FINANCIAL STABILITY BOARD

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

Response to Consultation

Standard Chartered PLC

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?**

   Yes, they are clear and relevant but certain adjustments may be required to clarify the scope (see example in question 2 below).

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

   For purposes of the report, "payments will cover all types of electronic funds transfers and instruments (e.g. cheques, credit transfers, direct debits, card payments, e-money)". Clarity is sought to whether digital money such as e-money tokens are intended to be captured as it is unclear.

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

   We further recommend inclusion of the following:

   Service level agreements used in cross-border payment arrangements define minimum service levels for correspondent banking relationships, the links between payment systems and payment instrument rulebooks.

   Consistent definition of On-Boarding Criteria, Allowed Settlements, and adherence to standard Cross-Border Payment System Rules.

   Having a consistent set of criteria and rules is essential for smooth cross-border transactions. Without this standardization, differences in regulations, procedures, or security measures could lead to inefficiencies, increased risks, and potential conflicts between jurisdictions.

   With regards to domestic vs. cross-border/one-leg-out transfers, the following should be taken into consideration:

The originating and receiving parties;

Rules around nested transactions, and;

Related payment transparency/travel rule requirements, where payment details are retained in the end-to-end payment flow.

There should be definitions of competent authorities.

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

Being clear upfront on the application of the recommendations by the various standard-setters (SSBs), and interaction with current regulations would be helpful. Some points of consideration include:

Are SSBs and national jurisdictions signed-up to operationalise these recommendations?

Is there scope for conflict with existing regulation?

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?

The description is sound and reflects current practices.

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?

Existing entity-based regulatory frameworks for banks are well-developed in terms of risk management, accompanied by an established supervisory approach from national authorities.

For non-banks, the regulatory framework at an ‘entity-level’ is often less appropriate, and activity-based regulation is less developed. This means that certain risks - e.g. operational risk in underlying technology infrastructure, and practical governance standards – may be handled differently between banks and non-banks.

There are also different national standards in information requirements and data-handling – some of which include barriers to sharing data cross-border. Given one of the proposed benefits of digital payments is the ability to bundle higher-quality data with payments instructions, such data-sharing limitations may reduce the benefits that digital innovation may bring.

Section 3: Principles for developing recommendations

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

   As a general approach, it could be argued that current frameworks are biased towards a focus on risks (whether systemic or institutional), rather than efficiency; resilience over innovation; and consumer protection over consumer provision.

   The principle on "safe, resilient, and efficient systems" is supported. However, any cross-border framework needs to be able to handle innovation balancing systemic resilience with speed-to-market – both of which benefit consumers.

   The "cooperation principle" is fundamental to the cross-border concept. To ensure systemic resilience and efficiency, we support clear international standards and a consistent supervisory approach, including in the information requirements, rather than international guidance accompanied by an additional national layer of regulation and supervisory requests. Ensuring that this report and the Priority 7 work is ambitious and fully aligned will be crucial.

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?**

   The FSB's recommendations are sufficiently flexible and adaptable to mitigate and reduce regulatory frictions while accommodating differences in national frameworks. However, the high-level nature of the recommendations means that further work may be needed at the national level to ensure they are actionable and granular enough to be effective in practice. The effectiveness of these recommendations will depend on the willingness and capacity of national regulators to implement the recommendations in a way that balances global alignment with local needs.

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?**

   We support "same activity, same risk, same rule" as an operating principle across regulation. A general application of activities-based lens for the regulation and supervision of cross-border payments would help in providing alignment and consistency in rules coverage, application and conduct between banks and non-banks.

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?**

Given limitations of regulatory resources, the frictions should be prioritised according to systemic importance, value-chain sequencing, and sectoral stakeholder impact.

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?**

Facilitating Cross-Border Operations:

Mutual Recognition: Licensing recognition regimes, such as mutual recognition agreements, allow PSPs licensed in one jurisdiction to operate in another without needing to undergo a full licensing process again. This reduces the administrative burden and cost for PSPs and encourages more seamless cross-border payment services.

Passporting Mechanisms: Similar to the European Union's passporting rights, where a license in one member state allows a PSP to operate across the EU, implementing such mechanisms globally would promote regulatory consistency and ease of operation across borders.

Enhancing Regulatory Consistency:

Standardization of Requirements: Licensing recognition regimes encourage jurisdictions to align their regulatory requirements. When a country agrees to recognize another's license, it implicitly trusts that the other jurisdiction's regulatory standards are sufficiently robust, leading to greater consistency in regulation.

Common Standards and Best Practices: These regimes can drive the adoption of common standards and best practices across jurisdictions, as countries may align their regulations to be part of a recognition agreement.

Promoting Supervisory Coordination:

Information Sharing: Licensing recognition regimes often involve agreements for ongoing information sharing between regulators, enhancing supervisory coordination. This ensures that risks are monitored consistently across borders.

Joint Supervisory Frameworks: Some recognition regimes could involve joint supervisory frameworks where regulators from multiple jurisdictions cooperate in overseeing cross-border activities of PSPs.

The types of risks that need to be considered include:

Regulatory Arbitrage: If licensing recognition is granted between jurisdictions with significantly different regulatory standards, PSPs might exploit these differences, choosing to operate from jurisdictions with less stringent requirements. This could undermine the overall regulatory framework's effectiveness.

Uneven Enforcement: Even with recognition regimes, the level of supervisory rigor might vary between jurisdictions. This could lead to uneven enforcement of regulations, with some PSPs facing stricter oversight than others, creating an unlevel playing field.

Systemic Risk Propagation:

Cross-Border Risk Transmission: Licensing recognition can facilitate the rapid expansion of PSPs across borders, which could amplify systemic risks if one provider encounters difficulties. The interconnected nature of cross-border payments means that issues in one jurisdiction could quickly spread to others.

Crisis Management: During a financial crisis, it may be challenging to coordinate actions between jurisdictions, especially if a PSP operates under different regulatory regimes. This could complicate resolution efforts and increase systemic risk.

Consumer Protection Variances: Variations in consumer protection laws between jurisdictions could lead to gaps in protection for customers using cross-border payment services, especially if one jurisdiction's standards are lower.

Careful consideration of potential risks is crucial to ensure that these regimes do not inadvertently introduce vulnerabilities into the financial system. Effective coordination between jurisdictions, alongside strong regulatory standards, is essential to mitigate these risks.

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?

Given the central role of banks in the financial system, it has been natural that regulation and supervision have been largely aimed at them. However, in a context where diversity of supply in financial services has been a recent policy aim, and where new financial technologies are being launched to market by a broader variety of non-bank providers there is a need (systemic resilience and a level playing field for all providers) for international standards in activities which mirror those of banks.

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?

There is no primary international coordinating body for payments – noting that while the FSB’s own membership may make it a suitable place to convene a discussion on such standards (as now), it somewhat stretches its operating mandate. A coordinating committee which brings together FATF, IOSCO, BCBS, MiFid. CPMI, the FSB and other relevant cross-border payments bodies would be welcome.

The coverage and consistent treatment across national systems of technology-based CASA, M1, M2, M3 should be further emphasized. Tokens are 1 possible expression of this but the overall policy level trend should address alternative methods to create commercial bank money in any form that allows for it to move freely across borders, entities, use cases, asset classes and local RTGS.