

Singapore VASPs subject to enhanced regulation

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In February 2022, the Financial Services and Markets Bill (bill) was tabled in the Singapore parliament. The bill aligns Singapore legislation with the enhanced standards adopted by the Financial Action Task Force, which require jurisdictions to regulate virtual asset service providers (VASP) to mitigate money laundering and terrorism financing risks (ML/TF risks).

While the current legislative framework in Singapore regulates entities that carry on virtual asset activities in Singapore, regardless of whether the entity was created in Singapore, the bill extends the regulatory framework to persons in the city-state who carry on virtual asset activities outside Singapore. VASPs that provide digital token (DT) services outside Singapore, will be subject to licensing and supervision to ensure that the Monetary Authority of Singapore (MAS) has adequate oversight. Licensing will extend to individuals who, or partnerships that, from a place of business in Singapore, provide DT services outside Singapore. This includes the overseas DT service being provided by someone other than the individual or partnership in Singapore.



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Under the bill, a DT is defined as either a digital payment token (DPT), which under the Payment Services Act, 2019, means any digital representation of value that is expressed as a unit, is not denominated in any currency, is not pegged by its issuer to any currency, is or is intended to be a medium of exchange accepted by the public as payment for goods or services or for the discharge of a debt and can be transferred, stored or traded electronically; or a digital representation of a capital markets product as defined in the Securities and Futures Act, 2001, which can be transferred, stored or traded electronically and satisfies the MAS requirements.

Asset-backed DTs satisfying the definition of a DPT or digital representation of a capital market product will be considered as DTs. Other types of tokens representing physical products will not be caught under the bill if they are neither DPTs nor digital representations of a capital markets product.

DT services under the bill include:

- dealing in DTs;
- facilitating the exchange of DTs;
- inducing any person to enter into any agreement for, or buying or selling, DTs in exchange for money or other DTs;
- accepting DTs for transmitting DTs;
- safeguarding DTs or DT instruments, where the service provider has control over the DT or the DT associated with the instrument. The MAS has explained that control over a DT or DT instrument includes being able to control access to the DT or execute transactions involving it. For example, a service provider will be subject to the FSM bill if it has control over the private cryptographic keys of a multi-signature wallet, and
- providing financial advice relating to the offer or sale of DTs, including advising others by issuing or promulgating research analyses of or research reports on any DTs, but not including professional legal or accounting-related advisory services.

The bill seeks to ensure that DT service providers have a meaningful presence in Singapore. An applicant for a DT service provider licence must appoint at least one executive director who is resident in Singapore, has a permanent place of business in the city-state and satisfies financial requirements prescribed by the MAS. DT service providers are expected to have adequate compliance arrangements commensurate with the scale, nature and complexity of their operations.

Due to the anonymity and speed of DT service transactions, the MAS regards them as carrying higher ML/TF risks. DT service providers will be primarily regulated under the bill to reduce ML/TF risks, in addition to technology and cyber risks. A DT service provider must assess the risks of the jurisdictions in which it has operations and take a risk-based approach in applying the requirements, including performing enhanced customer due diligence in higher-risk cases.

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Given the implications of the bill, it would be prudent for Singapore-based VASPs carrying on DT services outside Singapore, such as those providing DT services in India, to plan for the impact of the bill on their businesses and prepare their licensing and compliance approaches accordingly.

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