

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

Response to Consultation

Australian Payments Network

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 definition of terms has sufficient clarity to establish a common understanding.

With respect to the definition of 'payment', although digital currencies/crypto-currencies do not yet play a significant role in Australia's payments ecosystem, some consideration should be made to include them more formally in any definition of payment where they perform the same activity or function as a payment. Whilst the definition of e-money may be intended to capture digital currencies/crypto-currencies, it is not altogether clear that it does. It may be prudent to explicitly include digital currencies/crypto-currencies to ensure that there is no doubt as to their inclusion and that there is a sufficiency of clarity for regulators to apply appropriate regulatory and supervisory frameworks across the entire payment ecosystem.

This clarity would be in keeping with FATF's suggestion of changing the definition in R16 from 'wire transfers' to 'payments or value-transfers'. We note at this time that the R16 update is yet to be formally released.

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

A flexible framework that allows digital currencies/crypto-currencies, alternatively called e-money, to be brought into the same regulation where they fit the definition of a payment instrument would be in keeping with the 'same risk, same activity, same regulation' principle. It should be left to individual jurisdictions to then make a policy determination to include/exclude them based on the proportionality of the penetration that digital currencies have made within their respective jurisdiction's ecosystem as well as the risk that they may pose. This does not mean this area should remain policy free as this could result in regulatory arbitrage, which should be avoided. As such, a high-level best practice should set a minimum benchmark with regards to proportionality and risk-based approaches.

With respect to Payment Systems, we would suggest that the term 'transfer of funds' should be replaced with 'transfer of value' so as to ensure that gaps in regulatory and supervisory approaches are mitigated.

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

Nil

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

We agree with the scope of the report and the adoption of an approach of "same activity, same risk, same rule" which is largely the approach that Australia has embarked upon.

Whilst it can be argued that digital currencies/crypto-related activities are covered by related FATF recommendations (R14 & R15), it may well be prudent to consider drawing them into this consultation more formally where they perform the same activity, have similar risk, and perhaps should have the same rules applied to them. A full invocation of the approach of "same activity, same risk, same rules" which is agnostic to currency type yet embraces innovative payment solutions would be preferred. It also adds clarity for all participants in the ecosystem and complements prior FSB publications on crypto-assets and stablecoins.

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?

There is sufficiency in the descriptions of banks and non-banks.

We also note that the space is dynamic and evolving, where we see non-banks transitioning to a bank model. Whilst this is emergent, it would suggest that it is likely that more non-bank PSPs pursue this path, despite the increased regulation and oversight that this may entail, particularly where these same PSPs offer payment services to other PSPs.

There should be some consideration of non-bank PSPs pursuing a hybrid model where some of their activities sit in the regulated bank space and some do not. To ensure consistency is maintained, payments should be a regulated activity irrespective of the type of business model or structure. This will ensure that there are no gaps or opportunities for regulatory arbitrage and a level playing field is therefore maintained.

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?

The FSB has rightly identified that many non-bank PSPs are more likely to engage in "occasional transactions" rather than transactions originating from established customer

relationships. We do note that this dynamic is evolving since non-bank PSPs have become more entrenched in the cross-border payments space and now offer embedded payment services to both retail and corporate clients. Banks are uncertain, given their scale, whether the application of AML/CTF, CDD and KYC requirements by non-bank PSPs is effective. There is therefore a higher risk of de-banking occurring of non-bank PSPs. This can be reinforced where non-bank PSPs may be perceived to be pursuing what appears to be regulatory arbitrage to avoid robust regulatory and supervisory requirements. Thus, it would be appropriate for jurisdictions to ensure greater harmonisation in regulatory and supervisory matters to mitigate regulatory arbitrage.

Jurisdictions should have guidance on their approach to non-bank PSPs to avoid the risk of de-banking. Australia's AUSTRAC has published guidance for Australia's financial services industry that seeks to ameliorate issues and provides guidance on roles and responsibilities within the regulatory framework.

The current work on harmonising the application of FATF Recommendation 16 to improve payment transparency and incorporate ISO 20022 messaging standards is critical in providing a level playing field. The follow-on activity of developing guidance on payments transparency to promote consistent implementation of the revised FATF Standards across the global payments network is absolutely needed. The different models employed by non-bank PSPs in executing cross-border payments where the last leg is sent over a regulated banking payment rail is often an area of significant friction, as full transparency to all parties and agents in the payment chain is sometimes missing. Removing this friction by ensuring full transparency of all parties to a payment, consistent with CPMI's 'Harmonised ISO 20022 data requirements for enhancing cross-border payments' should establish the minimum standard for all bank and non-bank PSPs. This should also be consistent with FATF Recommendation

Section 3: Principles for developing recommendations

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

The Australian industry agrees with the principles.

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?

There is ongoing legislative and regulatory work being done in Australia to modernise the payments regulatory framework. This will include the introduction of a licensing framework for non-bank PSPs that will address the policy issues posed by new payments technologies. Moreover, it proposes to list payment functions which will be captured by regulation. These functions are intended to ensure that the 'regulatory perimeter' reflects the nature of the

industry and is appropriate for addressing key risks, whilst retaining technological and competitive neutrality.

The licensing framework, which requires an Australian Financial Services License (AFSL) authorisation process, is proposed to apply under this new regime for all PSPs seeking to be licensed. AFSL authorisations specify the types of financial products/and or services a licensee is able to provide.

It acknowledges that many PSP offerings involve a wide range of products and services. Where a PSP wishes to expand to other products and services, the proposed licensing approach would mean that it must seek a variation to its AFSL authorisation for each newly defined payment function it is looking to offer.

The Government has indicated its intention to introduce legislation for the new payments licensing regime some time in 2025.

The existing regulatory requirements and the proposed changes are comparable to the recommendations set out in the FSB consultation paper. We therefore agree with Recommendations 1-6 in their entirety.

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?

Outside of the G20 countries, we note that other countries may not have the resources to apply the recommendations, and hence technical assistance will be required by many. This should be a focus of the FSB and other bodies, such as the World Bank. An objective should be to reduce country risk ratings wherever possible. With wider implementation across jurisdictions outside of the G20 and reductions in country risk, we would expect some barriers to operating in certain payment corridors to be reduced, which in turn will drive better outcomes in terms of cross-border payments.

The desired outcome from the recommendations should enable competition as well as provide for a consistent and efficacious regulatory and supervisory framework.

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?

Categorising the identified frictions may well be useful in assisting jurisdictions prioritise those areas that require urgent remediation as well as assigning the order of priority and allocation of appropriate levels of resourcing that may be needed to support any changes.

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?

Recognition of the equivalence of licensing between jurisdictions would likely strengthen consistency but should not serve as a “passport”.

The currency of the equivalence of recognition would require constant monitoring. The risk is that jurisdictions move at different paces, resulting in gaps in regulation and supervision. This may also present undesirable opportunities for some participants to engage in regulatory arbitrage. As such, time-bounding compliance with the recommendations may offer a counter-balance. We would suggest that a global body, such as the World Bank, IMF, OECD or other body could create, review and publish a global recognition regime so that consistency could be achieved.

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 suggest that this an area for further exploration. If the goal is to promote alignment and consistency of regulation, supervision and oversight of non-bank PSPs in the cross-border payments space, then providing global guidance along with best practice should promote that consistent implementation across jurisdictions

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?

We would also suggest that the expansion of membership of countries of FATF and their ongoing adherence to FATF Recommendations would be an additional enabler and drive further consistency in regulation of bank and non-bank PSPs, which in turn would improve cross-border payment services.