

SINGAPORE TO INTRODUCE NEW MEASURES TO RING-FENCE CUSTOMERS' CRYPTO ASSETS

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The Monetary Authority of Singapore (“MAS”) has recently announced new requirements for Digital Payment Token Service Providers (“DPTSPs”) to ensure the safekeeping of customers’ assets. DPTSPs will be required to hold customers’ assets in a statutory trust, reducing the risk of loss or misuse and facilitating asset recovery in case of insolvency of the DPTSPs. The MAS will also prohibit DPTSPs from enabling retail customers to engage in lending and staking activities with Digital Payment Tokens (“DPTs”).

These measures are a positive response to a public consultation held in October 2022, which garnered significant interest and broad support for DPTSPs to be required to segregate customers’ assets from the DPTSP’s own assets, safeguard customers’ moneys, conduct daily asset reconciliations, maintain proper records, ensure operational independence for custody functions, and provide clear risk disclosures to customers. The MAS plans to implement these recommendations, and in this regard, had sought public feedback on the draft legislative amendments from 3 July 2023 to 3 August 2023, and plans to publish guidelines for consistent industry implementation.

Regarding lending and staking activities, MAS will restrict DPTSPs from enabling retail customers to lend and stake DPTs but institutional investors and accredited investors will be permitted to do so. It is noteworthy that feedback on this proposal was varied, with some suggesting implementing informed consent and risk disclosure rules for retail customers while others advocating a complete ban. The MAS will monitor market developments and consumer risk awareness to ensure a balanced approach.

In addition, MAS is consulting on regulatory measures to address unfair trading practices and market integrity risks in the DPT sector. Most respondents agreed with MAS’ observations on good industry practices, and suggestions were made for further measures to prevent market abuse. In this regard, MAS released a separate consultation paper proposing requirements and legislative provisions to address wrongful conduct, entitled ‘Consultation Paper on Proposed Measures on Market Integrity in Digital Payment Token Services’, which concluded on 3 August 2023.

MAS emphasises that regulations alone cannot protect consumers from all losses in the highly risky and speculative nature of DPT trading. Consumers must exercise caution, as asset segregation and custody requirements may only minimise the risk of loss, and asset recovery could still face delays in case of insolvency of a DPTSP. Consumers are also warned against dealing with unregulated entities, including those based overseas, as it carries the risk of losing all their assets.

Summary

To summarise, under MAS’ new requirements, DPTSPs would be required to:

1. safekeep customers’ assets in a statutory trust;
2. safeguard customers’ moneys;
3. provide clear disclosures to customers on the risks involved in having their assets held by the DPTSP;

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4. conduct daily reconciliation of customers' assets and keep proper books and records;
5. maintain access and operational controls to customers' DPTs in Singapore;
6. ensure that their custody function is operationally independent from other business units; and
7. prohibit retail customers from lending or staking their DPTs, but may continue to facilitate such activities for their institutional and accredited investors.

Next steps

From 3 July 2023 to 3 August 2023, the MAS sought public feedback on the draft legislative amendments in order to carry these requirements into effect. Thereafter, the MAS intends to implement these proposed requirements in the Payment Services Regulations by October 2023.

Notwithstanding the amendment process for the Payment Services Regulations, as MAS' policy positions in relation to segregation and custody requirements have been finalised and published, DPTSPs should be prepared to comply with the above requirements by October 2023.

References

- Press Release: MAS Publishes Investor Protection Measures for Digital Payment Token Services:

<https://www.mas.gov.sg/news/media-releases/2023/mas-publishes-investor-protection-measures-for-digital-payment-token-services>

- MAS Consultation Paper on Proposed Amendments to the Payment Services Regulations:

<https://www.mas.gov.sg/publications/consultations/2023/consultation-paper-on-proposed-amendments-to-the-ps-regs>

- MAS Consultation Paper on Proposed Measures on Market Integrity in Digital Payment Token Services:

<https://www.mas.gov.sg/publications/consultations/2023/consultation-paper-on-proposed-measures-on-market-integrity-in-dpt-services>

- MAS Consultation Paper on Proposed Regulatory Measures for Digital Payment Token Services:

<https://www.mas.gov.sg/publications/consultations/2022/consultation-paper-on-proposed-regulatory-measures-for-digital-payment-token-services>

Please note that “customers’ assets” do not include “customers’ moneys” unless otherwise stated.

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“Customers’ assets” refer to assets including digital payment tokens, while “customers’ moneys” refers mainly to fiat currency. The reason for this demarcation is due to the fact that MAS has proposed separate requirements for the safeguarding of each of “customers’ assets” and “customers’ moneys”.

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