an interest in a share if —
  - (i) the person has or is treated as having an interest in that share under section 7(1A), (1B), (2), (6) and (7) to (10) of the Companies Act; or
  - (ii) the person has any legal or equitable interest in that share, except an interest that is to be disregarded under section 7(9) of the Companies Act;
- (b) a reference to the control of a percentage of the votes in a corporation (being a licensee) is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that might be cast in a general meeting of the corporation; and
- (c) a person (A) is an associate of another person (B) if —
  - (i) A is the spouse, a parent, remoter lineal ancestor or step-parent, a son, daughter, remoter issue, stepson or stepdaughter, or a brother or sister, of B;

- (ii) A is a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (iii) A is a person that is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (iv) A is a subsidiary of B;
- (v) A is a body corporate in which B, whether alone or together with other associatees of B as described in sub-paragraphs (ii), (iii) and (iv), is in a position to control 20% or more of the votes in A; or
- (vi) A is a person with whom B has an agreement or arrangement (whether oral or in writing and whether express or implied) to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their votes in relation to, the corporation (being a licensee) mentioned in the definition of “5% controller”, “12% controller” or “20% controller”.

(3) For the purposes of section 4(2), the provision of a digital token service is incidental to any other business carried on by a person, if the digital token service –

- (a) is carried on, offered or provided by that person to support that other business; and
- (b) is provided by that person in connection with the carrying on of that other business.

### **Appointment of assistants**

**3.—(1)** Subject to subsection (2), the Authority may appoint any person to exercise any of its powers or perform any of its functions or duties under this Part, either generally or in any particular case, except –

- (a) the power of appointment conferred by this subsection; and
- (b) the power to make subsidiary legislation.

(2) The Authority may, by notification in the *Gazette*, appoint one or more of its officers to exercise the power, under a provision of this Part specified in the Second Schedule, to grant an exemption to a particular person, or to revoke any such exemption.

(3) Any person appointed under subsection (1) or officer appointed under subsection (2) is taken to be a public servant for the purposes of the Penal Code (Cap. 224).

*Division 2 – Licensing of Digital Token Service Providers*

*Subdivision 1 – Licensing of digital token service providers*

**Licensing of digital token service providers**

4.—(1) A person must not carry on a business of providing any type of digital token service outside of Singapore, unless the person has in force a licence that entitles the person to carry on a business of providing digital token services.

(2) For the purposes of subsection (1), where a person provides any type of digital token service while the person carries on any business (called in this subsection the primary business) —

- (a) the person is presumed to carry on a secondary business of providing that type of digital token service, regardless whether the provision of that type of digital token service is related or incidental to the primary business; and
- (b) the presumption in paragraph (a) is not rebutted by proof that the provision of that type of digital token service is related or incidental, or is both related and incidental, to the primary business.

(3) Subsection (1) shall not apply to any person who —

- (a) carries on the business of providing digital token service outside of Singapore that:
  - (i) is a business in a capital markets product regulated activity, which is carried out wholly outside of Singapore, where such act has a substantial and reasonably foreseeable effect in Singapore, in relation to capital markets products;
  - (ii) is a business in a capital markets product regulated activity or financial advisory service, which is carried out partly in and partly outside of Singapore, in relation to capital markets products;
  - (iii) is a business the person is deemed to be carrying on under section 6(2) of the Financial Advisers Act (Cap.110);
  - (iv) is a business in any other activity that may be prescribed;

- (b) is specified in the Third Schedule; or
- (c) belongs to a prescribed class of persons.

(4) A person that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction –

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or
- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(5) In this section –

“capital markets product regulated activity” means any of the following activities –

- (a) any regulated activity;
- (b) establishing or operating an organised market;

“financial advisory service” has the meaning given by section 2(1) of the Financial Advisory Act (Cap.110);

“organised market” has the meaning given by Part I of the First Schedule to the Securities and Futures Act (Cap. 289);

“person” means any of the following persons:

- (a) any individual operating from a permanent place of business in Singapore;
- (b) any corporation incorporated in Singapore;
- (c) any partnership or limited liability partnership formed in Singapore;

“regulated activity” has the meaning given by section 2(1) of the Securities and Futures Act (Cap. 289).



### **Application for licence**

5.—(1) A person that wishes to carry on a business of providing any type of digital token service may apply to the Authority for a licence, in such form and manner as the Authority may require.

(2) Upon receiving an application under subsection (1), the Authority may –

- (a) grant a licence to the applicant, with or without conditions; or
- (b) refuse to grant a licence.

(3) Where an applicant has applied for a licence, the Authority must not grant the licence to the applicant unless –

- (a) the applicant is a company incorporated in Singapore;
- (b) the applicant has a permanent place of business in Singapore;
- (c) an executive director of the applicant –
  - (i) is resident in Singapore; or
  - (ii) if the applicant satisfies such conditions as may be prescribed, belongs to a prescribed class of persons;
- (d) the applicant satisfies such financial requirements as may be prescribed;
- (e) the Authority –
  - (i) is satisfied that the applicant is a fit and proper person under the Guidelines on Fit and Proper Criteria;
  - (ii) is satisfied as to the financial condition of the applicant;
  - (iii) is satisfied that the public interest will be served by the granting of the licence; and
  - (iv) is satisfied that the applicant meets such other criteria for the grant of the licence as the Authority considers relevant;
- (f) the applicant satisfies such operational requirements as the Authority may specify; and
- (g) the application is accompanied by –

- (i) such information or documents as the Authority may require; and
- (ii) a non-refundable application fee of a prescribed amount that is payable in such manner as the Authority may specify.

(4) The Authority may at any time add to, vary or revoke any of the conditions of a licence imposed under subsection (2)(a) or this subsection.

(5) The Authority must not refuse an application under subsection (1) without giving the applicant an opportunity to be heard.

(6) Every licensee must, while its licence is in force, satisfy –

- (a) such financial requirements as may be prescribed or specified by the Authority by notice in writing; and
- (b) such operational requirements and other requirements as the Authority may specify by notice in writing.

(7) A licensee that fails to comply with any requirement mentioned in subsection (6) must immediately notify the Authority of the failure.

(8) Where a licensee fails to comply with any requirement under subsection (6) –

- (a) the Authority may, by notice in writing to that licensee, do either or both of the following:
  - (i) restrict or suspend the operations of that licensee;
  - (ii) give such directions to that licensee as the Authority considers appropriate; and
- (b) that licensee must comply with that notice.

(9) A licensee that, without reasonable cause, contravenes subsection (6), or fails to comply with any condition imposed by the Authority under subsection (2)(a) or (4), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Holding out as licensee**

6.—(1) A person must not hold the person out as a licensee, unless the person has in force a licence.

(2) A person must not hold the person out as carrying on a business of providing digital token service outside of Singapore, unless the person is a licensee or a person exempt under section 34.

(3) Subsection (2) shall not apply to any person mentioned in section 4(3).

(4) A person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction –

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or

(b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(5) For the purposes of subsection (2), “person” shall have the same meaning given by section 4(5).

### **Annual fees of licensees**

7.—(1) A licensee must pay to the Authority a prescribed annual fee in such manner as the Authority may specify by notice in writing.

(2) The Authority may, where the Authority considers it to be appropriate in a particular case, waive, refund or remit the whole or any part of any annual fee paid or payable to the Authority.

### **Lapsing, surrender, revocation or suspension of licence**

8.—(1) A licence lapses –

(a) if the licensee is wound up or otherwise dissolved, whether in Singapore or elsewhere; or

- (b) upon the occurrence of such other event as may be prescribed.

(2) The Authority may revoke a licence if –

- (a) it appears to the Authority that any of the following persons is not a fit and proper person under the Guidelines on Fit and Proper Criteria:
  - (i) the licensee;
  - (ii) any officer or employee of the licensee;
  - (iii) any 5% controller, 12% controller, 20% controller or indirect controller of the licensee;
- (b) it appears to the Authority that either of the following is not satisfactory:
  - (i) the financial standing of the licensee;
  - (ii) the manner in which the licensee's business is being conducted;
- (c) the licensee has contravened, or continues to contravene, any provision of this Act, or has failed, or continues to fail, to comply with any condition or restriction imposed by the Authority under this Act;
- (d) the licensee has failed, or continues to fail, to comply with any notice in writing issued by the Authority under this Act;
- (e) it appears to the Authority that the licensee has failed, or continues to fail, to comply with any of the licensee's obligations under or arising from —
  - (i) this Part; or
  - (ii) any notice in writing issued by the Authority under this Act;
- (f) the licensee has provided to the Authority any information or document required under this Act that is false or misleading in a material particular;
- (g) it appears to the Authority that any of the following persons has not performed that person's duties under this Act honestly or fairly:
  - (i) the licensee;
  - (ii) any officer or employee of the licensee;
- (h) it appears to the Authority that it would be contrary to the public interest for the licensee to continue its operations;
- (i) the licensee fails to pay the annual fee mentioned in section 7(1);

- (j) the licensee fails or ceases to carry on a business of providing any type of digital token service;
- (k) the licensee fails or ceases to have an executive director who –
  - (i) is resident in Singapore; or
  - (ii) belongs to the prescribed class of persons mentioned in section 5(3)(c)(ii);  
or
- (l) if any executive director of the licensee belongs to the prescribed class of persons mentioned in section 5(3)(c)(ii), the licensee does not or ceases to satisfy any condition mentioned in section 5(3)(c)(ii).

(3) The Authority may, if the Authority considers it desirable to do so —

- (a) suspend the licence of a licensee for a specified period, instead of revoking the licence under subsection (2); and
- (b) at any time —
  - (i) extend the suspension for a specified period; or
  - (ii) cancel the suspension.

(4) Except as provided in subsection (5), the Authority must not revoke a licence under subsection (2) or suspend a licence under subsection (3), without giving the licensee an opportunity to be heard.

(5) The Authority may revoke or suspend a licence of a licensee, without giving the licensee an opportunity to be heard, in any of the following circumstances:

- (a) the licensee is in the course of being wound up or otherwise dissolved, whether in Singapore or elsewhere;
- (b) a receiver, a receiver and manager, a judicial manager or an equivalent person has been appointed, whether in Singapore or elsewhere, for or in respect of any property of the licensee;
- (c) any of the following persons has been convicted, whether in Singapore or elsewhere, of an offence involving fraud or dishonesty, or of an offence the conviction for which involves a finding that the person convicted had acted fraudulently or dishonestly, whether the applicable offence is committed before, on or after the date of commencement of this paragraph:

- (i) the licensee;
- (ii) any director, 5% controller, 12% controller, 20% controller or indirect controller of the licensee.

(6) A licensee whose licence has lapsed, or is revoked or suspended, must cease to carry on the business of providing any type of digital token service from the date the licence lapses, or the revocation or suspension takes effect, as the case may be.

(7) Despite the lapsing or revocation of a licence granted to a person, unless the Authority otherwise directs, sections 12, 25, [sections 2 and 3 of Annex F] and [section 4 of Annex F] continue to apply in relation to the person in respect of matters that occurred before the lapsing or revocation of the licence.

(8) A person that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(9) A licensee may surrender the licensee's licence by submitting to the Authority a written notice of surrender, in such form as may be specified by the Authority by notice in writing.

(10) Any surrender, lapsing, revocation or suspension of a person's licence —

- (a) does not avoid or affect any agreement, transaction or arrangement relating to the person's business of providing any digital token service that is entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the surrender, lapsing, revocation, or suspension (as the case may be) of the licence; and
- (b) does not affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

### **Appeals to Minister**

9.—(1) Any person that is aggrieved —

- (a) by the refusal of the Authority to grant a licence to the person; or
- (b) by the revocation or suspension of the person's licence by the Authority,

may, within 30 days after having been informed by the Authority of the refusal, revocation or suspension, appeal in writing to the Minister, whose decision is final.

### *Subdivision 2 – Conduct of business*

#### **Place of business of licensee**

**10.—**(1) A licensee must not carry on a business of providing any type of digital token service unless the licensee has a permanent place of business.

(2) A licensee must appoint at least one person to be present, on such days and at such hours as the Authority may specify by notice in writing, at the licensee's permanent place of business to address any anti-money laundering and countering the financing of terrorism related queries or complaints from any digital token service user that uses any digital token service provided by the licensee or is a customer of the licensee.

(3) A licensee must keep, or cause to be kept, at the licensee's permanent place of business, books of all the licensee's transactions in relation to any digital token service provided by the licensee.

(4) A licensee must notify the Authority of any change in the address of any of the following places within 7 days after the date of that change:

- (a) the licensee's permanent place of business or registered office;
- (b) every other place of business of the licensee.

(5) A licensee that contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(6) A licensee that contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

#### **Obligation of licensee to notify Authority of certain events**

**11.—**(1) A licensee must notify the Authority of the occurrence of any of the following events as soon as practicable after that occurrence:

- (a) any civil or criminal proceeding instituted against the licensee, whether in Singapore or elsewhere;
- (b) any event (including an irregularity in the operations of the licensee) that materially impedes or impairs the operations of the licensee;
- (c) the licensee being or becoming, or being likely to become, insolvent or unable to meet any of the licensee's financial, statutory, contractual or other obligations;
- (d) any disciplinary action taken against the licensee by any regulatory authority (other than the Authority), whether in Singapore or elsewhere;
- (e) any significant change to the regulatory requirements imposed on the licensee by any regulatory authority (other than the Authority), whether in Singapore or elsewhere;
- (f) any other event that the Authority may prescribe or specify by notice in writing.

(2) A licensee must notify the Authority of the occurrence of any other event that the Authority may prescribe or specify by notice in writing within 14 days after the date of that occurrence.

(3) A person that contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000.

### **Obligation of licensee to provide information to Authority**

**12.**—(1) Subject to subsection (4), the Authority may, by notice in writing, require any licensee, or any person acting on behalf of a licensee, to provide to the Authority, within such period as the Authority may specify in the notice, all such information relating to the licensee's business of providing any digital token service as the Authority may specify in the notice.

(2) Without limiting subsection (1), the Authority may, in the notice under that subsection, require any person mentioned in that subsection to provide —

- (a) information relating to any of the following matters:
  - (i) the operations of the licensee;



- (ii) the pricing of, or any other form of consideration for, any digital token service offered or provided by the licensee; and
  - (b) such other information as the Authority may require for the purposes of this Part.
- (3) Subject to subsection (4) —
  - (a) a requirement imposed by the Authority under this section has effect despite any obligation as to secrecy or other restrictions upon the disclosure of information imposed by any rule of law or contract; and
  - (b) a person that complies with a requirement imposed by the Authority under this section is not to be treated as being in breach of any restriction on the disclosure of the information imposed by any rule of law or contract.
- (4) Nothing in this section requires a person to disclose any information subject to legal privilege.
- (5) A person that fails to comply with a notice under subsection (1) shall be guilty of an offence and shall be liable on conviction —
  - (a) in the case of an individual, to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part of a day during which the offence continues after conviction; or
  - (b) in any other case, to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part of a day during which the offence continues after conviction.

### **Obligation of licensee to submit periodic reports**

**13.—**(1) A licensee must submit to the Authority such reports or returns relating to the licensee's business in such form, manner and frequency as the Authority may specify by notice in writing.

(2) A person that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence,

to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Prohibition from carrying on certain businesses**

**14.—**(1) A licensee must not carry on a business of granting any credit facility to any individual in Singapore.

(2) A licensee that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(3) In this section, “credit facility” means —

- (a) any advance, loan or other facility that is granted by a licensee to a customer who is an individual, and that gives the customer access to any funds or financial guarantee provided by the licensee; or
- (b) any other liability that is incurred by a licensee on behalf of a customer who is an individual.

### *Subdivision 3 – Control of controllers of licensees*

### **Application and interpretation of this Division**

**15.—**(1) This Subdivision applies to —

- (a) every individual, whether or not resident in Singapore and whether or not a citizen of Singapore; and
- (b) every entity.

### **Control of shareholding in licensee**

**16.—**(1) A person must not become a 20% controller of a licensee without first applying for and obtaining the approval of the Authority under subsection (2).

(2) The Authority may approve an application made by any person under subsection (1) if the Authority is satisfied that —

- (a) having regard to the likely influence of the person, the licensee will or will continue to conduct its business prudently and comply with the provisions of this Act and any other written law administered by the Authority;
- (b) the person is, under the Guidelines on Fit and Proper Criteria, a fit and proper person to be a 20% controller of the licensee; and
- (c) it is in the public interest to do so.

(3) An approval under subsection (2) may be granted to any person subject to such conditions as the Authority may impose, including but not limited to —

- (a) any condition restricting the person's disposal or further acquisition of shares or voting power in the licensee; and
- (b) any condition restricting the person's exercise of voting power in the licensee.

(4) The Authority may at any time add to, vary or revoke any condition that is imposed under subsection (3) or this subsection.

(5) Any condition imposed under subsection (3) or (4) has effect despite any provision of the Companies Act or anything contained in the constitution of the licensee.

(6) Where the Authority refuses an application made by any person under subsection (1), the person must, within such period as the Authority may specify by notice in writing, take such steps (as soon as practicable after the refusal) as are necessary to cease to be a 20% controller of the licensee.

### **Objection to existing control of licensee**

**17.—**(1) The Authority may serve a written notice of objection on any person that is, or is required to obtain or has obtained the Authority's approval under section 16(2) to become, a 20% controller of a licensee, if the Authority is satisfied that —

- (a) any condition for approval under section 16(2) imposed on the person under section 16(3) or (4) has not been complied with;
- (b) it is not, or is no longer, in the public interest to allow the person to continue to be a 20% controller of the licensee;

- (c) the person has provided any false or misleading information or document in connection with an application under section 16(1);
- (d) the person is no longer a fit and proper person under the Guidelines on Fit and Proper Criteria;
- (e) having regard to the likely influence of the person, the licensee is no longer likely to conduct its business prudently or to comply with the provisions of this Part; or
- (f) the Authority would not have been satisfied as to any of the matters specified in section 16(2) had the Authority been aware, at that time, of circumstances relevant to the person's application under section 16(1).

(2) Before serving a written notice of objection under subsection (1), the Authority must, unless the Authority decides that it is not practicable or desirable to do so —

- (a) notify the person of the Authority's intention to serve the written notice of objection; and
- (b) specify a date by which the person may make written representations with regard to the proposed written notice of objection.

(3) The Authority must consider any written representations that the Authority receives before the date mentioned in subsection (2)(b), for the purpose of determining whether to issue a written notice of objection.

(4) The Authority must, in any written notice of objection, specify a reasonable period within which the person that has been served the written notice of objection must —

- (a) cease to be a 20% controller of the licensee; or
- (b) comply with such direction as the Authority may make under section 18.

(5) A person that has been served a written notice of objection must comply with that notice.

#### **Power of Authority to issue directions for this Subdivision**

**18.—**(1) If the Authority is satisfied that a person has contravened section 16(1) or (6) or has failed to comply with any condition imposed under section 16(3) or (4), or if the Authority has served a written notice of objection under section 17, the Authority may, by notice in writing —

- (a) direct the transfer or disposal of all or any of the shares in the licensee held by the person or any of the person's associates (called in this section the specified shares) within such time or subject to such conditions as the Authority considers appropriate;
- (b) restrict the transfer or disposal of all or any of the specified shares; or
- (c) make such other direction as the Authority considers appropriate.

(2) Where the Authority has issued any direction under subsection (1)(a) or imposed any restriction under subsection (1)(b), until a transfer or disposal is effected in accordance with the direction or until the restriction on the transfer or disposal is removed, as the case may be —

- (a) no voting rights may be exercised in respect of the specified shares, unless the Authority expressly permits such rights to be exercised;
- (b) no shares of the licensee may be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares, unless the Authority expressly permits such issue or offer; and
- (c) except in a liquidation of the licensee, no payment may be made by the licensee of any amount (whether by way of dividends or otherwise) in respect of the specified shares, unless the Authority expressly authorises such payment.

(3) Subsection (2) has effect despite any provision of the Companies Act or anything contained in the constitution of the licensee.

(4) Any issue or offer of shares in contravention of subsection (2)(b) is void, and a person to whom a direction has been issued under subsection (1)(a) or on whom a restriction has been imposed under subsection (1)(b) must immediately return those shares to the licensee, upon which the licensee must return to the person any payment received from the person in respect of those shares.

(5) Any payment made by a licensee in contravention of subsection (2)(c) is void, and a person to whom a direction has been issued under subsection (1)(a) or on whom a restriction has been imposed under subsection (1)(b) must immediately return the payment the person has received to the licensee.

**Power of Authority to obtain information relating to this Subdivision**

**19.** —(1) The Authority may, by notice in writing, direct a licensee to obtain from any of its shareholders, and to provide to the Authority, any information relating to the shareholder that the Authority may require for either or both of the following purposes:

- (a) ascertaining or investigating into the control of shareholding or voting power in the licensee;
- (b) exercising any power or function under section 16, 17, 18, 20 or 34.

(2) Without limiting subsection (1), the notice in subsection (1) may require the licensee to obtain and provide the following information:

- (a) whether the shareholder has an interest in any share in the licensee as beneficial owner or as trustee;
- (b) if the shareholder holds the interest in the share as trustee, to indicate as far as that shareholder is able to —
  - (i) the person for whom that shareholder holds the interest (either by name or by other particulars sufficient to enable that person to be identified); and
  - (ii) the nature of that person's interest.

(3) The Authority may, by notice in writing, require any shareholder (X) of a licensee, or any person (Y) that appears from information provided to the Authority under subsection (1) or this subsection to have an interest in any share in the licensee, to provide to the Authority any information relating to X or Y (as the case may be) that the Authority may require for either or both of the following purposes:

- (a) ascertaining or investigating into the control of shareholding or voting power in the licensee;
- (b) exercising any power or function under section 16, 17, 18, 20 or 34.

(4) Without limiting subsection (3), the notice in subsection (3) may require X or Y to provide the following information:

- (a) whether X or Y holds the interest as beneficial owner or as trustee;
- (b) if X or Y holds the interest as trustee, to indicate as far as X or Y can —
  - (i) the person (Z) for whom X or Y holds the interest (either by name or by other particulars sufficient to enable Z to be identified); and
  - (ii) the nature of Z's interest;
- (c) whether any share or any voting right attached to the share is the subject of an agreement or arrangement described in section 2(2)(c)(vi), and if so, to give particulars of the agreement or arrangement and the parties to it.

### **Offences, penalties and defences**

**20.** —(1) A person that —

- (a) contravenes section 16(1) or (6) or 17(5) or does any act in contravention of section 18(2);
- (b) fails to comply with —
  - (i) any notice in writing issued under section 18(1) or 19(1) or (3); or
  - (ii) any condition imposed under section 16(3) or (4); or
- (c) in purported compliance with a notice in writing issued under section 19(1) or (3), knowingly or recklessly provides any information or document that is false or misleading in a material particular,

shall be guilty of an offence.

(2) A person convicted of an offence under subsection (1) shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part of a day during which the offence continues after conviction; or

- (b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part of a day during which the offence continues after conviction.

(3) Where a person is charged with an offence in respect of a contravention of section 16(1) or (6), it is a defence for the person to prove that —

- (a) the person was not aware that the person had contravened section 16(1) or (6), as the case may be; and
- (b) within 14 days after becoming aware of the contravention, the person —
  - (i) notified the Authority of the contravention; and
  - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the licensee as the Authority may direct.

(4) Where a person is charged with an offence in respect of a contravention of section 16(1), it is also a defence for the person to prove that, even though the person was aware of the contravention —

- (a) the contravention occurred as a result of an increase in the shareholding as described in section 2(2)(a) of, or in the voting power controlled by, any of the person's associates described in section 2(2)(c)(i);
- (b) the person had no agreement or arrangement (whether oral or in writing and whether express or implied) with that associate —
  - (i) with respect to the acquisition, holding or disposal of shares or other interests in the licensee; or
  - (ii) under which the person and that associate act together in exercising their voting power in relation to the licensee; and
- (c) within 14 days after the date of the contravention, the person —
  - (i) notified the Authority of the contravention; and
  - (ii) within such time as may be determined by the Authority, took such action in relation to the person's shareholding or control of the voting power in the licensee as the Authority may direct.

(5) Except as provided in subsections (3) and (4), it is not a defence for a person charged with an offence in respect of a contravention of section 16(1) or (6) to prove that the person did not intend to, or did not knowingly, contravene that provision.



## **Appeals to Minister**

**21.** Any person that is aggrieved by a decision of the Authority under section 16, 17 or 18 may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister, whose decision is final.

### *Subdivision 4 — Control of officers of licensees*

## **Approval of chief executive officer or director of licensee**

**22.** —(1) Subject to subsection (4), a licensee must not appoint an individual as its chief executive officer or director unless the licensee has applied for and obtained the approval of the Authority under subsection (3)(b).

(2) An application under subsection (1) must be made in the form and manner prescribed.

(3) Without affecting any other matter that the Authority may consider relevant, the Authority may —

- (a) in determining whether to grant its approval under paragraph (b), have regard to such criteria as the Authority may specify by notice in writing to the licensee; and
- (b) approve or refuse the application.

(4) Where a licensee has obtained the approval of the Authority under subsection (3)(b) to appoint an individual as the licensee's chief executive officer or director, the individual may, without the approval of the Authority, be re-appointed as chief executive officer or director (as the case may be) of the licensee immediately upon the expiry of the individual's term of appointment.

(5) Subject to subsection (6), the Authority must not refuse a licensee's application under subsection (1) without giving the licensee an opportunity to be heard.

(6) The Authority may refuse an application under subsection (1) for the Authority's approval under subsection (3)(b) of an individual without giving the licensee an opportunity to be heard, in any of the following circumstances:

- (a) the individual has been convicted, whether in Singapore or elsewhere, of any of the following offences, whether the offence is committed before, on or after the date of commencement of this paragraph:
  - (i) an offence involving fraud or dishonesty;
  - (ii) an offence the conviction for which involves a finding that the individual had acted fraudulently or dishonestly;
  - (iii) an offence that is specified in the Third Schedule to the Registration of Criminals Act (Cap. 268);
- (b) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) the individual has had execution against the individual in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) the individual has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the individual's creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) the individual has in force against the individual a prohibition order under section 59 of the Financial Advisers Act (Cap. 110), section 35V of the Insurance Act (Cap. 142), section 101A of the Securities and Futures Act (Cap. 289) or this Act;
- (f) the individual has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) that is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the financial regulatory authority in that foreign country or territory.

(7) Where the Authority refuses an application under subsection (1) for the Authority's approval under subsection (3)(b), the Authority need not give the individual who was proposed to be appointed an opportunity to be heard.

(8) A licensee that, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

### **Removal of chief executive officer or director**

**23.** —(1) Despite the provisions of any other written law, where the Authority is satisfied that an individual appointed as chief executive officer or director of a licensee is not a fit and proper person to act as such chief executive officer or director, the Authority may, by notice in writing, direct the licensee to remove the individual, within such period as the Authority may specify in the notice —

- (a) from employment with the licensee; or
- (b) as director of the licensee.

(2) Without affecting any other matter that the Authority may consider relevant, in assessing whether to direct the licensee to remove an individual under subsection (1), the Authority may consider whether the individual —

- (a) has been convicted, whether in Singapore or elsewhere, of any of the following offences, whether the offence is committed before, on or after the date of commencement of this paragraph:
  - (i) an offence involving fraud or dishonesty;
  - (ii) an offence the conviction for which involves a finding that the individual had acted fraudulently or dishonestly;
  - (iii) an offence that is specified in the Third Schedule to the Registration of Criminals Act;
- (b) is an undischarged bankrupt, whether in Singapore or elsewhere;
- (c) has had execution against the individual in respect of a judgment debt returned unsatisfied in whole or in part;
- (d) has, whether in Singapore or elsewhere, entered into a compromise or scheme of arrangement with the individual's creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) has in force against the individual a prohibition order under section 59 of the Financial Advisers Act, section 35V of the Insurance Act, section 101A of the Securities and Futures Act or this Act;

- (f) has been a director of, or directly concerned in the management of, a regulated financial institution, whether in Singapore or elsewhere —
  - (i) that is being or has been wound up by a court; or
  - (ii) the approval, authorisation, designation, recognition, registration or licence of which has been withdrawn, cancelled or revoked by the Authority or, in the case of a regulated financial institution in a foreign country or territory, by the financial regulatory authority in that foreign country or territory;
- (g) has wilfully contravened, or wilfully caused the licensee to contravene, any provision of this Act;
- (h) has, without reasonable excuse, failed to secure the compliance of the licensee with this Act, the Monetary Authority of Singapore Act or any of the written laws set out in the Schedule to that Act;
- (i) has failed to discharge any of the duties of the individual's office or employment; or
- (j) needs to be removed in the public interest.

(3) Without prejudice to any other matter that the Authority may consider relevant, the Authority shall, in determining whether an individual has failed to discharge the duties of the individual's office or employment for the purposes of subsection (2)(i), have regard to such criteria as may be prescribed or as may be specified in written directions.

(4) Subject to subsection (5), before directing a licensee to remove an individual under subsection (1), the Authority must give both the licensee and the individual an opportunity to be heard.

(5) The Authority may direct a licensee to remove an individual under subsection (1) on any of the following grounds without giving the licensee or the individual an opportunity to be heard:

- (a) the individual is an undischarged bankrupt, whether in Singapore or elsewhere;
- (b) the individual has been convicted, whether in Singapore or elsewhere, of an offence, whether committed before, on or after the date of commencement of this paragraph —

- (i) involving fraud or dishonesty, or the conviction for which involves a finding that the individual had acted fraudulently or dishonestly; and
- (ii) punishable with imprisonment for a term of at least 3 months.

(6) Without affecting the Authority's power to impose conditions under section 5(2)(a) or (4), the Authority may at any time, by notice in writing to a licensee, impose or vary a condition requiring the licensee to notify the Authority of any change to any particulars (such as residence in Singapore or elsewhere, or nature of appointment) of its chief executive officer or director that may be specified in the notice.

(7) A licensee that, without reasonable excuse —

- (a) fails to comply with a notice in writing under subsection (1); or
- (b) contravenes any condition imposed under subsection (6),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(8) No criminal or civil liability shall be incurred by a licensee, or any person acting on behalf of the licensee, in respect of anything done (including any statement made) or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the licensee under this section.

### **Appeals to Minister**

**24.** —(1) A licensee that is aggrieved by a decision of the Authority under section 22(3)(b) may, within 30 days after receiving the decision of the Authority, appeal in writing to the Minister, whose decision is final.

(2) A licensee, or any chief executive officer or director of that licensee, that is aggrieved by a notice in writing of the Authority under section 23(1) may, within 30 days after receiving the notice, appeal in writing to the Minister, whose decision is final.

### *Subdivision 5 — Audit of licensees*

### **Auditing**

**25.** —(1) Despite the provisions of the Companies Act, a licensee —

- (a) must, on an annual basis and at its own expense, appoint an auditor; and

- (b) if for any reason its auditor ceases to be its auditor, appoint another auditor as soon as practicable after such cessation.
- (2) The Authority may appoint an auditor for a licensee —
  - (a) if the licensee fails to appoint an auditor; or
  - (b) if the Authority considers it desirable that another auditor should act with the auditor appointed under subsection (1).
- (3) The Authority may at any time fix the remuneration to be paid by a licensee to an auditor appointed by the Authority under subsection (2) for the licensee.
- (4) The duties of an auditor appointed under subsection (1) or (2) are as follows:
  - (a) to carry out an audit of the transactions in relation to the digital token services provided by the licensee, in particular, in respect of the licensee's observance of the provisions of this Act and any of the requirements imposed under any other written law administered by the Authority;
  - (b) to submit a report of such audit to the Authority in such form as may be prescribed and within such time as the Authority may allow.
- (5) The Authority may, by notice in writing to an auditor, impose all or any of the following duties on the auditor in addition to those provided under subsection (4), and the auditor must carry out the duties so imposed:
  - (a) a duty to submit such additional information in relation to the audit as the Authority considers necessary;
  - (b) a duty to enlarge or extend the scope of the audit of the licensee's business and affairs;
  - (c) a duty to carry out any other examination, or establish any procedure, in relation to the audit in any particular case;
  - (d) a duty to submit a report on any of the matters mentioned in paragraphs (b) and (c).
- (6) The licensee must remunerate the auditor in respect of —
  - (a) any remuneration the Authority has fixed under subsection (3); and

- (b) the discharge of all or any of the additional duties of the auditor imposed under subsection (5).

(7) Despite any other provision of this Part or the provisions of the Companies Act, the Authority may, if the Authority is not satisfied with the performance of any duty by the auditor of a licensee, at any time direct the licensee to —

- (a) remove the auditor; and
- (b) appoint another auditor.

(8) A copy of any report under subsection (5)(d) must be submitted in writing to the Authority.

(9) If an auditor, in the course of performing the auditor's duties, is satisfied that any of the following matters has occurred, the auditor must immediately report that matter to the Authority:

- (a) there has been a serious breach or non-observance of the provisions of this Act or any of the requirements imposed under any other written law administered by the Authority;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) losses have been incurred that reduce the capital of the licensee by at least 50%;
- (d) there is any irregularity that has or may have a material effect on the accounts of the licensee, including any irregularity that had caused a major disruption to the provision of any type of digital token service to the customers of the licensee;
- (e) the auditor is unable to confirm that the claims of creditors of the licensee are still covered by the assets of the licensee.

(10) Where an auditor or employee of the auditor discloses in good faith to the Authority —

(a) the auditor's or employee's knowledge or suspicion of any of the matters mentioned in subsection (9); or

(b) any information or other matter on which that knowledge or suspicion is based,

the disclosure is not a breach of any restriction upon the disclosure imposed by any law, contract or rules of professional conduct, and the auditor or employee is not liable for any loss arising out of the disclosure or any act or omission in consequence of the disclosure.

(11) A licensee that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(12) An auditor that contravenes subsection (5) or (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Powers of auditor appointed by Authority**

**26.** —(1) An auditor appointed by the Authority under section 25(2) may, for the purpose of carrying out an examination or audit —

(a) examine, on oath or affirmation, any officer or employee of the licensee or any other auditor of the licensee;

(b) require any officer or employee of the licensee, or any other auditor of the licensee, to produce any books held by or on behalf of the licensee relating to the licensee's business;

(c) make copies of or take extracts from, or retain possession of, any books mentioned in paragraph (b) for such period as may be necessary to enable those books to be inspected;



- (d) employ such persons as the auditor considers necessary to assist the auditor in carrying out the examination or audit; and
- (e) authorise in writing any person employed by the auditor to do, in relation to the examination or audit, any act or thing that the auditor could do as an auditor under this subsection, other than the examination of a person on oath or affirmation.

(2) An individual who, without reasonable excuse —

- (a) refuses or fails to answer any question put to the individual; or
- (b) fails to comply with any request made to the individual,

by an auditor appointed under section 25(2) or a person authorised under subsection (1)(e), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 or to imprisonment for a term not exceeding 12 months or to both.

#### **Restriction on auditor's and employee's right to communicate certain matters**

**27.** —(1) Except as may be necessary for the carrying into effect of the provisions of this Part or so far as may be required for the purposes of any legal proceedings, whether civil or criminal —

- (a) an auditor appointed under section 25(1) or (2); or
- (b) any employee of such auditor,

must not disclose any information that comes to the auditor's or employee's knowledge in the course of performing the auditor's or employee's duties, to any person other than the Authority or, in the case of an employee of such auditor, the auditor.

(2) A person that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of the auditor, to a fine not exceeding \$25,000; or
- (b) in the case of the employee, to a fine not exceeding \$12,500.

### **Offence to destroy, conceal, alter, etc., records**

**28.** —(1) An individual who, with intent to prevent, delay or obstruct the carrying out of any examination or audit under section 25 or 26 —

- (a) destroys, conceals or alters any book relating to the business of a licensee; or
- (b) sends, or conspires with any other person to send, out of Singapore any book or asset of any description belonging to, in the possession of or under the control of the licensee,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the individual charged with the offence —

- (a) destroyed, concealed or altered any book mentioned in subsection (1)(a); or
- (b) sent, or conspired to send, out of Singapore any book or asset mentioned in subsection (1)(b),

the onus of proving that, in so doing, the individual did not act with intent to prevent, delay or obstruct the carrying out of an examination or audit under section 25 or 26 lies on the individual.

### *Division 3 – Offences*

#### **Offences by officers**

**29.**—(1) An officer of a licensee, whose duty is or includes ensuring that the licensee complies with a provision of this Part, who fails to take all reasonable steps to secure such compliance, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) An officer of a licensee, whose duty is or includes submitting information to the Authority or any other person under this Part, who fails to take all reasonable steps to ensure the accuracy and correctness of any information so submitted, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) In any proceedings against an officer under subsection (1) or (2), it is a defence for the officer to prove that he or she had reasonable grounds for believing that —

- (a) another individual was charged with the duty of —
  - (i) securing compliance with the requirements of this Part; or
  - (ii) ensuring that the information submitted was accurate, as the case may be; and
- (b) that individual was competent, and in a position, to discharge that duty.

(4) An officer is not to be sentenced to imprisonment for any offence under subsection (1) or (2) unless, in the opinion of the court, the officer committed the offence wilfully.

**Falsification of records by officers, etc.**

**30.—**(1) An officer, auditor, employee or agent of a licensee who —

- (a) wilfully makes, or causes to be made, a false entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee;
- (b) wilfully omits to make an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, extracts, conceals or destroys an entry in any book, or in any report, slip, document or statement of the business, affairs, transactions, conditions or assets of the licensee, or wilfully causes any such entry to be altered, extracted, concealed or destroyed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) In this section, “officer” includes a person purporting to act in the capacity of an officer.

**General penalty**

**31.** A person guilty of an offence under this Part for which no penalty is expressly provided shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000; or
- (b) in any other case, to a fine not exceeding \$100,000.

*Division 4- Miscellaneous*

**Opportunity to be heard**

**32.** Where this Part provides for a person to be given an opportunity to be heard by the Authority, the Authority may prescribe the manner in which the person is to be given such opportunity to be heard.

**Power of court to make certain orders**

**33.—**(1) Where, on an application of the Authority, it appears to the court that a person —

- (a) has committed an offence under this Part; or
- (b) is about to do an act that, if done, would be an offence under this Part,

the court may (without prejudice to any other order it may make) make one or more of the orders under subsection (2).

(2) The orders mentioned in subsection (1) are —

- (a) in the case of a persistent or continuing contravention of a provision of this Part, an order restraining a person from —
  - (i) carrying on a business of providing digital token services; or
  - (ii) holding itself out as a licensee;
- (b) for the purpose of securing compliance with any order made under this section, an order directing a person to do or refrain from doing any specified act; or
- (c) any ancillary order the court considers to be desirable as a result of making any other order under this section.

(3) The court may, before making an order under subsection (2), direct that notice of the application be given to such person as it thinks fit or that notice of the application be published in such manner as it thinks fit, or both.

(4) A person that, without reasonable excuse, contravenes an order made under subsection (2) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (b) in any other case, to a fine not exceeding \$100,000.

(5) Subject to subsection (6), subsection (4) does not affect the powers of the court in relation to the punishment of contempt of court.

(6) A person cannot be punished for contempt of court in respect of any contravention of an order made under subsection (2), for which the person has been convicted of an offence under subsection (4).

(7) A person cannot be convicted of an offence under subsection (4) in respect of any contravention of an order made under subsection (2) that has been punished as a contempt of court.

(8) The court may rescind, vary or discharge, or suspend the operation of, an order made by the court under this section.

### **General exemption**

**34.—**(1) The Authority may, by regulations, exempt any of the following from all or any of the provisions of this Part, subject to such conditions as may be prescribed:

- (a) any person or class of persons;
- (b) any digital token service or class of digital token services;
- (c) any shares or interests in shares, or class or description of shares or interests in shares;
- (d) any other thing or class or description of things.

(2) Where the Authority, by regulations made under subsection (1), exempts any person or class of persons from section 14(1) and (2), the conditions that may be prescribed under subsection (1) include the following conditions:

- (a) a condition relating to the operations or activities of the exempt person, or of any person in the exempt class of persons;
- (b) a condition relating to the criteria that must be satisfied in order for the exempt person, or any person in the exempt class of persons, to grant any credit facility (within the meaning given by section 14(3)) to any individual in Singapore;
- (c) a condition relating to the standards to be maintained by the exempt person, or by any person in the exempt class of persons, when carrying on a business of granting any such credit facility to any individual in Singapore;
- (d) a condition relating to the duties to be undertaken by the exempt person, or by any person in the exempt class of persons, when doing any of the following things:
  - (i) granting any such credit facility to any individual in Singapore;
  - (ii) offering to grant, or issuing any advertisement containing any offer to grant, any such credit facility to any individual in Singapore;
  - (iii) making an offer or invitation, or issuing any advertisement containing any offer or invitation, to any individual in Singapore to enter into any agreement relating to the granting of any such credit facility to that individual;
- (e) a condition relating to the maintenance by the exempt person, or by any person in the exempt class of persons, of a licence, under any other written law, that allows that person to carry on a business of granting any credit facility to any individual in Singapore.

(3) Where the Authority, by regulations made under subsection (1), exempts any person or class of persons from section 16, the conditions that may be prescribed under subsection (1) include the following conditions:

- (a) a condition restricting the disposal or further acquisition, by that person or class of persons, of any shares or voting power in a licensee;
- (b) a condition restricting the exercise, by that person or class of persons, of any voting power in a licensee.

(4) The Authority may, if the Authority considers it appropriate to do so in the circumstances of the case, on the application of any person, exempt the person from —

- (a) all or any of the provisions of this Part; or
- (b) all or any of the requirements imposed by the Authority under this Part.

(5) An exemption under subsection (4) —

- (a) may be granted by notice in writing subject to such conditions as the Authority may specify in that notice;
- (b) need not be published in the *Gazette*; and
- (c) may be revoked at any time by the Authority.

(6) The Authority may at any time add to, vary or revoke any condition imposed under this section.

(7) A person shall be guilty of an offence if the person contravenes any condition —

- (a) prescribed under subsection (1);
- (b) specified by the Authority under subsection (5)(a); or
- (c) added or varied under subsection (6).

#### **Codes, guidelines, etc., by Authority**

**35.—(1)** The Authority may issue, and in its discretion publish by notification in the *Gazette* or in any other manner the Authority considers appropriate, such codes, guidelines, policy statements, practice notes and no-action letters as the Authority considers appropriate for providing guidance —

- (a) in furtherance of the Authority's regulatory objectives under this Part;
- (b) in relation to any matter relating to any of the Authority's functions under this Part; or
- (c) in relation to the operation of any of the provisions of this Part.

(2) The Authority may, at any time, amend or revoke the whole or any part of any code, guideline, policy statement, practice note or no-action letter issued under this section.

(3) Where amendments are made under subsection (2) —

- (a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guideline, policy statement, practice note or no-action letter; and
- (b) any reference in this Part or any other written law to the code, guideline, policy statement, practice note or no-action letter, however expressed, is (unless the context otherwise requires) a reference to the code, guideline, policy statement, practice note or no-action letter as so amended.

(4) Any failure by a person to comply with any provision of a code, guideline, policy statement or practice note issued under this section to the person does not of itself render that person liable to criminal proceedings, but any such failure may, in any proceedings, whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or negate any liability that is in question in the proceedings.

(5) The issue by the Authority of a no-action letter does not of itself prevent the institution of any proceedings against any person for the contravention of any provision of this Part.

(6) Any code, guideline, policy statement or practice note issued under this section may be of general or specific application, and may specify that different provisions of such code, guideline, policy statement or practice note apply to different circumstances or provide for different cases or classes of cases.

(7) To avoid doubt, any code, guideline, policy statement, practice note or no-action letter issued under this section is not to be treated as subsidiary legislation.

(8) In this section, “no-action letter” means a letter written by the Authority to a person to the effect that, if the facts are as represented by the person, the Authority will not institute proceedings against the person in respect of a particular state of affairs or particular conduct.

### **Power of Authority to issue notice in writing**

**36.—**(1) The Authority may, if it thinks it necessary or expedient for the effective administration of this Part, for the protection of consumers or in the interest of the public or a section of the public, issue to any of the following persons or classes of persons a



notice in writing, either of a general or a specific nature, to comply with such requirements as the Authority may specify in the notice:

- (a) any licensee or class of licensees;
- (b) any person, or class of persons, exempt under section 34;
- (c) any person that contravenes, has contravened, or is likely to contravene, any provision of this Part.

(2) Without limiting subsection (1), a notice may be issued —

- (a) with respect to —
  - (i) the activities that may be carried out by a licensee or a person exempt under section 34, in relation to its business;
  - (ii) the standards, framework, policies and procedures for the prudent management of risks (including information technology risks) by a licensee or a person exempt under section 34;
  - (iii) the financial soundness, financial management and stability of a licensee or a person exempt under section 34;
  - (iv) the standards to be maintained by a licensee or a person exempt under section 34, in the conduct of its business;
  - (v) the arrangement and conditions that are to apply if a licensee or a person exempt under section 34, appoints any person as an independent contractor to carry out the functions and duties of the licensee or person exempt under section 34, as the case may be;
  - (vi) the type, form, manner and frequency of returns and other information to be submitted to the Authority;
  - (vii) the preparation and publication of reports on the performance of a licensee or a person exempt under section 34;
  - (viii) the remuneration of an auditor appointed under this Part and the costs of an audit carried out under this Part;
  - (ix) the collection by or on behalf of the Authority of information from a licensee or a person exempt under section 34, in relation to the conduct of its business at such intervals or on such occasions as may be set out in the notice;
  - (x) the manner in which a licensee or a person exempt under section 34, deals with its customers, and any conflicts of interests between the licensee or person exempt under section 34 (as the case may be) and its customers;

- (xi) the display or exhibition by a licensee or a person exempt under section 34, of such cautionary statements as the Authority thinks fit in a conspicuous place at every place of business or website of the licensee, or person exempt under section 34; and
  - (xii) the provision by a licensee or a person exempt under section 34, of cautionary statements in writing to the customers or prospective customers of the licensee or person exempt under section 34;
- (b) to require any person that contravenes, has contravened, or is likely to contravene any provision of this Part —
  - (i) to comply with, or to cease contravening, that provision;
  - (ii) to take any action necessary to enable the person to conduct the person's business in accordance with sound principles; and
  - (iii) where the person is a company, to remove any of its directors; and
- (c) for any other purpose specified in this Part.

(3) It is not necessary to publish any notice in writing issued under subsection (1) in the *Gazette*.

(4) The Authority may at any time vary, rescind or revoke any notice issued under subsection (1).

(5) A person that fails to comply with any requirement specified in a notice issued under subsection (1) shall (if the failure to comply with that requirement is not an offence under any other provision of this Part) be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Power of Authority to make regulations**

**37.—**(1) The Authority may make regulations prescribing matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Without limiting subsection (1), the Authority may make regulations for or with respect to —

- (a) the fees to be paid in respect of any matter or thing required for the purposes of this Part, and the refund or remission of the whole or any part of any such fees;
  - (b) the granting, lapsing, surrender, revocation or suspension of a licence, and all incidental matters;
  - (c) the cessation of the provision of a digital token service by a licensee, or a person exempt under section 34, and all incidental matters;
  - (d) the corporate governance of a licensee or a person exempt under section 34;
  - (e) the requirements applicable to a licensee or person exempt under section 34, including requirements in relation to the fitness and propriety of the licensee, the person exempt under section 34, or the chief executive officer, a director, a 5% controller or equivalent person of the licensee or person exempt under section 34, as the case may be; and
  - (f) prescribing the procedure —
    - (i) for the use of the electronic service mentioned in section 40; and
    - (ii) in circumstances where there is a breakdown or an interruption of the electronic service.
- (3) Except as otherwise expressly provided in this Part, regulations made under this Part —
- (a) may be of general or specific application;
  - (b) may contain such saving and transitional provisions as the Authority may consider necessary or expedient;
  - (c) may provide that a contravention of any specified provision of the regulations shall be an offence; and
  - (d) may provide —
    - (i) in the case of an individual, for penalties not exceeding a fine of \$50,000 or imprisonment for a term not exceeding 2 years or both for each offence and, in the case of a continuing offence, a further penalty not exceeding a fine of \$5,000 for every day or part of a day during which the offence continues after conviction; and

- (ii) in any other case, for penalties not exceeding a fine of \$100,000 and, in the case of a continuing offence, a further penalty not exceeding a fine of \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Publication of certain information**

**38.—**(1) The Authority may, from time to time, prepare and publish —

- (a) consolidated statements aggregating any information provided under this Part;  
or
- (b) for statistical purposes, statements that relate to or are derived from any information provided under this Part in respect of a digital token service provided by a licensee.

(2) The Authority may, from time to time and in such form or manner as the Authority considers appropriate, publish such information as the Authority may consider necessary or expedient to publish in the public interest, including information relating to all or any of the following:

- (a) the lapsing, surrender, revocation or suspension of the licence of any person under section 8;
- (b) the acceptance by any person of an offer to compound an offence under section [176 of MAS Act];
- (c) the revocation or withdrawal of any exemption granted in respect of any provision under this Part;
- (d) the conviction of any person for any offence under this Part;
- (e) any other action taken by the Authority against any person under this Part.

### **Service of documents**

**39.—**(1) A document that is permitted or required by this Part to be served on a person may be served as described in this section.

(2) A document permitted or required by this Part to be served on an individual may be served —

- (a) by giving it to the individual personally;
- (b) by sending it by prepaid registered post to the address specified by the individual for the service of documents or, if no address is so specified, the individual's residential address or business address;
- (c) by leaving it at the individual's residential address with an adult apparently resident there, or at the individual's business address with an adult apparently employed there;
- (d) by affixing a copy of the document in a conspicuous place at the individual's residential address or business address;
- (e) by sending it by fax to the fax number last known to the person giving or serving the document as the fax number for the service of documents on the individual;  
or
- (f) by sending it by email to the individual's last email address.

(3) A document permitted or required by this Part to be served on a partnership (other than a limited liability partnership) may be served —

- (a) by giving it to any partner or other like officer of the partnership;
- (b) by leaving it at, or by sending it by prepaid registered post to, the business address of the partnership;
- (c) by sending it by fax to the fax number used at the business address of the partnership; or
- (d) by sending it by email to the last email address of the partnership.

(4) A document permitted or required by this Part to be served on a body corporate (including a limited liability partnership) or an unincorporated association may be served —

- (a) by giving it to the secretary or other similar officer of the body corporate or unincorporated association, or to the manager of the limited liability partnership;
- (b) by leaving it at, or by sending it by prepaid registered post to, the registered office or principal office of the body corporate or unincorporated association;
- (c) by sending it by fax to the fax number used at the registered office or principal office of the body corporate or unincorporated association; or
- (d) by sending it by email to the last email address of the body corporate or unincorporated association.

(5) Service of a document under subsection (2), (3) or (4) takes effect —

- (a) if the document is sent by fax and a notification of successful transmission is received, on the day of transmission;
- (b) if the document is sent by prepaid registered post, 2 days after the day the document was posted (even if it is returned undelivered); or
- (c) if the document is sent by email, at the time the email becomes capable of being retrieved by the person to whom the document is sent.

(6) A document may be served on a person under this Part by email only with that person's prior written consent.

(7) This section does not apply to documents to be served in proceedings in court.

(8) In this section —

“business address” means —

- (a) in the case of an individual, the individual's usual or last known place of business, or place of employment, in Singapore; or
- (b) in the case of a partnership (other than a limited liability partnership), the principal or last known place of business in Singapore of the partnership

“document” includes a notice permitted or required by this Part to be served;

“last email address” means —

- (a) the last email address given, by the addressee concerned to the person giving or serving the document, as the email address for the service of documents under this Part; or
- (b) the last email address of the addressee concerned known to the person giving or serving the document;

“residential address” means an individual’s usual or last known place of residence in Singapore.

### **Electronic service**

**40.**—(1) The Authority may provide an electronic service for the service of any document that is required or authorised by this Part to be served on any person.

(2) For the purposes of the electronic service, the Authority may assign to any person —

- (a) an authentication code; and
- (b) an account with the electronic service.

(3) Despite section 39, where a person has given consent for any document to be served on the person through the electronic service —

- (a) the Authority may serve the document on that person by transmitting an electronic record of the document to that person’s account with the electronic service; and
- (b) the document is treated as having been served at the time when an electronic record of the document enters the person’s account with the electronic service.

(4) In this section —

“account with the electronic service”, in relation to any person, means a computer account within the electronic service that is assigned by the Authority to the person for the storage and retrieval of electronic records relating to the person;

“authentication code”, in relation to any person, means an identification or identifying code, a password or any other authentication method or procedure that is assigned to the person for the purposes of identifying and authenticating the access to and use of the electronic service by the person;

“document” includes a notice and an order;

“electronic record” has the meaning given by section 2(1) of the Electronic Transactions Act (Cap. 88).

### **Amendment of Schedules**

**41.—**(1) The Minister may from time to time, by order in the *Gazette*, amend, add to or vary the First, Second or Third Schedule.

(2) The Minister may, in any order made under subsection (1), make such incidental, consequential or supplementary provisions as may be necessary or expedient.

(3) Any order made under subsection (1) must be presented to Parliament as soon as possible after publication in the *Gazette*.

### *Division 5- Savings and Transitional Provisions*

#### **Other saving and transitional provisions**

**42.** For a period of 2 years after the date of commencement of any provision of this Part, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent to the enactment of that provision as the Minister may consider necessary or expedient.



FIRST SCHEDULE

Sections 2(1) and 41

DIGITAL TOKEN SERVICES

PART 1

SERVICES THAT ARE DIGITAL TOKEN SERVICES

1. Except where Part 2 of this Schedule provides otherwise, each of the following services is a digital token service for the purposes of this Part —

- (a) any service of dealing in digital tokens (other than any such service that the Authority may prescribe);
- (b) any service of facilitating the exchange of digital tokens (other than any such service that the Authority may prescribe);
- (c) any service of accepting digital tokens from one digital token address or account, whether in Singapore or outside Singapore, as principal or agent, for the purposes of transferring, or arranging for the transfer of, the digital tokens to another digital token address or account, whether in Singapore or outside Singapore;
- (d) any service of arranging for the transmission of digital tokens from one digital token address or account, whether in Singapore or outside Singapore, to another digital token address or account, whether in Singapore or outside Singapore;
- (e) any service of inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any digital tokens in exchange for any money or any other digital tokens (whether of the same or a different type);
- (f) any service of safeguarding or administration of —
  - (i) a digital token where the service provider has control over the digital token; or
  - (ii) a digital token instrument where the service provider has control over the digital token associated with the digital token instrument;
- (g) any service relating to the offer or sale of digital tokens, where such service refers to:

- (i) advising others, either directly or through publications or writings, and whether in electronic, print or other form, concerning any digital tokens; or
- (ii) advising others by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any digital tokens.

## PART 2

### SERVICES THAT ARE NOT DIGITAL TOKEN SERVICES

2. Despite Part 1 of this Schedule, the following services are not digital token services for the purposes of this Part:

- (a) any service, including (but not limited to) any of the following services, provided by any technical service provider that supports the provision of any digital token service, but does not at any time enter into possession of any money or digital token under that digital token service:
  - (i) the service of processing and storing data;
  - (ii) any information technology security, trust or privacy protection service;
  - (iii) any data and entity authentication service;
  - (iv) any information technology service;
  - (v) the service of providing a communication network;
  - (vi) the service of providing and maintaining any terminal or device used for any digital token service;
- (b) any service of dealing in, or facilitating the exchange of, any central bank digital token, carried out by a central bank or financial institution;
- (c) any service of dealing in, or facilitating the exchange of, any limited purpose digital payment token.

## PART 3

### INTERPRETATION

3. In this Schedule, unless the context otherwise requires —

“central bank digital token” means any digital token that is issued by a central bank, or by any entity authorised by a central bank to issue a digital token on behalf of the central bank;

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

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

“digital token account” means an account that holds digital tokens;

“digital token address” means any combination of letters, numbers or symbols identifying a source or destination that can be used to send or receive digital tokens;

“digital token exchange” —

- (a) means a place, or a facility (whether electronic or otherwise), where —
  - (i) offers or invitations to buy or sell any digital token in exchange for any money or any other digital 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 tokens in exchange for money or other digital 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 token in exchange for any money, or any digital token (whether of the same or a different type);
  - (ii) to accept any offer to buy or sell any digital token in exchange for any money, or any digital token (whether of the same or a different type);

“digital token instrument” means any instrument that enables control over the digital token associated with the instrument;

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

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

“financial institution” means any person that —

- (a) is licensed, approved, registered or regulated, or is exempt from being licensed, approved, registered or regulated, by the Authority under any written law; or
- (b) is licensed, approved, registered or regulated, or is exempt from being licensed, approved, registered or regulated, under any law administered by an authority in a foreign country (the functions of which correspond to the functions of the Authority in Singapore) to carry on any financial activity in that country;

“financial product” means any product or service that is provided by a financial institution;

“in-game asset” means any digital representation of value that —

- (a) is purchased or otherwise acquired by a person (called in this definition the game player);
- (b) is not denominated in any currency;
- (c) is issued as part of an online game; and

- (d) is used by the game player to pay or in exchange for virtual objects or services in the online game;

“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;

“merchant” means a person (other than an individual who is not required to be registered under the Business Names Registration Act 2014 (Act 29 of 2014)) who, in the course of the person’s business —

- (a) provides goods or services;
- (b) promotes the use or purchase of goods or services; or
- (c) receives, or is entitled to receive, any money or other consideration for providing goods or services,

and includes any employee or agent of the person;

“non-monetary customer loyalty or reward point” means any digital representation of value, by whatever name called, that satisfies all of the following conditions:

- (a) it is not denominated in any currency;
- (b) it is issued as part of a scheme, the dominant purpose of which is to promote the purchase of goods, or the use of services, provided by its issuer or any merchant specified by its issuer;
- (c) it is issued to a person upon the purchase of goods, or the use of services, provided by its issuer or any merchant specified by its issuer;

- (d) it is used 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;
- (e) it is not part of a financial product;

“service of administration of a digital token” means the service of carrying out an instruction relating to a digital token for a customer;

“service of administration of a digital token instrument” means the service of carrying out an instruction relating to a digital token associated with the digital token instrument, for a customer.

4. For the purposes of this Schedule, a person is deemed to have control over a digital token if the person has control over the digital token jointly with one or more persons.

## SECOND SCHEDULE

Sections 3(2) and 41

### SPECIFIED PROVISIONS

1. Section 34(4)

## THIRD SCHEDULE

Sections 4(3) and 41

### EXCLUDED PERSONS

1. Any public statutory corporation established under any Act in Singapore.
2. Any —
  - (a) advocate and solicitor;
  - (b) Singapore law practice, Joint Law Venture, Formal Law Alliance or Qualifying Foreign Law Practice, as defined in section 2(1) of the Legal Profession Act (Cap. 161); or
  - (c) public accountant who is registered under the Accountants Act (Cap. 2) or accounting corporation which is approved under that Act,

whose carrying on of the business in providing digital token service is solely incidental to the practice of law or accounting, as the case may be.

3. The Official Assignee in exercising his powers under the Bankruptcy Act (Cap. 20).
4. The Public Trustee in exercising his powers under the Public Trustee Act (Cap. 260).
5. A person acting in relation to a company as its liquidator, provisional liquidator, receiver, receiver and manager or judicial manager.

**Annex D**

**PROPOSED PROVISIONS ON HARMONISED POWER TO ISSUE DIRECTIONS  
OR MAKE REGULATIONS ON TECHNOLOGY RISK MANAGEMENT**

DISCLAIMER: This Annex is draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

**Power of Authority in relation to technology risk management**

(1) The Authority may, from time to time, issue such directions or make such regulations concerning any financial institution or class of financial institutions as the Authority considers necessary for –

- (a) the management of technology risks, including cyber security risks;
- (b) the safe and sound use of technology to deliver financial services; and
- (c) safe and sound use of technology to protect data.

(2) A financial institution which fails to comply with a direction issued to it under subsection (1) or contravenes any regulation made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine of \$100,000 for every day or part of a day during which the offence continues after conviction.

(3) In this section, “financial institution” has the same meaning as in [section 27A(6) read with section 27A(7) of the MAS Act].



## **Annex E**

### **PROPOSED PROVISIONS ON STATUTORY PROTECTION FROM LIABILITY TO BE PROVIDED TO MEDIATORS, ADJUDICATORS AND EMPLOYEES OF AN OPERATOR OF AN APPROVED DISPUTE RESOLUTION SCHEME**

DISCLAIMER: This Annex is draft form and is subject to clearance. It is also  
subject to review by the Attorney-General's Chambers.

#### **Power of Authority in relation to dispute resolution schemes**

##### **28A. ...**

(6A) No liability shall lie against any mediator, adjudicator or employee of an operator of an approved dispute resolution scheme, for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith in the course of or in connection with any mediation or adjudication of a dispute under the approved dispute resolution scheme.

**Annex F**

**PROPOSED PROVISIONS ON INSPECTION POWERS**

**DISCLAIMER:** This Annex is draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

PART [X]

INSPECTION POWERS OF AUTHORITY

**Interpretation of this Part**

1.—(1) In this Part, unless the context otherwise requires —

“book” has the same meaning as in section 152(1);<sup>30</sup>

“financial institution” has the same meaning as in section 27A(6) read with section 27A(7);

“licensee” has the same meaning as in section [2(1) of Annex C];<sup>31</sup>

“relevant person” means a person mentioned in section 2(1)(a), 1(c), 1(e) or 1(f).<sup>32</sup>

**Inspection by Authority**

2. —(1) The Authority may from time to time inspect, under conditions of secrecy, the books of any of the following persons:

- (a) a financial institution, for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under sections 27A and 27B;

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<sup>30</sup> Section references in this document are to the MAS Act unless otherwise stated.

<sup>31</sup> Reference to section in Annex C.

<sup>32</sup> Reference to section in Annex F.

- (b) any subsidiary, branch, agency or office outside Singapore of a financial institution incorporated or established in Singapore, for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under sections 27A and 27B;
- (c) a financial institution, for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under [section in Annex D];
- (d) any subsidiary, branch, agency or office outside Singapore of a financial institution incorporated or established in Singapore, for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under [section in Annex D];
- (e) a licensee, for a purpose other than the purpose mentioned in sub-paragraph (a) or (c) ;
- (f) a person exempt under section 34,<sup>33</sup> for a purpose other than the purpose mentioned in sub-paragraph (a) or (c).

(2) The Authority may appoint any person, including an auditor (not being an auditor of the relevant person), to carry out an inspection under this section.

(3) If the inspection is carried out on the ground that the Authority has reason to believe that—

- (a) the financial institution has contravened or is contravening any direction issued or regulation made under section 27A, 27B or [section in Annex D];
- (b) the licensee has contravened or is contravening any provision of [Annex C]; or
- (c) the person exempt under section 34<sup>34</sup> has contravened or is contravening any provision of [Annex C],

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<sup>33</sup> Reference to section in Annex C.

<sup>34</sup> Reference to section in Annex C.

and if the Authority so directs, then the financial institution, licensee or person exempt under section 34,<sup>35</sup> as the case may be, is liable to pay for the remuneration and expenses of any person appointed under subsection (2) for the inspection.

(4) The Authority may recover from the relevant person the remuneration and expenses referred to in subsection (3) as a civil debt due to the Authority.

(5) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3).

(6) Where, in the course of an inspection under subsection (1), the Authority obtains any protected information as defined in section 152(1), and that information is not necessary for taking any action regarding—

- (a) non-compliance with any direction issued or regulation made under section 27A or 27B;
- (b) non-compliance with any direction issued or regulation made under [section in Annex D]; or
- (c) non-compliance with [any provision in Annex C],

then the Authority must treat that information as secret.

(7) Subsection (6) does not prevent the transmission under section 5,<sup>36</sup> 155, 157 or 160 by the Authority of any information to any authority referred to in the applicable section.

### **Obligation of financial institution under inspection**

**3.—**(1) For the purposes of an inspection under section 2(1)<sup>37</sup>, a relevant person must—

- (a) give the Authority access to such of the books of the relevant person as the Authority may reasonably require to conduct the inspection;

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<sup>35</sup> Reference to section in Annex C.

<sup>36</sup> Reference to section in Annex F.

<sup>37</sup> Reference to section in Annex F.

- (b) procure any other person who is in possession of such of the books of the relevant person as the Authority may reasonably require to conduct the inspection, to give the Authority access to the books;
- (c) provide such information (including information relating to the internal control systems of the relevant person) and facilities as the Authority may reasonably require to conduct the inspection; and
- (d) procure a person who is in possession of such information (including information relating to the internal control systems of the relevant person) and facilities as the Authority may reasonably require to conduct the inspection, to provide the information and facilities to the Authority.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the relevant person or any of its officers, or on any person referred to in subsection (1)(b) or (d), by any prescribed written law as defined in section 152(1) or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(3) A relevant person which refuses or neglects, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a relevant person or any of its officers, or by any person referred to in subsection (1)(b) or (d), in respect of any obligation or restriction referred to in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(5) A relevant person, or any of its officers, or any person referred to in subsection (1)(b) or (d), that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (2).

(6) For the purposes of an inspection under section 2(1),<sup>38</sup> the Authority may —

- (a) make copies of, or take possession of, any such books;
- (b) use, or permit the use of, any such books for the purposes of any proceedings under this Act; and
- (c) subject to subsection (8), retain possession of any such books for so long as is necessary —
  - (i) for the purposes of exercising a power conferred by this section;
  - (ii) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or
  - (iii) for such proceedings to be commenced and carried on.

(7) A person is not entitled, as against the Authority, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(8) While the books are in the possession of the Authority, the Authority —

- (a) must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the possession of the Authority; and
- (b) may permit another person to inspect any of the books.

(9) The Authority may require a person that produced any book to the Authority to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or to which the book relates.

(10) A person that fails, without reasonable excuse, to comply with a requirement of the Authority under subsection (9) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing

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<sup>38</sup> Reference to section in Annex F.

offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction; or

- (b) in any other case, to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

### **Confidentiality of inspection reports**

4.—(1) Except as provided in subsection (2), where a written report has been produced in respect of a relevant person by the Authority following an inspection under section 2,<sup>39</sup> the report must not be disclosed to any other person by —

- (a) the relevant person; or
- (b) any officer or auditor of the relevant person.

(2) Disclosure of the report may be made —

- (a) by the relevant person to any officer or auditor of that relevant person solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that relevant person;
- (b) by any officer or auditor of the relevant person to any other officer or auditor of that relevant person, solely in connection with the performance of their respective duties in that relevant person; or
- (c) to such other person as the Authority may approve in writing.

(3) In granting approval for any disclosure under subsection (2)(c), the Authority may impose such conditions or restrictions as it thinks fit on the relevant person, any officer or auditor of that relevant person or the person to whom disclosure is approved, and that relevant person, officer, auditor or person (as the case may be) must comply with those conditions or restrictions.

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<sup>39</sup> Reference to section in Annex F.

(4) The obligations of an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the relevant person.

(5) Any person who contravenes subsection (1), or fails to comply with any condition or restriction imposed by the Authority under subsection (3), shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction —

- (a) in any case where the person is an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
- (b) in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

- (a) the disclosure was made contrary to the person's desire;
- (b) where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the report surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the Authority; and
- (c) where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the Authority.

**Authority may transmit information from inspection to corresponding authority**



5.—(1) The Authority or any person authorised by the Authority may, on the Authority's own motion, and subject to the satisfaction of such conditions as the Authority may determine, transmit any information obtained by the Authority from an inspection under section 2<sup>40</sup> to a corresponding authority as defined in section 152(1) of a foreign country that exercises consolidated supervision authority (whether or not for compliance with any AML/CFT requirement as defined in section 152(1)) over the relevant person to which the inspection relates.

(2) Subsection (1) applies despite the provisions of any prescribed written law as defined in section 152(1) or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct, and is without prejudice to section 160 or any other written law or rule of law authorising the Authority, or a person authorised by the Authority, to disclose information in the Authority's or the person's possession to another person.

### **Self-incrimination**

6 —(1) A person is not excused from disclosing information to the Authority pursuant to a requirement made of the person under this Part on the grounds that the disclosure of the information might tend to incriminate the person.

(2) Where a person claims, before making a statement disclosing information that the person is required to disclose by such requirement, that the statement might tend to incriminate the person, that statement is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section [General duty to use reasonable care not to provide false information to Authority].<sup>41</sup>

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<sup>40</sup> Reference to section in Annex F.

<sup>41</sup> Reference to new section in Annex G.

**Annex G**

**PROPOSED PROVISIONS ON PROVISION OF FALSE INFORMATION**

DISCLAIMER: This Annex is draft form and is subject to clearance. It is also subject to review by the Attorney-General's Chambers.

**General duty to use reasonable care not to provide false information to Authority**

1.—(1) A person who provides the Authority with any information under or for the purposes of any provision of this Act must use reasonable care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information that is false or misleading in a material particular.

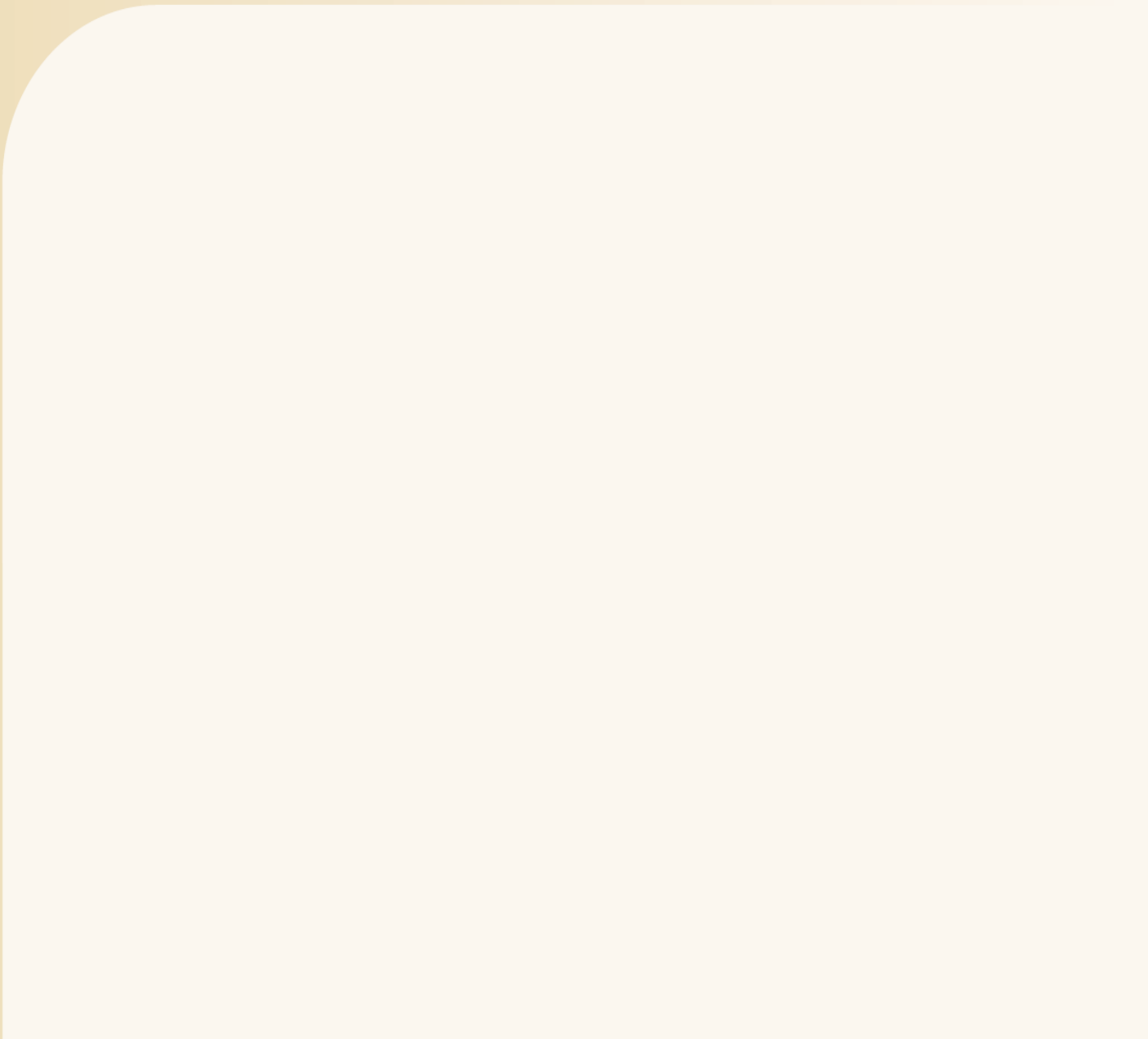
(3) A person who —

- (a) signs any document lodged with the Authority; or
- (b) lodges with the Authority any document by electronic means using any identification or identifying code, password or other authentication method or procedure assigned to the individual by the Authority,

must use reasonable care to ensure that the document is not false or misleading in any material particular.

(4) A person who contravenes subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction —

- (a) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both; or
- (b) in any other case, to a fine not exceeding \$100,000.



Monetary Authority of Singapore