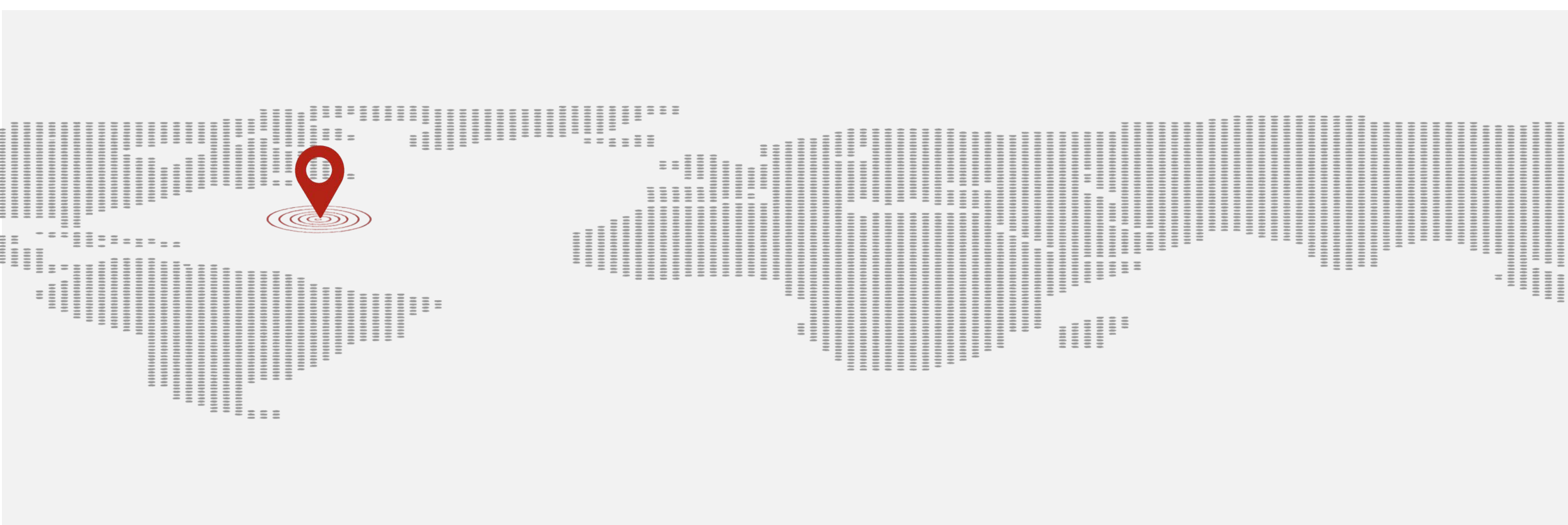
Tuesday, 15 April, 2025

DISCUSSION PAPER

Payment Services Provider Regulatory Framework

Comments to be received by 15 May 2025



Contents

INTRODUCTION

1. This Discussion Paper (DP) represents the initial step towards a comprehensive proposal to modernise Bermuda's legislative framework for Payment Services Providers (Framework). It invites feedback from stakeholders to clarify the scope, objectives, and preliminary concepts for the potential regulatory framework. Additionally, the DP aims to clearly define the intended regulatory perimeter and the policy goals that drive the initiative. It does not represent a legislative proposal at this stage but rather seeks stakeholder input to inform future legislative developments.

2. The proposed Framework intends to modernise Bermuda's approach to payment services regulation by outlining a clear, robust and consistent regulatory structure that reflects the evolving payments landscape. It proposes to streamline licensing through defined licence categories aligned to the Bermuda Monetary Authority's (Authority or BMA) principles and business models. The Framework also aims to implement risk-based regulatory standards, align Bermuda's regulatory practices with international principles and encourage technological innovation.

3. Given the significance and complexity of introducing an entirely new legislative and regulatory architecture, it is vital to receive detailed input from all relevant stakeholders. Comprehensive engagement through this DP is critical for thoroughly understanding the range of risks associated with modern payment systems and ensuring that the legislative framework eventually proposed is robust, balanced and fit for purpose. The feedback obtained from this initial DP will inform critical areas requiring further detailed exploration in a subsequent Consultation Paper (CP).

4. As such, industry and other stakeholders are invited to provide feedback on the proposals outlined in this paper and its attachments by emailing their comments to fintech@bma.bm by the close of business on 15 May 2025.

OBJECTIVES

5. The objectives of this Framework are:

   I. Establish a unified, cohesive and future-proof payments regulatory framework, including a new Payment Services Act (PSA);

   II. Implement principles of proportionality and a risk-based approach for Payment Service Providers (PSPs);

III. Align with the Authority's commitment to assist in preventing financial crime and ensuring consumer protection;

IV. Replace the Money Service Business Act 2016 (MSB Act) and streamline the process for firms seeking multiple licences;

V. Encourage technological advancements and sustainable innovation; and

VI. Align Bermuda's payment regulatory framework with international principles and best practices.

BACKGROUND

6. The payments landscape is undergoing rapid evolution, characterised by the convergence of technology and payments. The emergence of sophisticated business models and enhancements in user experience underscore the necessity for a progressive shift in the regulatory approach to payment systems.

7. Defining this 'hybrid' sector is a valuable step towards maintaining effective and proactive regulatory frameworks while supporting responsible innovation locally and in global markets.

8. Domestically, implementing a unified, modernised payments framework is essential to facilitating seamless economic operations within Bermuda by enhancing consumer protection and fostering a more secure and efficient value transfer mechanism. At the international level, a modernised payments framework paves the way for sustainable business practices and responsible innovation, enabling solutions that meet customer needs.

9. Sound payment systems bolster financial stability by mitigating the risks associated with financial transactions and facilitating seamless payment flows that are vital for economic activities. They also aid in the development of the financial sector in Bermuda by instilling confidence in the use of payment services among consumers and businesses. Additionally, they provide a conduit for interactions with global markets. As payment innovations advance, significant potential emerges to boost productivity, enhance consumer benefits and drive innovation.

10. In recent years, the momentum of change has amplified. This is partly due to consumer behaviour adapting in response to the COVID-19 pandemic but also largely due to the digitisation of everyday services. This shift is becoming evident in almost all payment systems, from in-person transactions to online shopping, and accompanies a growing

demand for instantaneous, seamless payment experiences. Concurrently, there is a decreasing reliance on physical payment forms, such as cash and cheques, with a surge in contactless card payments. These global payment system trends are also being reflected in Bermuda, where increasing payment complexities present international regulatory challenges.

11. Technology-driven businesses have entered the market, offering services in areas like online payment processing, digital wallets and point-of-sale payment acceptance. Additionally, digital platforms are increasingly integrating payment services alongside their existing offerings by leveraging their customer bases and connectivity to enhance payment accessibility and convenience.

12. As financial interactions increasingly shift to digital platforms, the necessity for efficient and reliable payment arrangements has never been more apparent. Integral to this endeavour are secure payment systems bolstered by stringent technological, organisational and governance standards. They hold significant potential to revolutionise transactions across various sectors, thereby marking a significant leap in the journey towards a fully digitised financial landscape.

13. In the payments sector, technological innovation is continuous, with advancements such as comprehensive cloud-based solutions, secure mobile technologies, concurrent transaction handling capabilities, and the adoption of advanced approaches like Artificial Intelligence (AI) and machine learning becoming increasingly widespread.

14. Given this rapid pace of innovation, the Authority considers the MSB Act to have reached a point where new legislation is necessary to adequately reflect the significant evolution that has occurred in the payments industry. The introduction of a new regulatory payment framework presents numerous advantages. These encompass supporting responsible innovation locally and globally, including adopting payment technology (e.g., programmability), enhanced consumer protection, promoting financial inclusion, and transparent regulatory guidelines for existing and new PSPs.

15. To provide clarity, the existing MSB Act will be superseded by a new, modernised payments framework, which will revise the scope of licensable activities under the MSB regime and consider the introduction of a transitional period to enable currently regulated firms to adapt to the new requirements.

16. The Authority aims to create a regulatory environment that strikes a balance between innovation, safety and trust. This approach involves recognising the specificities of the payments industry, assessing the potential implications to consumers and the financial system overall and streamlining administrative procedures.

17. In drafting this proposed Framework, the Authority has considered principles and best practices gleaned from international standard-setters in primary jurisdictions, such as

Australia, Singapore and Europe. These are jurisdictions that have recently revised and/or updated their payment frameworks, as well as strategies adopted in peer jurisdictions.

KEY PROPOSALS

TYPES OF PAYMENT SERVICE PROVIDERS

18. It is proposed that operators engaging in the following types of PSP activities or offering the following products will come under the regulatory purview of the PSA.

Digital Wallet Providers

19. Digital Wallets Providers (DWPs) are a type of payment service that stores a certain value, typically digitally or on a physical device. This value is prepaid by the user and can then be used for various transactions, including the purchase of goods and services.

20. DWPs are playing an increasingly important role in the financial sector, providing customers with a convenient and efficient way to transact, store and manage value. As the shift towards cashless transactions accelerates and is driven by technological advancements, DWPs have become essential to modern financial ecosystems. This category differs from the custodial digital wallet provider under the Digital Asset Business Act 2018 (DABA), which is defined as '*provision of the services of storing or maintaining digital assets or a virtual wallet on behalf of a client*'. Instead, DWPs represent an aggregation of different configurations for payment solutions that can be accepted as a means of payment and facilitate transactions.

21. The DWP category clearly defines undertakings focused on facilitating payments, distinguishing them from 'digital asset' or 'custody' services. They operate as part of a payment ecosystem, often integrating with merchants and payment service providers, without necessarily providing long-term asset safekeeping.

22. The subsequent attributes detail the definition of DWPs in the context of the proposed PSA:

    I. DWPs facilitate the transfer of value from their customers into a designated account or facility maintained by the DWPs, essentially defining the DWPs' service as a type of storage or prepaid facility;

    II. Customers using DWPs have flexibility in using the stored value for multiple purposes, such as purchasing goods or services or transferring value to others;

III. Resources stored in DWPs can be stored in various forms and on various platforms. They can be stored in online accounts or embodied in physical or virtual devices (e.g., virtual cards), offering a broad spectrum of service channels to users;

IV. DWPs embrace a broad interpretation of 'value'. The proposed definition intentionally remains flexible regarding the nature of the assets stored. This allows DWPs to accommodate different legal and practical configurations — for instance, temporarily storing consumers' financial assets or holding contractual obligations that enable third parties, such as AI agents, to execute payments on behalf of consumers.

23. Illustrative examples of undertakings currently falling under the MSB Act that would typically be categorised as DWPs include, but are not limited to, those that provide the following services:

I. Issuing, selling, or redeeming drafts, money orders, or traveller's cheques.

24. For clarity, the following are not considered DWPs:

I. Gift and/ or loyalty digital wallet providers; and

II. Providers of facilities that store value, such as debentures or interests in managed investment schemes, which are not compatible with payment transactions.

Definition - Digital Wallet Provider

Any undertaking who issues and administers a payment product or service by receiving value, which is stored electronically or on a physical device, and used for making payments, transferring funds, or withdrawing stored value at a future point in time.

Q1. Do you agree with the defined scope of the 'DWPs' activity? Are there any services that have not been captured by the definition that should be included (or that are included but, in your view, they shouldn't be)?

Payment-Handling Providers

25. Payment-Handling Providers (PHPs) are entities that engage in the receipt and handling of money or monetary value from payers, primarily for transmitting equivalent amounts to designated payees. PHPs hold, process, or directly interact with these funds, including situations where currency conversion or foreign exchange services are part of the overall service provided.

26. PHPs perform a critical role within the payments ecosystem by facilitating secure and timely transfers between payers and payees. This function is integral to payment services, particularly in a financial landscape that increasingly relies on electronic and digital methods for transactions.

27. Illustrative examples of undertakings that may be categorised as PHPs include but are not limited to:

    I. Merchant acquirers;

    II. Payment facilitators and aggregators;

    III. Payout providers;

    IV. Other payment acceptance providers;

    V. Domestic or overseas remittance providers; and

    VI. Settlement intermediaries.

    Typically, PHP activities are distinguished by the direct involvement in the custody or transmission of funds, including situations where funds are held temporarily to facilitate the successful and secure transmission between payers and payees. Activities falling under the PHP definition inherently involve a short-term holding or temporary control of funds, specifically for the execution and settlement of a payment transaction.

28. The following activities (currently regulated under the MSB Act) would also typically fall under this second category of PSPs:

    I. Cash cheques written to customers (or cheque guarantee services);

    II. Money transmission; and

    III. Currency exchange.

29. For clarity, the following are not considered activities performed by PHPs:

    I. Facilitation of the initiation of payments (or some elements of the payment cycle) without holding or coming into contact with the funds;

II. Provision of payment initiation services, such as those authorised to initiate a one-time payment or recurring payments from a payer's account on their behalf but where the entity does not hold financial resources as part of its operations; and

III. Direct debit or direct credit services that send payment initiation messages to execute direct debit or credit requests on behalf of the payer but do not hold financial resources as part of its operations.

Definition - Payment-Handling Provider

Any undertaking carrying on a business activity involving the receipt of money or monetary value from a payer. This includes where currency conversion or foreign exchange services are integral to the service for the purpose of transmitting an equivalent amount to a specified payee or payees domestically or internationally, whether through electronic or physical means, and whether or not the payer or payee maintains an account with the provider.

Q2. Do you agree with the scope of the 'Payment-Handling Providers' activity as it is currently defined? Are there any services that have not been captured by the definition but should be included (or that are included but, in your view, they shouldn't be)?

Payment Technology Providers

30. Payment Technology Providers (PTPs) are entities that provide specialised technological services designed to facilitate and enable payment transactions. These providers operate without directly holding, accessing or controlling customer funds. Instead, their role is to manage critical elements of the payment process, including the secure transmission of data and payment credentials on behalf of customers.

31. PTPs differ from other payment providers primarily in their indirect involvement with funds. They facilitate the initiation, authentication or processing of transactions but do not take possession or custody of financial resources. Their operational risks primarily relate to transaction accuracy, cybersecurity and data privacy.

32. In contrast to PHPs, which act as a third party to the payment account housing the payer's funds, PTPs solely facilitate the payments. Unlike PHPs, they do not assume possession or control of the financial resources involved in the transactions.

33. Entities engaged in this activity typically include, but are not limited to, those providing the following services:

I. Services that are preliminary or necessary for sending or receiving payments (e.g., payments that pass through digital wallets or payment gateways);

II. Transfer and custody of data related to payments (e.g., payment credential operators);

III. The operation and management of payment platforms, pass-through digital wallets and similar services; and

IV. Provision of consolidated information on a consumer's multiple payment accounts, such as balances and transaction history.

34. For clarity, the following are not considered PTPs:

I. PSPs that have access to or hold financial resources during their operations;

II. Technical services provided to PSPs that do not directly enable payments or are not specific to payment transactions, such as cloud storage services, telecommunications networks, mobile devices and e-invoicing services; and

III. Payment systems as a whole or payment system operators (e.g., card networks).

Definition - Payment Technology Provider

Any undertaking providing services that facilitate payment transactions, including user authentication, transaction approval, routing determination, and the secure transfer of payment credentials (whether tokenised or not). This includes entities that enable customers, upon authorisation, to initiate payment instructions from their accounts held at other institutions, directing fund transfers from the payer to the payee—without ever holding, possessing or storing the funds at any stage.

Q3. Do you agree with the current scope of the 'Payment Technology Providers' category? Are there any services that have not been captured by the definition but should be included (or that are included but, in your view, they shouldn't be)?

Q4. Are there any payment activities or services that are not currently covered? Are there any emerging trends or innovations (e.g., embedded payments) that should also be considered?

LICENSING REGIME

35. No persons would be permitted to conduct PSP business in or from Bermuda unless licenced to do so by the BMA. The PSA will specify that conducting business without the requisite licence is a criminal offence and outline the penalties for such breaches.

36. The proposed licencing regime is intended to be an appropriately proportionate regime designed to encourage both confidence and innovation in the sector while affording adequate protection for customers.

37. Similar to the approach taken under the DABA, and in anticipation of a variety of businesses seeking to be licenced, the Authority will implement a tiered licencing structure based on criteria such as the applicant's previous experience and the maturity of their offering (given the critical nature of consumer protection) and its novelty (i.e., whether the business concept is proven).

38. The objective of the tiered licensing structure is to allow innovative entities in various stages of development to operate within a regulatory system that provides regulatory certainty and endeavours to ensure proportionality through phased regulation. This facilitates market entry and the development of the proof of concept by establishing a robust track record before a full licence is obtained.

39. The Authority proposes to implement the following tiered licencing structure:

    I. Class T (Testing) - a defined period licence for the express purpose of carrying out pilot or beta testing;

    II. Class M (Modified) - a defined period licence to scale up a business model that has previously been tested and is building a complete compliance programme;

    III. Class F (Full) - a full licence allowing entities to run a proven business model at scale with a fully developed compliance programme; and

    IV. Class PG (Professional Grade) - a licence designed for institutional-grade operators handling complex, high-value, and/or high-volume transactions exclusively to businesses, institutions, or high-net-worth individuals that possess distinct risk and business model requirements.

40. While encouraging innovation, the Class T and M licences will be restricted to ensure adequate consumer protection. The restrictions will depend upon the business model and its associated risks. Additionally, licence holders will be required to disclose to prospective clients the class of licence held.

41. Notwithstanding the rationale for the tiered licence approach, if an applicant is experienced and has a well-developed business model with requisite governance and risk management, then it may be possible for the applicant to bypass Classes T and M and be issued a Class F licence upon application.

42. The proposed framework takes into account the diverse landscape of payment services. After reviewing the initial feedback received from industry participants, the Authority aims to propose a licensing category tailored explicitly for the wholesale market. This will be referred to as the Professional Grade (PG) licence and would carve out some protections designed for retail customers.

43. The Authority intends to adopt a risk-based and proportional approach to provide clear expectations to the industry. We expect the tiered licence structure to facilitate a reduction in the ex-ante costs of understanding the regulatory requirements for entities seeking to run contained pilots or tests. The four classes also provide clarity to protect the public from companies in the testing or piloting phase and may, therefore, represent a higher risk of failure. With this approach, potential clients should be better equipped to decide whether to engage with an undertaking based on their licence class.

44. A high-level summary of the proposed licence types is as follows:

Class	Overview
T	• A Class T licence will be an initial licence type designed to facilitate a regulatory sandbox for novelty start-up businesses, particularly for testing a minimum viable product or service via beta testing or piloting. • Applicants would be expected to develop success criteria for the test within their business plan, list their minimal scale of pre-identified or targeted customers or counterparties, and ensure that appropriate risk disclosures for potential counterparties are in place. • The T licence will have an initial duration of 12 months or less and be subject to appropriate regulatory requirements based on proportionality.
M	• A Class M licence is intended to be valid for a specified period of usually 12 to 24 months, at which point the licence holder must cease conducting business or apply for either an extension to the initial licence period or transition to an entire Class F licence. • The Authority will determine the initial licence period (and any subsequent extensions) on a case-by-case basis.
F	• The Class F licence will be a full licence and will not be subject to a specified period. It will be subject to restrictions or conditions if the Authority deems it appropriate to do so.
PG	• The PG licence is intended for operators that offer advanced and specialised financial services. This licence caters to entities that exclusively serve other businesses, institutions or high-net-worth individuals, rather than general retail customers. A PG licence recognises the differing needs and risk profiles of these operators and adopts a tailored regulatory approach that ensures a high standard of oversight while encouraging innovation and efficiency. • This license also aims to provide a fit-for-purpose regulatory environment

	while maintaining adherence to global principles and best practices by offering these entities regulatory clarity, balanced compliance requirements aligned to their operations, and enhanced market perception due to specific licence recognition.

Q5. How clear and easily distinguishable are the definitions for the four proposed licence classes (T, M, F, and PG)? Is this licence class effectively guiding your decision-making process on which licence to apply for?

Q6. Given the growing significance of wholesale market participants, do you agree that a specific PG licence is needed to cater to their distinct needs? How advantageous do you consider this separate licence category?

Q7. Do you believe the proposed tiered licensing structure effectively strikes the appropriate balance between nurturing innovation and ensuring a controlled environment? Please explain why or why you do not believe this.

EXCLUSIONS AND EXEMPTIONS

45. The licensing regime is intended to regulate PSPs, not payment systems as a whole. Payment activities performed by a designated payment system are typically excluded in other jurisdictions.

46. The following undertakings would fall outside the scope of the proposed Framework:

I. Institutions licenced under the Banks and Deposit Companies Act 1999;

II. Institutions licenced under the Credit Unions Act 2010; and

III. Insurers designated by the Authority under the Insurance Act 1978.

47. The following activities are not intended to be captured by the proposed Framework:

I. Payments facilitated by a commercial agent (e.g., via escrow accounts) acting solely on behalf of either the payer or the payee;

II. The secure transport and handling of physical currency as a professional service;

III. A payment network or arrangement operated by an undertaking that establishes rules, standards, or procedures that govern card-based payment transactions and provides the related operational infrastructure but does not itself issue payment cards to consumers, hold customer funds, or make contracts directly with merchants for acquiring services;

IV. Payment transactions and related services (including currency conversion and payment aggregation) are conducted exclusively between a parent undertaking and its subsidiaries or between subsidiaries under common control. This exemption shall apply solely to internal group treasury management activities and does not extend to transactions indirectly servicing external customers;

V. Payment transactions carried out within a payments system or securities settlement system between PSPs and settlement agents, central counterparties, clearing houses, central banks, or other participants in such a system, including central securities depositories;

VI. Payroll services; and

VII. Loyalty schemes.

Q8. Do you agree with the proposed exclusions from the Framework? Are there any other types of entities that you think should also be excluded from the proposed Framework?

Q9. Do you agree with the proposed exempted activities? Are there any additional payment activities that you think should also be exempted from the proposed Framework?

REGULATORY SUPERVISION AND OVERSIGHT

48. PSPs will be required to satisfy the Minimum Criteria for Licensing (MCL), both at the application stage and when licenced. MCL will include:

I. Fit and proper requirements - every person who is deemed to be a controller or officer of the licenced undertaking must be a fit and proper person to hold that position, demonstrating integrity, competence and financial soundness;

II. Conduct business in a prudent manner - e.g., by complying with the provisions of the PSA, adhering to anti-money laundering and anti-terrorist financing measures, including 'know your customer' procedures and transaction monitoring. They will also be required to comply with international sanctions compliance in Bermuda and any codes issued by the Authority. The codes may cover areas such as cybersecurity, operational resilience, and conduct of business, for example;

III. Corporate governance - the licensed undertaking shall implement corporate governance policies and processes that the Authority considers appropriate given the nature, size, complexity and risk profile of the licenced company; and

IV. Integrity and skill - the business will be conducted with integrity and its employees will have professional skills commensurate with the nature and scale of the business' activities.

49. An undertaking will also need to meet any relevant prudential and capital requirements applicable to a PSP, as well as any regulatory reporting requirements imposed by the Authority.

50. Regulatory oversight will be conducted by the Authority by adopting a risk-based supervisory approach. The level of oversight will correspond with each PSP's specific risk profile, considering factors such as the nature, scale, complexity of operations and systemic significance to the jurisdiction. Supervision will incorporate both off-site monitoring and on-site examinations, integrating prudential oversight with the conduct of business assessments to ensure comprehensive risk management.

51. PSPs will be mandated to submit periodic returns to the BMA to facilitate the Authority's continuous oversight and the PSP's timely regulatory responses. The BMA will leverage insights from these supervisory processes to ensure that regulatory interventions remain proportionate, targeted and adaptive to evolving market risks.

NEXT STEPS

52. The Authority welcomes feedback on the questions presented in this DP and any related topics by the close of business on 15 May 2025. As mentioned previously, the BMA aims to issue a CP later in 2025, which will encapsulate pertinent feedback received from this DP and present refined proposals for the Framework.

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