



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 41]

MONDAY, NOVEMBER 2

[2020

First published in the *Government Gazette*, Electronic Edition, on 2 November 2020 at 5 pm.

Notification No. B 41 — The Payment Services (Amendment) Bill is published for general information. It was introduced in Parliament on 2 November 2020.

Payment Services (Amendment) Bill

Bill No. 41/2020.

Read the first time on 2 November 2020.

A BILL

i n t i t u l e d

An Act to amend the Payment Services Act 2019 (Act 2 of 2019).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Payment Services (Amendment) Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 2

2. Section 2(1) of the Payment Services Act 2019 (called in this Act the principal Act) is amended by deleting the definition of “digital payment token service” and substituting the following definitions:

““digital payment token account” means any account, or any device or facility (whether in physical or electronic form), that contains digital payment tokens;

“digital payment token instrument” and “digital payment token service” have the meanings given by Part 3 of the First Schedule;”.

New section 21A

3. The principal Act is amended by inserting, immediately after section 21, the following section:

“Additional requirements in respect of licensee providing digital payment token service

21A.—(1) A licensee that provides a digital payment token service must satisfy the requirements prescribed by regulations made under section 103(1) in respect of —

(a) the extent to which assets (including digital payment tokens) belonging to a customer held by the licensee may be commingled with other assets (including other digital payment tokens) held by the licensee;

(b) the maintenance in a prescribed manner of a prescribed amount or percentage of the following assets:

(i) assets (including digital payment tokens) belonging to the customer held by the licensee;

- (ii) assets (including digital payment tokens) belonging to the licensee;
 - (iii) other assets (including digital payment tokens) held by the licensee;
- (c) the safeguarding of assets (including digital payment tokens) belonging to customers held by the licensee, in the event of the insolvency of the licensee; 5
- (d) insurance against the risk of insolvency of the licensee;
- (e) the manner in which the licensee must conduct its dealings with a customer for the following purposes: 10
 - (i) safeguarding assets (including digital payment tokens) belonging to its customers;
 - (ii) protecting data relating to its customers;
 - (iii) safeguarding digital payment token instruments belonging to its customers; 15
- (f) the disclosure, to customers of the licensee, of information relating to the manner in which the licensee —
 - (i) safeguards assets (including digital payment tokens) belonging to its customers; 20
 - (ii) protects data relating to its customers; and
 - (iii) safeguards digital payment token instruments belonging to its customers;
- (g) the monitoring of digital payment token accounts and assets (including digital payment tokens) belonging to customers held by the licensee; 25
- (h) the standards and processes which the licensee must adopt —
 - (i) to safeguard assets (including digital payment tokens) belonging to customers held by the 30

licensee, and digital payment token instruments, from unauthorised use; and

(ii) to protect data relating to customers that is held by the licensee from unauthorised use and disclosure;

(i) the amount of digital payment tokens which can be contained in, or transferred out of, a digital payment token account;

(j) the amount of digital payment tokens which a licensee can hold or transfer (whether for itself or for another person);

(k) the exchange of digital payment tokens for Singapore currency;

(l) the use of moneys collected in exchange for digital payment tokens for any business activity of the licensee; and

(m) the use of digital payment tokens for any business activity of the licensee.

(2) A licensee that provides a digital payment token service must, in respect of the service, satisfy any requirement prescribed by regulations made under section 103(1) that the Authority considers necessary or expedient in the interest of any of the following:

(a) the public or a section of the public;

(b) the stability of the financial system in Singapore;

(c) the monetary policy of the Authority.

(3) Despite section 103(3)(c) and (d), regulations made under section 103(1) may provide that a licensee that contravenes a requirement prescribed for the purposes of subsection (1)(a), (b), (c), (d), (g), (h)(i), (i), (j), (k), (l) or (m) shall be guilty of an offence and shall be liable on conviction 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.”.

Amendment of section 23

4. Section 23 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Subsection (2) applies to —

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- (a) every major payment institution that carries on a business of providing any of the following payment services:

(i) a domestic money transfer service;

(ii) a cross-border money transfer service;

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(iii) a merchant acquisition service;

- (b) any prescribed major payment institution in respect of a prescribed payment service (other than a payment service mentioned in paragraph (a)(i), (ii) or (iii)); and

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- (c) any prescribed licensee (other than a major payment institution) in respect of a prescribed payment service.”;

- (b) by inserting, immediately after the words “major payment institution” in subsections (2) and (4), the words “or licensee”;

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- (c) by deleting subsection (3) and substituting the following subsection:

“(3) Subsection (4) applies to —

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- (a) every major payment institution that carries on a business of providing an e-money issuance service;

- (b) any prescribed major payment institution in respect of a prescribed payment service (other than a payment service mentioned in paragraph (a)); and

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(c) any prescribed licensee (other than a major payment institution) in respect of a prescribed payment service.”;

(d) by deleting sub-paragraph (A) of subsection (5)(b)(iii) and substituting the following sub-paragraph:

“(A) any event affecting the ability of the major payment institution or licensee to which subsection (2) or (4) applies to perform its obligations, such as in the event of the insolvency of the major payment institution or licensee;”;

(e) by inserting, immediately after the words “major payment institution” in subsections (5)(b)(iv), (c)(i) and (iii), (d), (e), (f), (g) and (h), (7)(a) and (8), the words “or licensee to which subsection (2) or (4) applies”;

(f) by deleting sub-paragraph (ii) of subsection (5)(c) and substituting the following sub-paragraph:

“(ii) the manner in which the relevant money must be treated and dealt with, despite any other written law, on the occurrence of any event affecting the ability of the major payment institution or licensee to which subsection (2) or (4) applies to perform its obligations, such as in the event of the insolvency of the major payment institution or licensee; and”;

(g) by inserting, immediately after the word “e-money” in subsection (5)(d), the words “and digital payment tokens”;

- (h) by inserting, immediately after the words “insolvency of the major payment institution” in subsection (6), the words “or licensee to which subsection (2) or (4) applies”;
- (i) by inserting, immediately after the words “held by the major payment institution” in subsection (6), the words “or licensee (as the case may be)”;
- (j) by inserting, immediately after the words “to the major payment institution” in subsection (6)(b), the words “or licensee (as the case may be)”;
- (k) by inserting, immediately after the words “A major payment institution” in subsection (9), the words “or licensee to which subsection (2) or (4) applies”;
- (l) by inserting, immediately after the words “major payment institution” in subsection (9)(a) and (c), the words “or licensee (as the case may be)”;
- (m) by deleting the words “mentioned in subsection (2) or (4)” in subsection (10) and substituting the words “or licensee to which subsection (2) or (4) applies”;
- (n) by deleting the words “the major payment institution must not” in subsection (10) and substituting the words “the major payment institution or licensee (as the case may be) must not”;
- (o) by deleting the words “received by the major payment institution” in subsection (10) and substituting the words “received by the major payment institution or licensee (as the case may be)”;
- (p) by deleting the words “A major payment institution that contravenes subsection (2), (4), (9) or (10)” in subsection (11) and substituting the words “A major payment institution or licensee mentioned in subsection (1) that contravenes subsection (2), (9) or (10)”;
- (q) by deleting subsection (12) and substituting the following subsection:

“(12) A major payment institution or licensee mentioned in subsection (3) that contravenes subsection (4), (9) or (10), or fails to comply with any condition imposed under subsection (8), shall be guilty of an offence and shall be liable on conviction 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.”;

(*r*) by deleting subsection (13); and

(*s*) by deleting the definition of “relevant money” in subsection (14) and substituting the following definition:

““relevant money” —

(*a*) means any money —

(i) that is received —

(A) by a major payment institution from, or on account of, a customer in respect of any payment service mentioned in subsection (1)(*a*)(i), (ii) or (iii) or (3)(*a*);

(B) by a major payment institution prescribed for the purposes of subsection (1)(*b*) or (3)(*b*) from, or on account of, a customer in respect of any payment service prescribed in respect of the major payment institution; or

(C) by a licensee prescribed for the purposes of subsection (1)(*c*) or

(3)(c) from, or on account of, a customer in respect of any payment service prescribed in respect of the licensee; and

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(ii) that the major payment institution or licensee (as the case may be) —

(A) where subsections (1) and (2) apply — continues to hold at the end of each business day; or

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(B) where subsections (3) and (4) apply — has held at any time and (in the case of an e-money issuance service) has issued specified e-money in exchange for; but

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(b) does not include all of the following:

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(i) any money paid to the major payment institution or licensee (as the case may be) to reduce the amount owed to the major payment institution or licensee (as the case may be) by a customer;

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(ii) any money that is repaid by the major payment institution or licensee (as the case may be) to a customer;

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(iii) any money which is paid to the major payment institution or licensee (as the case may be), or which the major payment

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institution or licensee has informed a customer will be used, to defray any fee or charge imposed by the major payment institution or licensee for providing any payment service to a customer;

(iv) where a major payment institution or licensee carries on a business of providing a domestic money transfer service, a merchant acquisition service or an e-money issuance service, any money that is paid to, and received by, a recipient in accordance with instructions given by a customer of the major payment institution or licensee (as the case may be) to the major payment institution or licensee;

(v) where a major payment institution or licensee carries on a business of providing a cross-border money transfer, any money that is paid by the major payment institution or licensee (as the case may be) in accordance with instructions given by a customer of the major payment institution or licensee (as the case may be) to the major payment institution or licensee, whether or not the recipient has received that money;

- (vi) any money paid to any other person that is entitled to the money;”.

Amendment of section 94

5. Section 94 of the principal Act is amended —

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- (a) by deleting the words “An individual” in subsections (1) and (2) and substituting in each case the words “A person”;
- (b) by inserting, immediately after subsection (1), the following subsection:

“(1A) Subsection (1) applies only where no other provision of this Act creates an offence in connection with the provision of information that is false or misleading in a material particular.”; and

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- (c) by deleting subsection (3) and substituting the following subsection:

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“(3) A person who 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 \$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.”.

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Amendment of section 103

6. Section 103(3) of the principal Act is amended by inserting, immediately after paragraph (a), the following paragraph:

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“(aa) may relate to all, or any class, category or description of persons or payment services, and may make different provisions for different classes, categories or descriptions of persons or payment services or to a particular person or payment service;”.

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Amendment of First Schedule

7. The First Schedule to the principal Act is amended —

(a) by deleting sub-paragraphs (k) and (l) of paragraph 2 and substituting the following sub-paragraphs:

“(k) any digital payment token service that is provided, in respect of any central bank digital payment token, by any central bank or financial institution;

(l) any digital payment token service that is provided in respect of any limited purpose digital payment token.”;

(b) by deleting the word “either” in the definition of “cross-border money transfer service” in paragraph 3 and substituting the word “any”;

(c) by inserting, immediately after paragraph (b) of the definition of “cross-border money transfer service” in paragraph 3, the following paragraph:

“(c) any service of arranging for the transmission of money from any country or territory to another country or territory, whether as principal or agent (other than any such service that the Authority may prescribe);”;

(d) by inserting, immediately after the definition of “digital payment token exchange” in paragraph 3, the following definition:

““digital payment token instrument” means any password, code, cipher, cryptogram, private cryptographic key or other instrument that enables a person —

(a) to control access to one or more digital payment tokens; or

(b) to execute a transaction involving one or more digital payment tokens;”;

(e) by inserting, immediately after paragraph (b) of the definition of “digital payment token service” in paragraph 3, the following paragraphs:

- “(c) any service of accepting (whether as principal or agent) digital payment tokens from one digital payment token account (whether in Singapore or elsewhere), for the purposes of transmitting, or arranging for the transmission of, the digital payment tokens to another digital payment token account (whether in Singapore or elsewhere); 5
 - (d) any service of arranging (whether as principal or agent) for the transmission of digital payment tokens from one digital payment token account (whether in Singapore or elsewhere) to another digital payment token account (whether in Singapore or elsewhere); 10
 - (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 payment token in exchange for any money or any other digital payment token (whether of the same or a different type); 15
 - (f) any service of safeguarding a digital payment token, where the service provider has control over the digital payment token; 20
 - (g) any service of carrying out for a customer an instruction relating to a digital payment token, where the service provider has control over the digital payment token; 25
 - (h) any service of safeguarding a digital payment token instrument, where the service provider has control over one or more digital payment tokens associated with the digital payment token instrument;
 - (i) any service of carrying out for a customer an instruction relating to one or more digital payment tokens associated with a digital payment token instrument, where the service provider has control over the digital payment token instrument;” 30
- (f) by deleting the words “, in any case where neither the payer nor the payee is a financial institution” in the definition of “domestic money transfer service” in paragraph 3 and substituting the words “(except in the case where both the payer and the payee are financial institutions)” 35

(g) by deleting the word “and” at the end of paragraph 4(a)(iv); and

(h) by deleting the full-stop at the end of sub-paragraph (b) of paragraph 4 and substituting the word “; and”, and by inserting immediately thereafter the following sub-paragraph:

“(c) a person has control over a digital payment token whether the person has control over the digital payment token solely or jointly with one or more other persons.”.

Saving and transitional provision

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

EXPLANATORY STATEMENT

This Bill seeks to amend the Payment Services Act 2019 (Act 2 of 2019) (the Act) for the following purposes:

- (a) to widen the definition of “digital payment token service” in order to regulate activities of virtual asset service providers required to be regulated under new standards adopted by the Financial Action Task Force (FATF) on anti-money laundering and countering the financing of terrorism;
- (b) to widen the definition of “cross-border money transfer service” to include transmission of money between 2 countries, arranged by a payment service provider in Singapore, in order to deal with money laundering, terrorism financing, and reputational risks to Singapore, arising from such transmissions of money;
- (c) to expand the powers of the Monetary Authority of Singapore (the Authority) to make regulations imposing additional requirements on licensees that provide digital payment token services;

- (d) to widen the definition of “domestic money transfer service” such that the definition applies except where both the payer and the payee of a transaction executed under the service are financial institutions;
- (e) to provide that the requirement under section 94 to use reasonable care to ensure that information provided to the Authority for the purposes of the Act is not false or misleading in any material particular, and to use reasonable care to ensure that any document lodged with the Authority is not false or misleading in any material particular, extends to all persons, whether or not the person is an individual;
- (f) to provide that, in relation to the obligations under section 23 to safeguard money received from customers, the Authority may prescribe particular classes of licensees or classes of payment services to which the obligations apply;
- (g) to make miscellaneous and technical amendments.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) (Interpretation) to insert a new definition of “digital payment token account”, a term which means any account, or any device or facility (whether in physical or electronic form), that contains digital payment tokens, and also to insert a new definition of “digital payment token instrument”, a term which is defined in the First Schedule (as amended by clause 7).

Clause 3 inserts a new section 21A (Additional requirements in respect of licensee providing digital payment token service) to require a licensee that provides a digital payment token service to satisfy certain new requirements that may be prescribed by regulations (to be made under section 103(1)). The requirements that may be prescribed include requirements relating to the following:

- (a) the extent to which assets (including digital payment tokens) belonging to a customer held by the licensee may be commingled with other assets (including other digital payment tokens) held by the licensee;
- (b) the maintenance in a prescribed manner of a prescribed amount or percentage of assets (including digital payment tokens) by a licensee;
- (c) the safeguarding of customer assets (including digital payment tokens) in the event of the insolvency of the licensee;
- (d) insurance against the risk of insolvency of the licensee;
- (e) the manner of dealing with customers for the purposes of safeguarding customers’ assets (including digital payment tokens), protecting data and safeguarding digital payment token instruments;

- (f) the disclosure of certain information to customers;
- (g) the monitoring of customers' digital payment token accounts and assets (including digital payment tokens);
- (h) the standards and processes to safeguard against unauthorised use of customers' assets (including digital payment tokens) and digital payment token instruments, and to protect against unauthorised use and disclosure of data;
- (i) the amount of digital payment tokens that can be contained or transferred from a digital payment token account and which a licensee can hold or transfer;
- (j) the exchange of digital payment tokens for Singapore currency;
- (k) the use of moneys collected in exchange for digital payment tokens for any business activity of the licensee;
- (l) the use of digital payment tokens for any business activity of the licensee.

A licensee must also satisfy requirements prescribed in regulations made under section 103(1) relating to matters that the Authority considers necessary or expedient in the interest of the public or a section of the public, the stability of the financial system in Singapore, or the monetary policy of the Authority. Contravention of the requirements prescribed in the regulations is an offence. The regulations may provide for a specific maximum penalty, set out in the new section 21A(3), for the contravention of certain requirements. Where no specific maximum penalty is set out, the regulations may provide for the maximum penalty set out in section 103(3).

Clause 4 amends section 23 (Safeguarding of money received from customer).

Clause 4(a) amends section 23(1) to refine and extend the scope of application of section 23(2). The amended section 23(2) will apply to any prescribed major payment institution in respect of a prescribed payment service (other than a domestic money transfer service, a cross-border money transfer service or a merchant acquisition service), instead of every prescribed major payment institution in respect of a prescribed payment service. The amended section 23(2) is extended to apply, additionally, to any prescribed licensee (other than a major payment institution) in respect of a prescribed payment service.

Clause 4(b), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n) and (o) amends section 23 to include a reference to a licensee wherever there is a reference to a major payment institution (consequential to the amendments to section 23(1) and (3)).

Clause 4(c) amends section 23(3) to refine and extend the scope of application of section 23(4). The amended section 23(4) will apply to any prescribed major

payment institution in respect of a prescribed payment service (other than an e-money issuance service), instead of every prescribed major payment institution in respect of a prescribed payment service. The amended section 23(4) is extended to apply, additionally, to any prescribed licensee (other than a major payment institution) in respect of a prescribed payment service.

Clause 4(*g*) amends section 23(5)(*d*) to include an express reference to “digital payment tokens” where there is a reference to e-money.

Clause 4(*p*) amends section 23(11) to set out the penalties for a contravention of section 23(2), (9) or (10) by a major payment institution or licensee mentioned in section 23(1).

Clause 4(*q*) deletes and substitutes section 23(12). The new section 23(12) sets out the penalties for a contravention of section 23(4), (9) or (10), or a failure to comply with any condition imposed under section 23(8), by a major payment institution or licensee mentioned in section 23(3). The existing section 23(12) is no longer necessary because the amendments made by clause 4 apply section 23 expressly to a prescribed licensee (other than a major payment institution) in respect of a prescribed payment service.

Clause 4(*r*) deletes section 23(13). The existing section 23(13) is no longer necessary because of the amendments made by clause 4(*g*) (to include an express reference to “digital payment tokens” where there is a reference to e-money or specified e-money) and clause 4(*s*) (to clarify that the part of the definition that refers to money for which the major payment institution or licensee has issued specified e-money in exchange applies only in the case of an e-money issuance service) (explained below).

Clause 4(*s*) deletes and substitutes the definition of “relevant money” in section 23(14). Among other amendments, paragraph (*a*)(ii)(B) of the new definition clarifies that the part of the definition that refers to money for which the major payment institution or licensee has issued specified e-money in exchange applies only in the case of an e-money issuance service. The words “paid to a recipient” in paragraph (*b*)(v) of the existing definition are substituted with the words “paid by the major payment institution or licensee (as the case may be)” in the new definition to clarify that the money referred to in that paragraph need not have been received by the intended recipient of the money.

Clause 5 amends section 94 (General duty to use reasonable care not to provide false information to Authority) to provide that section 94(1) and (2) (relating to the duty to use reasonable care to ensure that information or any document provided to the Authority is not false or misleading in any material particular) applies to persons, instead of individuals only. The new section 94(1A) provides that section 94(1) applies only where no other provision of the Act creates an offence in connection with the provision of information that is false or misleading in a material particular. The existing section 94(3) is substituted with a new

section 94(3) to set out the penalties for a contravention of section 94(1) or (2) by persons other than individuals (in addition to the penalties for a contravention by individuals).

Clause 6 amends section 103(3) (Power of Authority to make regulations) to provide that regulations made under section 103 may relate to all, or any class, category or description of persons or payment services, and may make different provisions for different classes, categories or descriptions of persons or payment services or to a particular person or payment service. For example, regulations made under section 103 for the purposes of the new section 21A(1) may apply only to a particular class of licensees that provide a digital payment token service, or only to licensees that provide a particular category of digital payment token services.

Clause 7 amends the First Schedule (Payment services).

Clause 7(a) amends the exclusions from the definition of “payment service” under paragraph 2(k) and (l) of the First Schedule, consequential to the amendments to the definition of “digital payment token service” made by clause 7(e). Any digital payment token service that is provided, in respect of any central bank digital payment token, by any central bank or financial institution, and any digital payment token service that is provided in respect of any limited purpose digital payment token, is excluded from the definition of “payment service”.

Clause 7(b) and (c) expands the definition of “cross-border money transfer service” to include any service of arranging for the transmission of money from any country or territory to another country or territory, whether as principal or agent (other than a service prescribed by the Authority).

Clause 7(d) inserts a new definition of “digital payment token instrument”, which means any password, code, cipher, cryptogram, private cryptographic key or other instrument that enables a person to control access to one or more digital payment tokens or to execute a transaction involving one or more digital payment tokens. A private cryptographic key is a form of cryptography that allows a user of a digital payment token account to access his or her digital payment tokens contained in the digital payment token account.

Clause 7(e) widens the definition of “digital payment token service”. The following services fall within the new definition:

- (a) any service of accepting (whether as principal or agent) digital payment tokens from one digital payment token account (whether in Singapore or elsewhere), for the purposes of transmitting, or arranging for the transmission of, the digital payment tokens to another digital payment token account (whether in Singapore or elsewhere);

- (b) any service of arranging (whether as principal or agent) for the transmission of digital payment tokens from one digital payment token account (whether in Singapore or elsewhere) to another digital payment token account (whether in Singapore or elsewhere);
- (c) 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 payment token in exchange for any money or any other digital payment token (whether of the same or a different type);
- (d) any service of safeguarding a digital payment token, where the service provider has control over the digital payment token;
- (e) any service of carrying out for a customer an instruction relating to a digital payment token, where the service provider has control over the digital payment token;
- (f) any service of safeguarding a digital payment token instrument, where the service provider has control over one or more digital payment tokens associated with the digital payment token instrument;
- (g) any service of carrying out for a customer an instruction relating to one or more digital payment tokens associated with a digital payment token instrument, where the service provider has control over the digital payment token instrument.

Clause 7(f) amends the definition of “domestic money transfer service” such that the definition applies except where both the payer and the payee of a transaction executed under the service are financial institutions. In contrast, the existing definition does not apply where either the payer or the payee is a financial institution.

Clause 7(g) and (h) amends paragraph 4 to provide that, for the purposes of the First Schedule, a person has control over a digital payment token whether the person has control over the digital payment token solely or jointly with one or more other persons.

Clause 8 empowers the Minister to prescribe provisions of a saving or transitional nature consequent on the enactment of any amendment, by way of regulations in the *Gazette* which must be made within a 2-year time limit.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
