Bank of Jamaica

Responses to the Stakeholders' Feedback on the Legal and Regulatory Framework for Payment Service Providers (PSPs)

This document provides a summary of feedback/comments received from key stakeholders on the policy proposals for the legal framework for the regulation of retail payment service providers (PSPs) and responses from the Bank to these comments.

Feedback/comments received from six (6) stakeholders are summarized in the table below:

Table 1 – Summary of Stakeholder Responses

Number	Feedback/Comments from Stakeholders	BOJ Comments
1.	a. The impact of any new regulatory requirements must always be carefully assessed in a cost-effective manner in order to avoid unintended negative consequences.	Agreed. Bank of Jamaica is committed to developing measures as part of its risk-based approach to ensure the industry is regulated with minimum disruption to the business models of PSPs.
	b. Implementation should be conducted using a risk-based approach.	Agreed. Supervisory guidance is being developed as part of a risk based approach. This guidance will be published after the enactment of the amendments to the Payment Clearing and Settlement Act (PCSA).
	c. The broad definition of payment services (Article 3.1.h.) for the purposes of determining the scope of the PSPs, combined with Article 5.1.1 (Licensing of Payment Service Providers) could potentially include services that in the international practice are not subject to regulatory license from the regulatory authority.	Noted. The policy proposals are intended to achieve an appropriate balance between safeguarding customers, promoting financial access through payment services and maintaining the integrity of the financial markets infrastructure. The policy proposals also considered international standards on the regulation of financial services, including Financial Action Task Force (FATF) guidance. Further, the details of the risk based approach would be placed in the regulations and supervisory guidance.

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	d. If the BOJ absolutely must regulate in this space we suggest an alternative approach of empowering the payment systems, through their own standards and rules, to make sure that all such networks operate safely and properly while ensuring minimum standards: proper settlement, redundancy, network availability/resilience, among others, without prejudice to the BOJ's oversight powers.	Noted. Under the PCSA, Bank of Jamaica has a legal obligation as the overseer to payment systems, to ensure that financial system stability is maintained. As such, all payment systems, including international networks will be subject to appropriate oversight to maintain the safety and efficiency of the financial market infrastructure.
2.	a. Section 5.2. C (Eligibility Requirements for an applicant to be granted a licence) Where a licence has not been granted, we recommend that the PSP be given twelve (12) months to appeal the Supervisor's decision.	The details of the appeal process will be stated in the legislation. The intention is to provide persons who have not been granted a licence, a period of one month to challenge the decision of Bank of Jamaica. The Fintech Regulatory Sandbox provides a mechanism for entities to test payment innovations before obtaining a licence. The period of testing is a maximum of twenty-four (24) months.
	b. Section 5.3 (Duration of the licence) The duration of the license should be a minimum of three (3) years in its initial term, given the often significant investment required to establish the business of this nature. Beyond the initial period, the PSPs can be required to recertify with the Bank annually for which they may be required to pay a recertification fee as prescribed by the Bank.	Entities are given an opportunity to test their products in the Fintech Regulatory Sandbox for a period of twenty-four (24) months, which then allows successful entities to seek a licence. The licence will be valid for one year. An annual fee will be required for renewal of the licence.
	c. Section 5.4.1. (Suspension or Revocation of Licence of a Payment Service Provider) We suggest amending this period to twelve (12) months instead of six (6) months. The partnerships and technical considerations required to establish PSP operations may experience unforeseen but reasonable delays during initial setup.	The Fintech Regulatory Sandbox provides new market entrants an opportunity to test their payment innovations to achieve market readiness. The period of testing is a maximum of twenty-four (24) months. As such, the failure to commence operations within six months of the grant of the licence, is deemed to be an appropriate ground for suspension.

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	d. Section 5.4.1.d (Suspension or Revocation of Licence of a Payment Service Provider) we recommend that this be modified to say "failure to comply with any (*reasonable*) direction or enforcement action taken by the Bank:"	The Bank issues directions in keeping with its legal mandate.
	e. Section 5.4.2 (Suspension or Revocation of Licence of a Payment Service Provider) is a supplementary note to 5.41, and together they discuss broadly, suspension or revocation of licenses of PSPs, however, they do not outline a precise dispute resolution mechanism. Part D suggests that the PSPs will have the opportunity to be heard concerning the Bank's decision to suspend or revoke a license, but it does not indicate 'by whom' they will be heard. We recommend that this type of adjudication not be done by the Bank.	The appeal process will allow for appeals to the Supervisory Appeals Board. The details regarding the appeal process will be stated in the legislation.
	f. Section 6. (Imposition of Administrative Fines (Fixed Penalties/Civil Penalties). If the Bank will have the power to impose administrative fines (fixed or civil penalties), there should be a precise dispute resolution mechanism.	Refer to comment above at item 5 (e).
	g. Section 11. (Transitional provision) This section is unclear regarding the details on the 'transitional period.'	The transitional period is three (3) months from the effective date of the amendments to the PCSA to apply for a licence. This is applicable to entities which were authorised by the Bank under the Electronic Retail Payment Services (ERPS 2) Guidelines.
	h. Appendix 1.C and 1 D. related to capital and liquidity requirements; while this has yet to be defined, we are unclear why this would be considered in the context of non-deposit taking institutions, such as a PSP which generally not be the primary holder of any financial instrument – traditional or non-traditional. In our understanding, the risk that these requirements protect against should remain with the direct holder of the financial instrument, in this case, the sponsor bank. In the	These matters will be dealt with in the supervisory guidance.

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	case of a stored value instrument or a digital currency, the regulations applicable for deposit-taking institutions should apply.	
3.	We note that the main objective of the Payment Clearing and Settlement Act is *to make provision for the protection of systematically important clearing and settlement systems from disruptions that may lead to risks to the stability of financial systems*. The objective of the amendments to the act is to enhance the Bank's supervisory powers over entities, which provide electronic retail payment services. We believe that while the two are not unrelated the BOJ's objective could be better achieved if the frameworks are separated. This is supported by the following:	Noted. As part of the legislative process, the Attorney-General's Chambers will provide its legal advice on the preferred statutory approach.
	a. There could be many and varied PSPs which would not be considered a prominent risk to the financial system. We believe that the BOJ should classify the PSPs based on their potential to pose systemic risks to the financial systems.	Agreed. These matters will be addressed in the supervisory guidance.
	b. The document makes a valiant attempt to be all encompassing for payment services however the specific services to be included are unclear. This may cause companies to conduct business unknowingly in breach of the orders.	Noted. Please see the comment at item 3 (a) above.
	c. There are and will be many and varied classifications of payment services requiring its own framework to treat them according to risk classification and impact on the financial systems.	Noted. Please see the comment at item 3 (a) above.
	d. We were expecting to see a section in the regulations requiring data privacy standards in expectation of the data privacy act.	Noted.
	e. The PCSA be could be amended to give the BOJ oversight over the PSPs, however, not to amend the PCSA to include the framework for the regulation of the PSPs. The classification of the PSPs who are designated under the PCSA can be defined based on the risks posed to the financial systems.	Noted. The legislative treatment will be informed by the advice received from the Attorney-General's Chambers.

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	f. We are not however sure whether Remittance companies are to be considered PSPs. It could be deduced, but it is not clear. We are also not clear if the following are included in the framework based on the language: Payment Initiators, Payment Facilitators, Merchant Aggregators, Remittance aggregators.	Money transfer and remittance agents and agencies (remittance companies) will continue to operate under a separate framework. The regulations will identify the categories of payment service providers.
4.	a. The procedure for imposing penalties and the penalties themselves should be clearly stated in the legislation.	Agreed, the offence provisions and the administrative penalties will be in the legislation.
	b. What is meant by market behaviour? If by market behaviour, you mean that you would develop codes of conduct regarding the PSP payout rates/percentages this would be of concern to the Company as it could curtail our freedom to determine the commercial targets/imperatives of our Group of companies.	Market behaviour refers to how PSPs conduct their business and engage their customers. This includes disclosing key contractual terms, managing complaints and implementing advertisement protocols. The Bank will not seek to regulate payout rates/percentages.
5.	a. Sub-clause: 3.1 (Definition of Custodian Account) (i)The interpretation of a Custodian Account provides for the net balances due to PSP customers held in trust by the PSP in a custodian account to be entitled to deposit insurance coverage pursuant to the Deposit Insurance Act.	Agreed.
	b. Sub-clause: 3.1 (Definition of Custodian Account) (ii)To ensure the customers of PSPs are provided with appropriate protection consistent with the public policy objective of the JDIC and that funds are accurately accounted for as deposits of the DTI, consideration should be given to the issuance of regulations and/or supervisory guidance to outline the responsibilities of deposit taking institutions and PSPs in maintaining a custodian account. This is also against the background that deposit insurance coverage provided by way	Agreed.

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	of this indirect approach "passing through" in a custodial account at a depository institution can be complex.	
	c. Sub-clause: 3.1 (definition of Custodian Account) It is also noted that "Responsibilities of deposit taking institutions and PSPs in maintaining a custodian account" is not included in the listing of the matters to be addressed in Regulations detailed in the Appendix of the Consultation Paper.	Noted. This matter will be dealt with in supervisory guidance.
	d. Sub-clause: 3.1 (definition of Custodian Account) The JDIC looks forward to collaborating with the BOJ in this regard to ensure the legal regulatory and operational frameworks are adequate to convey clearly to the public the level and type of coverage, provided to PSPs; and to minimize any operational challenges regarding the implementation of the legal framework.	Agreed.
	e. Sub-clause 4.2, sub-clause 5.1.2 (l) Within the context of the above comment, provisions in the PCSA that give the Bank the power to share information and enter arrangements for information sharing with "regulatory agencies" should expressly include/state the Jamaica Deposit Insurance Corporation.	Agreed.
	f. Sub-clause 5.1.2 (o) The JDIC recognizes and fully supports the importance of a framework to protect PSP consumers.	Noted.
	g. Sub-clause 5.1.2 (o) It is suggested that the words "obtain from the Supreme Court" be replaced with the words "make a submission to the Supreme Court…." This will, also seek to avoid potential unrealistic expectations from customers of a PSP that the BOJ may have a statutory obligation to obtain restitution from the Court on their behalf.	Noted.

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	h. Sub-clause 5.1.2 (o) It is also noted that to carry out this function it will require the allocation of significant legal and administrative resources by the BOJ. Please clarify: (a) who will offset the associated costs? (b) What arm of the BOJ will have responsibility for this function?	Agreed. Sub-clause 5.1.2 (o) has been deleted from the policy proposals.
	i. Sub-clause 5.1.2 (p) Recommend the inclusion of the "……members of the Financial Regulatory Committee" consistent with the statutory objectives of the FRC.	This policy proposal will include a reference to any statutory committees established under the Bank of Jamaica Act and the PCSA.
	j. Sub-clause 5.2 (c) Are there any extensions of the appeals process?	The legislation will permit one month for filing an appeal to the Supervisory Appeals Board.
	k. Sub-clause 5.2 (c) Please clarify the different arms of the appeals process.	Refer to the comment at item 5 (j) above.
6	I wish for information on the regulations which were implemented.	The regulations will be made available on the Bank's website once the legislative process is complete.
7	a. An annual licence is bureaucratic. Licences should be granted for a duration of five or ten years and may be revoked for specific reasons, such as non-compliance or non-performance.	Given the dynamic nature of payment innovation, granting a licence for a long duration is not in keeping with a risk based approach to supervision. Also refer to our comments at 2 (b).
	b. Suspension or Revocation of License of a Payment Service Provider (5.4.1.f) (change in significant shareholding) – This clause impacts investment. A licence should only be revoked or suspended if the change in ownership results in a risk to national security, fraud or money laundering concerns.	Licences are non-transferrable. A licence is granted based on the fitness and propriety of key persons, including substantial shareholders, who own 10% or more of the shares.