

GOOD NEWS FOR FINTECHS: TAIWAN ANNOUNCES PLANS TO STREAMLINE PAYMENTS REGULATIONS

Date: 19 November 2020

Asia Fintech Alert

By: Joseph P.Y. Tseng

Two separate legal regimes currently govern Taiwan's payment institution and electronic money industries:

- On electronic money, the Act Governing Issuance of Electronic Stored Value Cards (電子票證發行管理條例), promulgated in January 2009, governs electronic money institutions on the issuance of an IC (integrated circuit) chip, card, certificate or other forms of debt obligation that utilize electronic, magnetic or optical means to store monetary value and perform the function of data storage or computing for multiple payment purposes. These electronic stored value cards are in physical form.
- On payment institutions, the Act Governing Electronic Payment Institutions (電子支付機構管理條例, the Act), promulgated in February 2015, regulates businesses that operate internet platforms and serve as intermediaries for money transfers and deposits of money value.

As technologies advance and the market develops, the line between an electronic money institution and a payment institution has become harder to draw. Having two different sets of laws for similar industries creates room for regulatory arbitrage, while also limiting each industry's development.

On July 30, 2020, Taiwan's Executive Yuan (the executive branch of the government) proposed an amendment to the Act and submitted to the Legislative Yuan (the legislature of the government) on August 3, 2020 (the Proposed Amendment). The Proposed Amendment will merge the Act Governing Issuance of Electronic Stored Value Cards into the Act. The focus of the Proposed Amendment is to expand the business scope to services complementary to payment and electronic money businesses, to open up cross-institutional transfers and settlements, and to adopt a risk-based approach for regulating the industries and increasing convenience of the users.

BUSINESS SCOPE WILL EXPAND

The Proposed Amendment expands the scope of businesses of an Electronic Payment Institution (EPI), which can be divided into two categories: (Section 4, Para. 1 of the Proposed Amendment)

- EPI businesses – where an EPI license is required to operate these businesses (unless otherwise provided by the Act or applicable laws, such as the Banking Act), including:
 - making or receiving payments of money for underlying transactions on one's behalf – referring to the service of accepting the funds transferred by the payer for underlying transactions, which is

transferred to the payee upon the satisfaction of certain conditions, the expiry of a certain period or at the instruction of the payer;

- receiving deposited money – referring to accepting the funds deposited by the payer for “multi-purpose payments” through electronic payment accounts or stored value cards. The term “Multi-Purpose Payment” means that the funds deposited under the electronic payment accounts or stored value cards may be used to pay for goods or services offered by a person other than the EPI, any sort of funds of the government, and other funds approved by the Financial Supervisory Commission (the “FSC”), but excluding: (Section 3, Item 10 of the Proposed Amendment)
 - those used only to pay for the use of transportation and are approved by the competent authority for transportation purposes;
 - goods or service gift certificate for the delivery or provision of goods or services may be requested from a person designated by the issuer thereof; and
 - stored-value cards issued by government authorities or electronic payment accounts opened, of which the money shall be deposited in advance by the government authorities for the benefits of the payer (e.g. social benefits, subsidies, etc.)
- handling of domestic and foreign remittances in small amounts (which will be set by the FSC) – currently, the Act only permits transfers of money between electronic payment accounts of the same EPI. The Proposed Amendment will abolish such restriction, opening up transfer across different EPIs; and
- handling the purchase and sale of foreign currencies (including the currencies of the People's Republic of China, Hong Kong and Macau) in connection with the preceding EPI businesses.

An EPI license is not required if (i) the Act or other applicable laws provide otherwise, e.g. banks may handle domestic and foreign remittances without an EPI license, (ii) a business that only operates in EPI business of “making or receiving payments of money for underlying transactions on one's behalf” and the total balance it handles does not exceed a certain threshold. The calculation of total balance and the threshold is to be announced by the FSC after the passing of the Proposed Amendment, (iii) those businesses that fall into the exclusions to EPI business of “receiving deposited money”, and (iv) foreign remittances in small amounts by certain foreign workers.

As a direct response to Taiwan's regulatory sandbox experiment, Section 4, Paragraph 3 of the Proposed Amendment makes an exception to the above EPI license requirement for EPI business of “handling of domestic and foreign remittances in small amounts”. The exception allows a non-EPI to apply for a special permit by the FSC for handling foreign remittance in small amounts by certain qualified migrant workers (household workers, caregivers, fishing workers, etc.) These migrant workers have been underserved by traditional banks around the world for the fact that these workers usually remit smaller amounts to which the banks' handling fees would represent a much higher percentage than other remittances, and they have more difficult access to banks due to the nature of their work, transportation and distance to banks, time restraints and language barriers.

- Secondary businesses that are complementary to EPI businesses, including:

- collection and payment information integrated-delivery-service for merchants (Art. 4, Para. 1, Item 5 from the Proposed Amendment);
- sharing of terminal equipment for merchants (Art. 4, Para. 1, Item 6 from the Proposed Amendment);
- message transfer between users and between users and merchants (Art. 4, Para. 1, Item 7 from the Proposed Amendment);
- electronic invoice system and related value-added services (Art. 4, Para. 1, Item 8 from the Proposed Amendment);
- commodity (service) gift certificate or ticket price storage and assistance in the issuance, sale and verification services (Art. 4, Para. 1, Item 9 from the Proposed Amendment);
- reward integration services and applying rewards in making or receiving payments of money for underlying transactions under authorization (Art. 4, Para. 1, Item 10 from the Proposed Amendment);
- provision of stored-value card storage blocks or applications for others to use (Art. 4, Para. 1, Item 11 from the Proposed Amendment);
- planning, construction, maintenance or consulting services for information systems and equipment related to the EPI businesses and preceding items of secondary businesses (Art. 4, Para. 1, Item 12 from the Proposed Amendment); and
- other types of businesses authorized by the FSC (Art. 4, Para. 1, Item 13 from the EPI Business List).

Secondary businesses may require permits, approvals or licenses from the other competent authorities. For example, providing electronic invoice system and related value-added services would require approval of the Ministry of Finance. In such case, the FSC requires that approval of the Ministry of Finance must be obtained before submitting an application for an EPI license.

RELEASE FROM PAST RESTRICTIONS AND DESIGNED FOR ADAPTABILITY

The Proposed Amendment will include several measures to release EPIs from past restrictions, which will allow them to grow their businesses further domestically and internationally:

- Banks' involvement will no longer be required for inter-EPI fund settlements. EPIs will be able to engage financial information service enterprises directly for inter-EPI fund settlements. For cross-border transactions, funds settlement methods may be proposed to and approved by the FSC with the consultation of the Central Bank of China (Taiwan) ("CBC"). (Section 6, Item 4 and Section 8, Para. 1 of the Proposed Amendment)
- EPIs may open accounts with non-bank financial institutions such as credit departments of farmers' associations, fishermen's associations, cooperatives, etc. to receive deposited money. This would allow EPIs to tap into users in rural areas underserved by traditional banks, which will help in promoting financial inclusion. (Section 17, Para. 1 of the Proposed Amendment)
- For receiving deposits in foreign currencies, the Proposed Amendment will allow users to deposit through their electronic payment account opened at the EPI to which the deposit is made, or by such method

proposed to and approved by the FSC with the consultation of the CBC to ensure innovative ways of depositing money can be accommodated in the future. (Section 19, Para. 2 of the Proposed Amendment)

- EPIs will be able to establish foreign branch offices with the approval of the FSC after its consultation with the CBC. (Section 28 of the Proposed Amendment)
- EPIs will be able to handle all sorts of underlying transactions unless otherwise prohibited by the laws and regulations. Since the FSC has already approved that electronic payment accounts may be used for payments of certain financial products and services, this is an affirmation that in principle, all underlying transactions may be settled by users through their EPI. (Section 6 of the Proposed Amendment)

A RISK-BASED APPROACH THAT CONTRIBUTES TO ENHANCING USER EXPERIENCE AND CONVENIENCE

The Proposed Amendment will give the FSC flexibility to set several standards, thresholds and limitations on a risk-based approach, as opposed to fixing such standards, thresholds and limitations in the Act:

- Transfer/deposit limit – Currently, a user cannot deposit more than NT\$50,000 (approximately US\$1,700) with one electronic payment account, and any transfer between electronic payment accounts shall not exceed NT\$50,000. The Proposed Amendment will now authorize the FSC to set the limit with the consultation of the CBC. Therefore, the FSC may adjust the limit from time to time according to the economic development, practical considerations, and the risk profile of customer due diligence. (Section 16 of the Proposed Amendment)
- After receiving a payment instruction, an EPI will not need to re-confirm with the parties involved as the current regulations already require the payer to confirm payment instruction before it is made, and in addition, there are other sufficient security measures, with the users being informed after the transaction which can also reduce the security risks. Therefore, the requirement of re-confirming a payment instruction is abolished.
- Client due diligence and know-your-merchant procedures will be conducted on a risk-based approach, which shall include the review of ultimate beneficiary(ies). Therefore, enhanced due diligence may be conducted on politically exposed persons, while reduced due diligence may be conducted with persons with lower risk profile. This recognizes that there is no one-size-fits-all due diligence procedure, and also closes the gap with Taiwan's Money Laundering Control Act (洗錢防制法). (Section 25 of the Proposed Amendment)

OTHER REQUIREMENTS

- Minimum Capital Requirement – As the Proposed Amendment merges the Act Governing Issuance of Electronic Stored Value into the Act, the minimum capital requirements of EPI will adopt a classified approach: (Section 9 of the Proposed Amendment)
 - The minimum capital requirement for EPIs that only makes and receives payments of money for underlying transactions on one's behalf and handles the purchase and sale of foreign currencies in connection therewith, and not other EPI businesses) will be NT\$100 million (approximately US\$3.5 million);

- The minimum capital requirement for EPIs that operate all EPI businesses other than domestic and foreign remittances will be NT\$300 million (approximately US\$10.5 million); and
- The minimum capital requirement will be NT\$500,000,000 (approximately US\$17.6 million) for all other EPIs.
- Qualifications for Responsible Persons – Currently, the Act only requires qualifications for internal auditors of the EPI, but not for the responsible persons. The Proposed Amendment will authorize the FSC to set the qualifications, restrictions on concurrent positions, and other compliance matters. This gives the FSC power to remove responsible persons that become unqualified.

CONCLUSION

Taiwan's proposal of the Proposed Amendment is a thoughtful, forward-thinking approach that will support greater development of Fintechs and innovative payments in Taiwan. The Proposed Amendment envisions a six-month transition period for all EPIs to submit their business plan and self-assessment report on their compliance with the new Act. With the government putting financial technology on the priority list of its agenda, we are anticipating that the Proposed Amendment may be passed by the Legislative Yuan in the near future. If you have any questions regarding the Proposed Amendment, please feel free to contact us.

KEY CONTACTS



JOSEPH P.Y. TSENG
PARTNER
TAIPEI
+886.2.2326.5177
JOSEPH.TSENG@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.