

# Recommendations for Regulating and Supervising Bank and Non-bank Payment Service Providers Offering Cross-border Payment Services: Consultation report

## Response to Consultation

### Emerging Payments Association Asia

#### *Introduction*

- 1. Do the definitions contained in the report provide sufficient clarity and establish the common understanding necessary to facilitate the practical implementation of recommendations proposed in this report?**

The definitions in the consultation report provide sufficient clarity and a common understanding. We would agree that having clear definitions is a critical part of this process, importantly to provide a shared understanding and to avoid unnecessary confusion. This is particularly important in payments as often the same term can have a different meaning depending on the geography where it is being used and whether the term is being used in business, legal / regulatory or technological context.

- 2. What adjustments are required to the draft definitions to improve clarity?**

The definitions provided in the consultation report do raise some questions that could benefit from some further refinement. For example, there could be some benefit from the FSB providing further clarification as to the application of activity vs entity-based regulation “based on a determination whether particular activity risks could be significant in the context of the overall national financial system even though failure to manage such risks may not necessarily affect the overall safety and soundness of the entity conducting the activity.”

- 3. What other terms should be defined in this section?**

There are, however, a number of important terms that are used extensively throughout the consultation report yet are not defined. For example, “bank” and “non-bank” are used throughout, yet never really defined, despite numerous references to their operating models, regulation, and inherent risk. Further, critical terms such as “consistency” are used throughout, yet are not fully defined or explained.

As the G20 cross-border payments initiative continues, we would also call for consideration of definitions around terms such as digital wallets, that are commonly used but often describe different things.

**4. Does the explanation regarding the scope of the report provide sufficient clarity to promote the intended understanding of the recommendations?**

We believe the scope of the consultation report provides clarity, though there may be value in considering the impact that these efforts have beyond the bank / non-bank regulated entities, for example the benefits and impact to end-user including businesses, merchants and individual consumers who use these services.

We would also like to emphasize that the focus of this work needs to remain on a proportional, risk-based regulatory approach that can be harmonized across borders. It should also ensure that any new regulations should avoid duplications or unnecessary regulatory burdens that impose costs and create inefficiencies.

*Section 1: The role of banks and non-banks in cross-border payments*

**5. Do the descriptions of the roles of banks and non-banks in providing cross border payment services adequately reflect current practices?**

Proportional and risk-based regulation for banks and non-banks is key to facilitating greater access to safe, fast, inexpensive, and useful payments. We support the principle of “same activity, same risk, same regulation” as a basis for developing regulatory frameworks that are fit for purpose. These regulatory frameworks should balance the need to protect end-users against harm while recognizing the commensurate roles and responsibilities of different players across the ecosystem.

We have some concerns about the inference in the consultation report that non-banks have greater inherent risk (for example in relation to money laundering or terrorist financing risk) or are somehow less able to manage their fraud risk or operational risk.

We would also note this applies to the consultation report’s description of the risk associated with newer technologies for instance noting that “Consumers may be generally unfamiliar with the products they are using and the related distribution technologies. They could be exposed to a higher prevalence or new types of fraud or unauthorised payments.” It could be argued that consumers actually have a poor understanding of the technologies that underpin modern cash and cheques, yet they still feel they can use and trust them. In the end, it is about trusting the instrument and understanding the risks as opposed to expecting consumers to actually understand the underlying technology being used.

Further, there is significant diversity across banks and non-banks globally. Just as there are individual non-banks that struggle with managing their risk, there will be banks that also struggle. There are also individual non-banks that are leading edge in terms of their ability to manage their fraud, ML/TF and operational risks. Simplistic dualism between does little to advance the debate and misses out on the nuances and diversity across the ecosystem. It also masks what are often complex chains of transactions with numerous intermediaries involved, not just those who provide accounts or interact directly with end-users.

Lastly, while there remains “inconsistent regulation and supervision of PSPs (in particular non-bank PSPs)”, it could be argued this also applies to bank PSPs as well, given the global inconsistencies around privacy, AML/CTF, and consumer protection.

## *Section 2: Cross Border Payment Frictions and Risks*

- 6. What additional risks or frictions, within the scope of this report, are created by potential inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payment services?**

Given the concerns noted above, we feel it is important that the FSB-led processes be grounded in data and research. This is important so that regulatory standards are properly applied on the basis of “same activity, same risk, same regulation” and that requirements are properly applied and proportionate to the risk created by the nature of the activity and not based on the entity in question or the geographies they operate in.

## *Section 3: Principles for developing recommendations*

- 7. Do the identified principles provide sufficient support and appropriately frame boundaries for the recommendations in the report?**

Harmonizing regulations and promoting regulatory interoperability can facilitate efficiency gains for regulated entities, consumers, businesses and merchants and help make digital payments more affordable, accessible, and inclusive.

Regulatory harmonization should be evidence-based and undertaken in a manner that manages risk and promotes efficiency. Any coordinated “whole of government” approach should involve a broad range of impacted regulators and foster alignment both within and across jurisdictions and areas of regulation.

We would also note that partnerships to develop digital public goods can further enhance the provision and implementation of much needed infrastructure and facilitate progress for innovative outcomes.

## *Section 4: Recommendations for improving alignment of PSP regulatory and supervisory regimes*

- 8. Are the recommendations sufficiently granular, actionable, and flexible to mitigate and reduce frictions while accommodating differences in national legal and regulatory frameworks and supporting the application of proportionality?**

As already noted, there appears to be an inference in the consultation report that non-bank PSPs create more money laundering and terrorist financing risk than banks due to their business models (for example, occasional payments and reliance on agent networks) and geographic operation (within developing markets and populations where banks are less prevalent).

Any such assessment should be based on data and rigorous analysis, and ideally include an analysis of risk after mitigation.

Lastly, we believe there needs to be a recognition that in many jurisdictions, non-bank PSPs are may be subject to the same or similar regulatory requirements as banks.

**9. To what extent would the recommendations improve the quality and consistency of regulation and supervision of non-bank payment service providers (PSPs) active in cross-border payments services?**

In addition to the comments already made, we believe the analysis would benefit from a better recognition of global diversity. There is an inference in the consultation report that banks are all the same and regulated the same way, but non-bank PSPs are diverse and regulated inconsistently. We believe that the regulation of banks is less uniform than implied in the consultation report and this needs to be better reflected in any work taken forward.

**10. For the purpose of identifying material areas to be addressed from a priority and effectiveness perspective, should the report categorise the identified frictions created by inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payments services in terms of focus or order in which they should be addressed?**

We would concur that a thorough mapping of identified frictions and inconsistencies could be a useful first step before prioritisation and help to focus on impactful activities.

**11. Recommendation 5 focuses on domestic licensing. How and to what extent would licensing recognition regimes between jurisdictions support the goal of strengthening consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services? What risks need to be considered?**

We strongly support the creation of licensing recognition regimes across jurisdictions. These would have multiple benefits, including reducing regulatory costs. If there is also greater alignment between licensing conditions, then there could be further efficiencies as well as a reduction in opportunities for regulatory arbitrage. We would also note that these benefits will be best achieved through multilateral arrangements as opposed to bilateral recognition.

**12. There are no comprehensive international standards for the regulation, supervision and oversight of non-bank PSPs and the cross-border payment services that they offer. Is there a need for such international standards?**

We support the development and alignment of international standards, including for consumer protection. It is important not only to establish such standards but to ensure consistent implementation and enforcement across various jurisdictions.

While the G20 / OECD High-Level Principles on Financial Consumer Protection appear acceptable on an initial review, we would note that they are very high level and do not have a high degree of visibility within the payments ecosystem community. On this basis, further work may be required.

As is the case with any form of mutual recognition, cross-border recognition should ideally be multilateral.

*General*

**13. What, if any, additional issues relevant to consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services should be considered in the report?**

As noted in the consultation report, we would concur that regulatory regimes that are unified under one or a small number of distinct regulators is preferable to fragmented regulation.

We would concur that the state-based regulation found in the United States can impose significant costs on both bank and non-bank PSPs. More unified regulatory frameworks, such as those found in Singapore with the MAS playing the role as primary regulator, can provide better outcomes.

Once again, thank you for the opportunity to comment on this. We are more than happy to expand further on the items raised in this submission or to provide further information. If you do have any comments or questions, please feel free to contact EPAA's Policy Lead, Dr Brad Pragnell at [brad.pragnell@34south45north.com](mailto:brad.pragnell@34south45north.com).