

Monday, 17 July 2023

Ms Anna Zhou
Director
Payments Licensing Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

RE: Treasury consultation on ‘Payments system modernisation (Licensing: Defining payment functions)’

Dear Ms Zhou,

We thank the Treasury and the Government for the steps taken to date to progress a reform program for Australia’s payments system, and we welcome the opportunity to provide a submission for the ‘Payments system modernisation’ consultation paper.

In our view, the current payments system is anti-competitive and outdated, and the delays in introducing new and fit-for-purpose legislation in light of the extensive changes to the industry to date have put Australia behind other countries which have progressed to address the modernisation and innovation of the financial services sector in the past few years. In fact, the delay has entrenched the power of the banks to continue excessive charging and under-servicing Australian businesses and consumers.

We are two years into this reform process already in Australia, and we are 10 years behind the payments system reforms in the UK and Singapore – yet are still debating definitions.

The reform process needs to accelerate and move to addressing substantive items; otherwise, we fear Australia risks falling further behind.

While the suggested principles, definitions and exclusions are an important base for the reform process, the process for collecting and refining feedback would be greatly sped up by convening sector representatives and hosting working sessions to finalise the details as soon as possible. We would welcome the opportunity to participate in such discussion sessions and contribute to this important initiative.



Airwallex is focused on the actionable details of the yet-to-be-released reforms to legislation and regulations. We believe we are well positioned to work with the government to finalize these details.

Firming up the timeline for reform

Given the lengthy timeline of the process so far, we suggest the Treasury and the Government detail expected timings and milestones for the coming elements of the reform process. We are concerned that without such concrete timelines to which the government strives to achieve, the suggestion by the Treasury that legislation will be introduced in 2024 may slip further.

The costs the current regulatory system imposes on our businesses and more importantly, our customers, are very real and dear.

Any delays or expanded timelines only compound that impact.

For example, ongoing delay results in financial and human capital shifting to other markets, and higher costs for Australian businesses, which may result in higher prices for Australian consumers.

Attachment 1 to this letter details Airwallex's view on several issues we hope will be addressed in the coming reform process. Should you wish to discuss any element of this response, please contact Airwallex's Director of Corporate Affairs for Australia and New Zealand, Nick Creevey, on 0447 644 957.

We are keen to contribute and be actively involved in the proposed reforms, and welcome the opportunity to meet and participate in any discussions.

We look forward to the Treasury's and the Government's next steps.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jack Zhang'.

Jack Zhang
CEO and Co-Founder
Airwallex

A handwritten signature in black ink, appearing to be 'Luke Latham'.

Luke Latham
General Manager - Australia and New
Zealand
Airwallex

Attachment 1

CONSULTATION SUBMISSION

Airwallex company information

Airwallex is a leading global financial platform for modern businesses, offering trusted solutions for global payments, treasury and expense management, and embedded finance.

With our proprietary infrastructure, Airwallex removes the friction from global payments and financial operations, allowing businesses of all sizes to unlock new opportunities and grow beyond borders.

Founded in Melbourne in 2015, Airwallex has since grown to over 1,400 employees in 20 locations around the world. Airwallex has around 200 staff in Australia, with plans to grow by adding about 90 more employees locally in 2023, and by up to 400 globally.

Airwallex in Australia and New Zealand has grown its customer base from 6,000+ to more than 15,000 in the last year, adding a range of customers recently including Kogan, Freelancer.com, Camilla, EUC, HiSmile, BFT, RATIONALE and Ecosa. They join other Australian and New Zealand Airwallex customers including Qantas, Culture Kings, Stake, Mr Yum and Assembly Label.

In October 2022, Airwallex was valued at US\$5.5bn (~AU\$8bn).

Proposed principles, definitions and exclusions

Consultation question 1: Are there any other principles that should be considered in developing the list of payment functions?

Consultation question 2: Is the list of payment functions comprehensive, or should other functions be included?

Consultation question 7: Does the list of proposed payment functions adequately capture the range of payment services offered?

Consultation question 8: Does the list need to be broken down in more detail?

Consultation question 9: Should any other payment functions be included?

Consultation question 13: Should any exclusions or exemptions be revised to be more consistent with comparable jurisdictions?

Consultation question 15: Should any other exclusions or exemptions be provided?

Airwallex supports the proposed key principles, and emphasises the need for regulation to be targeted based on risk.

Airwallex suggests the Treasury convene a working group from the payments sector to speed up the finalisation of the definitions and exclusions.

Airwallex is encouraged by the Treasury's focus on reforms that ensure regulation is targeted based on risk. We also broadly agree with the proposed principles meant to drive the development of a list of payment functions that require regulatory oversight.

Airwallex supports the Treasury's attempts to develop a common set of definitions and exclusions for the payments sector and its various participants.

Airwallex suggests the final form of definitions and exclusions should provide examples of participants in various categories to help clarify what applies to which participants.

We also support the work of our peers, as well as the Tech Council of Australia and Fintech Australia, to suggest detailed changes to the proposed definitions and exclusions. We have coordinated our feedback on the proposed definitions and exclusions with other members of the Tech Council of Australia and Fintech Australia to be included in those groups' submissions.

We believe that to speed up the finalisation of these definitions and exclusions, the simplest course of action would be for the Treasury to convene sector representatives and align on the solutions. We would welcome the opportunity to be part of such an initiative and provide our suggestions stemming from our experiences in providing similar insights in other parts of the globe and assist in the mission of the Treasury to develop a state-of-the-art payments regime for Australia.

Payments system regulator

Consultation question 24: How can the payments licensing processes across regulators be further streamlined?

Consultation question 25: Is the proposal to provide central guidance and a website portal for PSP licensing processes a good alternative to the single point of contact proposal recommended by the Payments System Review?

Airwallex strongly reiterates the need for a payments system convenor as recommended by the Payments System Review.

Airwallex appreciates that the Treasury has continued to explore avenues to simplify the regulatory arrangements of Australia's payments system, and believes the central guidance and website portal is a positive suggestion.

One of the major concerns the Australian payments sector has expressed for years is the lack of a central point of contact with oversight for our sector, and the proposals as they currently stand in the consultation paper do not address that issue.

However, it remains unclear why the Treasury and the Government have not acted on the recommendation of the Payments System Review to introduce a payments industry convenor¹.

The role of this convenor would be an important conduit for the industry to ensure the effective functioning of Australia's payments system, and would ensure that there is a dedicated appointee driving the implementation of the Strategic Plan for the Payments System and its important initiatives.

As the current consultation paper highlights, at times the various regulators with oversight of Australia's payments systems will have different priorities and focuses.

In addition to an appointed official or a body with responsibility for implementing the Plan, the payments sector also needs an 'umpire' or arbiter to help guide the focus of Australia's regulators and act to better share information with existing payments system participants, and those looking to join the system.

In practice, it is Airwallex's experience – not just in Australia but globally – that a lack of clear accountability and singular, defined leadership of the payments system reduces the speed of implementing reform. In this case, we fear this scenario would reduce the speed at which Australia's payments system can catch up to best practice jurisdictions like the United Kingdom and Singapore.

As an example, in the consultation paper it is proposed that 'Standard Stored Value Facility' (SVF) providers will have the Australian Securities and Investments Commission (ASIC) as their primary regulator before transitioning to become 'Major Stored Value Facility' providers when they meet certain thresholds to having the Australian Prudential Regulatory Authority (APRA) as their primary regulator. It is unclear in practice what resources and guidance and support will be available to those providers under the proposal.

They would clearly benefit from having an expert authoritative body for support in their transition.

¹ Page ix, Payments System Review

As an interim measure to a dedicated payments convenor, Airwallex suggests it would be appropriate for the Treasury to assume the role and function as outlined in the Payments System Review, with a dedicated payments system team and Deputy Secretary-level leader.

Consultation question 19: Is the proposed risk-based approach to applying regulatory obligations appropriate?

Consultation question 20: Should payment functions that are not consumer-facing be required to hold a payments license?

Consultation question 21: Should the common access requirements and industry standards be linked to the payments license?

Airwallex suggests all payments system participants should be regulated to help build and maintain trust in the sector.

There are several specific areas of the regulatory obligations that could be better clarified in the next iteration of proposals.

The ePayments Code would benefit from a review before it is mandated.

Airwallex strongly supports the direction of the Treasury's consultation paper to adopt a risk-based approach to applying regulatory obligations.

Airwallex looks forward to engaging with the coming consultation processes on the details of the regulatory obligations.

As a broad principle and in order to build and maintain the reputation of Australia's payments system, Airwallex suggests that all payments system participants should be formally regulated beyond just the proposed industry standards.

Australia has some of the most entrenched banking and financial services providers. Regulation of all participants in the payments system will help build consumers' confidence in alternatives to the incumbent banks and financial services companies. More widely used alternatives will encourage others to compete for consumers' business and will ultimately help promote more innovation.

Regarding the proposed regulatory obligations, there are several points that Airwallex suggests would benefit from clarification in the more detailed regulations documents that are upcoming:

1. Whether it is Treasury's intention that a 'Major SVF' will need to comply with APRA's requirements (e.g. holding high-quality liquid assets, minimum capital requirements etc), but not ASIC's separate client monies rules under the Corporations Act (which are only expressed in this consultation paper to apply to Standard SVFs). This appears to be Treasury's current proposal as outlined in Section 7 of the consultation paper, but we would be grateful for Treasury's confirmation.
2. Whether a payments system participant that offered a range of services (for instance, both 'PFS services' and 'Major SVF' services) would be regulated according to more than one category. An example here would be where a Major SVF offered merchant acquiring services. In this example, it is unclear under Treasury's proposal whether customer funds stored by that entity in connection with their merchant acquiring service would be required to be subject to APRA's prudential standards (under the proposed Major SVF regulations) or ASIC's client monies rules (under the PFS regulations).
3. Whether Treasury intends to legislate any requirements for what is currently termed a 'PPF provider without stored value at risk' in paragraph 11 of *APRA Prudential Standard 610: Prudential Requirements for Providers of Purchased Payment Facilities* (APS 610). Currently, APRA has not provided industry with any guidance on what form of product structure would be accepted by APRA as a 'PPF provider without stored value at risk'. We are not aware of any industry participants that have successfully obtained this classification from APRA to date, which suggests the concept has very little clarity in the current form administered by APRA. The criteria for the concept (outlined in APS 610) appear to indicate that a PPF provider that holds customer funds on trust (e.g. in a statutory trust account) would be classifiable at law as a 'PPF provider without stored value at risk' (under the existing, valuable protections afforded by Australian trust law), but we are aware that APRA has not formally recognised any such trust structures to date. Given APRA's lack of guidance on this subject, we would recommend that Treasury legislates this concept and provides further clarity on what would constitute a 'PPF provider without stored value at risk' under Australian law.
4. Whether Treasury intends to preserve the effect of the current ['Exemption Notice for Certain Guaranteed Holders of Stored Value under Section 25'](#) (issued by the Reserve Bank of Australia) for entities that are classifiable as Major SVFs but have yet to be granted their Major SVF license by APRA.

Finally, Airwallex reiterates its suggestion, which is also the suggestion of a number of our peers, the Tech Council of Australia and the Fintech Australia that if the ePayments Code is to



become mandatory as the consultation paper proposes, that it should be reviewed and updated by a cross-section of the payments industry.

We expect this is planned by the Treasury, however, it is currently not articulated in the consultation paper.

The Code was written in its original form more than a decade ago with only minor amendments since. The Code should be updated in order to remain relevant. As the Treasury would be aware, many of the businesses the Code would impact have had no opportunity to discuss its contents or provide suggestions on how the Code could be made more effective as they were founded after the Code was originally developed.