



SVF Submissions

Payments Policy Department

Reserve Bank of Australia

GPO Box 3947

Sydney NSW 2001

Submission for the Review of Retail Payments Regulation: Stored-value Facilities

Ant Financial (**Alipay**), a group consisting of Ant Small and Micro Financial Services Group Co., Ltd., its subsidiaries and affiliates, is a leading technology conglomerate. One of our primary goals is to use innovative and advanced technologies to build an inclusive platform which improves the efficiency and convenience of financial transactions on a day-to-day level.

Although we do not currently have plans to launch a stored-value facility (**SVF**) product for Australian consumers, we welcome the opportunity to provide our thoughts in relation to the Issues Paper published by the Council of Financial Regulators (**CFR**) for its Review of Retail Payments: Stored Value Facilities. We believe the CFR's recommendations could be beneficial in encouraging businesses to develop SVFs and related products for Australian consumers in the future.

About Ant Financial

Alipay is dedicated to using technology to bring the world equal opportunities. Our technologies, including blockchain, artificial intelligence, security, Internet of Things and computing, empower us and our ecosystem partners to serve the unbanked and underbanked, bringing more secure, transparent, cost-effective and inclusive financial services to individuals and SMEs worldwide. Alipay has formed international partnerships with global strategic partners to serve local users in some markets. We also serve Chinese travelers overseas by connecting Alipay with online and offline merchants in popular destinations. By the end of March 2018, together with its global JV partners, Alipay served 870 million users worldwide.





In Australia our focus is to enable Alipay PRC users to be able to use their Alipay PRC digital wallets to pay for goods and services when they travel to Australia or when they shop online from Australian merchants. We also provide payment services related support for Australian buyers to purchase goods or services on Alibaba e-commerce platforms (such as Aliexpress).¹

Market Developments and Regulation

From a general legislative point of view and with consultation from our external law firm, we are under the impression that the current regulation of SVFs is comprised of disparate statutes, regulations and industry codes each having their own objectives and approach reflecting regulatory priorities at the time of their respective commencement dates. This may present a significant barrier for companies seeking to provide innovative solutions for customers because such disparities introduces complexity resulting in increases in cost and time to enter the market, roll out new services and to improve existing services.

The outlook for SVFs in Australia

Alipay agrees with the PC Report suggestion that, with appropriate regulation, SVFs have the potential to grow in Australia. However, even if the Australian regulatory landscape for issuing SVFs is addressed, their success is dependent upon acceptance by merchants. The key in this regard is the ability for an SVF to easily provide a ubiquitous service across online and offline merchants, and in particular to easily integrate with existing in store acceptance services such as point of sale systems and terminals. This is particularly important where large merchants with frequent customer purchases are involved as that is critical to building customer desire for the SVF.

The Issues Paper makes the observation that in some jurisdictions, such as China, the growth of SVFs has been associated with the adoption of non-bank payment services in areas that may have been underserved by the traditional banking sector. As we run one of the world's leading mobile payment platforms with 700 million active PRC users, we would like to take this opportunity to share some of our insights.

¹ For more information on Ant Financial, please visit our website at www.antfin.com.





Alipay started as an escrow service supporting payments on the Alibaba platform. This led to rapid adoption of Alipay in an online environment, which has recently been enabled in the instore environment.

Further, China was a heavily cash based market with little electronic payment capability. So the early success of the Alipay wallet in China was largely attributable to the convenience of remote payments which are possible through a technology based wallet. Prior to being able to pay utility bills or top up a mobile phone in the Alipay app, consumers would have to queue for hours in order to make such payments by cash. This was a significant point of friction that the Alipay wallet was able to overcome for the benefit of consumers.

Today, the Alipay wallet is a lifestyle enabler. In China, users can hail a taxi, book a hotel, buy movie tickets, pay utility bills, make appointments with doctors, or purchase wealth management products directly from within the app. This increases the utility of the app to Chinese consumers.

Other jurisdictions

The consultation paper refers to regulatory arrangements in other jurisdictions including the European Union, Singapore and Hong Kong. In Australia there are three regulators (excluding AUSTRAC) with responsibilities for the general conduct and authorisation of SVFs under three different statutes. The approach taken in each of these other jurisdictions is more streamlined and more tailored for SVFs with fewer statutes and fewer regulators, and as a result a higher level of active licensed SVF providers.

In Hong Kong, the Payment Systems and Stored Value Facilities Ordinance is the only applicable regulatory framework. It sets out the requirements of obtaining an SVF licence and is overseen by the Hong Kong Monetary Authority. The framework is well used as there are 16 licensees, of which 3 are banks.

In Singapore, SVFs are regulated by the Payment Systems (Oversight) Act but prior approval from the Monetary Authority of Singapore (**MAS**) is not required unless an SVF is to be "widely accepted" (in which case the aggregate stored value is underwritten by a bank and may exceed SGD30 million). The MAS also has responsibility for the Money-changing and Remittance Businesses Act (MCRBA) which may apply to some SVFs depending on its features. However, a new Payment Services Bill, when enacted, will consolidate the regimes into a single licensing



framework adopting a two-tiered approach. Under the Bill, a payment service provider will only need to hold one modular licence to conduct its regulated activity. A payment service provider may apply to be a:

- major payment institution where the average daily e-money stored exceeds SGD5 million (which will be subject to additional prudential controls); and
- a standard payment institution (which will be subject to fewer controls).

The UK has transposed the EU's Electronic Money Directive (EMD) into national law through the Electronic Money Regulations 2011 (the EMRs). A single authorisation from the Financial Conduct Authority is required for electronic money institutions and there are currently 138 electronic money institutions. The authorisation is on a two-tiered basis and small electronic money institutions have a simpler registration process and are subject to fewer ongoing obligations.

1. The environment in relation to innovation and competition in Australia

It has long been recognised that competition does not necessarily require the physical presence of many suppliers, but simply that suppliers be able to enter the market freely if existing suppliers do not price competitively.² The limited number of entrants into the Australian market suggests the barriers are too high.

Innovation by the banks has been largely confined to their own core banking systems and customer interfaces such as internet banking applications and merchant banking applications, which are based upon existing payment systems and networking arrangements.

In contrast, mobile payment platforms enable risk to be managed in a more nimble, comprehensive and cost-effective way. The rapid evolution of regulatory technology and its adoption by the financial services industry to enhance regulatory compliance makes it possible for relatively new technology based businesses to utilise the most sophisticated and dynamic compliance resources.

Alipay has developed and is developing a range of RegTech solutions for KYC and AML processes, some of which utilize artificial intelligence and machine learning technology. Such processes

² Financial System Inquiry, Final Report, 1997, [15.2].

could significantly improve AML and counter-terrorism financing measures and help us to ensure greater levels of compliance and consumer protection while improving efficiency of customer onboarding procedures. Having a flexible yet balanced regulatory framework for stored-value facilities is key to drive innovation while also offering proper protection for consumers at the same time.

Regulatory hurdles faced by potential new entrants are excessive and not suitable for SVFs. For example, APRA'S new restricted ADI framework requires the restricted ADI to exit the market if it does not become an unrestricted ADI within 2 years. The alternative could be to continue under a lower tier of prudential regulation based upon the aggregate of stored value. The restricted ADI framework should be refined to better cater for SVF providers.

With the alleviation of regulatory hurdles such as these, the changing landscape in the digital age would give new entrants the potential to efficiently achieve the scale required to drive competition.

2. How can regulation appropriately balance consumer protection aims while supporting an innovative competitive industry?

One of the main regulatory challenges to innovation in the financial services sector is a lack of coordination between policymakers and supervision division. It is a common interest shared in the Fintech industry that the regulator supervisory divisions should keep pace with continuous developments in the technology industry, if not, this can adversely affect whether the right balance is struck between promoting innovation and protecting consumer rights.

In the context of Australia, we encourage greater clarity from regulators on the application of local regulatory regimes to relevant business models and services. Establishing better communication channels between regulators and market participants, and giving market participants an opportunity to provide ongoing feedback to regulators, is likely to help regulators develop practical, proportionate and effective regulations and supervisory practices and to help firms meet regulatory expectations in the design and delivery of new services and business models.

For illustration, in the wider context of "payment system regulation", the following worthy objectives were identified in the Final Report of the 2014 Financial System Inquiry (FSI).³

- Maintain confidence and trust in the payments system
- Be better understood by industry, particularly new entrants, and accommodate rapid market development
- Provide adequate consumer protections
- Provide competitive neutrality for PPFs

It is submitted that SVFs are inherently simple because they merely provide access to a prepaid balance. While they may be offered with innovative value add features and benefits, any regulation of them should reflect the simplicity on the underlying claim against a store of value. This is why some forms of SVF have been exempted from regulation.⁴

In the context of SVFs, the regulatory priorities should be:

- confidence against insolvency risk (i.e., protection of the float through meeting minimum capital adequacy and liquidity requirements such as those imposed under an AFS Licence);
- product disclosure requirements and minimum consumer protections (such as the disclosure and liability provisions articulated in the ePayments Code).

It is submitted that little would be required to satisfy these regulatory priorities because the frameworks already exist. The key to this would be to streamline the various overlapping frameworks into a single framework and to have a single regulator with oversight of such framework.

The rationalisation of the overlapping regulatory frameworks will encourage new entrants who can demonstrate a commitment to invest in the Australian retail payments sector in order to establish a long term stable presence.

³ 2014 FSI Final Report, page 163.

⁴ Examples include low value facilities, gift facilities, facilities to pay a single payee and road toll facilities.

3. Is there potential to clarify the definition of stored-value facilities and the intended coverage of stored value regulation?

A single definition of SVF would significantly reduce the uncertainty and regulatory arbitrage which currently exists across the Banking Act, the Payment Systems (Regulation) Act, Chapter 7 of the Corporations Act, the Anti-Money Laundering and Counter-Terrorism Financing Act and the ePayments Code. The various definitions have been developed at different times in the context of past and anticipated future products and technologies which are not aligned with the current SVF market in Australia.

Of the various definitions used, the concept of a Purchased Payment Facility (**PPF**) used in the Payment Systems (Regulation) Act and adopted under the Banking Act is the most technology neutral in the sense that it captures facilities regardless of the nature of the underlying claim the holder has against the issuer (whether it be founded on a debt claim, a trust claim, a claim under pure contractual right without a debt claim or on proprietary rights in identifiable electronic tokens).⁵

The PPF definition can be improved by:

- Removing the condition that the facility be purchased but instead provide equal footing for prepaid SVFs which are gifted, won or earned. However, if this change is made, it would need to be made clear that the definition does not apply to credit facilities which are another form of facility for making payments but which do not involve any of the prudential concerns applicable to other SVFs;
- Removing paragraph (c) of the definition as it purports to describe who makes the payments when the facility is used, but this fails to recognise that when the facility is used, several parties might be engaged in an act recognised as a payment. For example the consumer pays the merchant / payee using the SVF; the merchant / payees accepts

⁵ That definition is expressed in the following terms:

- (1) A purchased payment facility is a facility (other than cash) in relation to which the following conditions are satisfied:
- (a) the facility is purchased by a person from another person; and
 - (b) the facility is able to be used as a means of making payments up to the amount that, from time to time, is available for use under the conditions applying to the facility; and
 - (c) those payments are to be made by the provider of the facility or by a person acting under an arrangement with the provider (rather than by the user of the facility).

However, a facility covered by a declaration under subsection (3) is not a purchased payment facility for the purposes of this Act.

the SVF as a conditional means of payment similar to a credit card or cheque; the SVF issuer pays the payee's / merchant's acquirer; the payee's / merchant's acquirer pays the payee / merchant by crediting the payee's / merchant's account.

If the definition in the Banking Regulations were to be used to describe facilities which are "deposit-like" based upon an ability to demand Australia currency and the "wide basis" upon which the facility is available, the requirement for APRA to make a determination (as specified in regulation 6) should be removed or clarified. The definition should stand alone and not be subject to a discretionary determination of APRA which is uncertain as to its nature and the process by which it would be exercised.

The definition used in Chapter 7 of the Corporations Act is not suitable for SVFs because it does not contemplate any storage of value. It is instead concerned only with the function of making payments regardless of whether the payments draw on a store of value, a bank account or any other source of funds.

Assuming a common definition can be adopted, relevant float and user thresholds could then be applied to determine the level of regulatory controls to apply to a given facility.

4. What regulatory boundaries or thresholds for stored-value facilities are appropriate?

The regulatory boundaries should be aligned with the policy objectives (such as confidence and trust in the payments system and consumer protection) and work with existing regulatory frameworks rather than seeking to duplicate or override them. For example, consumers already enjoy protection against the unfair forfeiture of "expired" prepaid value under unfair terms provisions of the Australian Consumer Law.

Relevant factors to consider include:

- the value of the float;
- the value of individual user facilities;
- the duration of exposure for individual users (e.g., long term balances versus short term remittance amounts);
- the number of users and payees exposed to losses;
- the nature of the claim a user has against the issuer (e.g., whether the user is an unsecured creditor or has recourse to an asset pool on the issuer's insolvency); and

- the nature of the user (e.g., whether the user is a consumer or a business).

While it is difficult to attribute an appropriate weighting to these factors, simple numeric thresholds alone fail to take account of all of the above factors. For example, a remittance business which is unregulated, may at any time have an aggregate of claims far in excess of the proposed \$10 million threshold, but the short-term nature of the exposure is such that prudential controls are not warranted in the way they are for deposits.

5. Are there other criteria that could be used to defined regulatory boundaries for stored value facilities?

This is addressed in the response to the previous question.

6. What are your views on a tiered approach to prudential supervision for stored value facilities?

While Alipay supports the Commission's draft recommendation that there should be a tiered prudential regime for purchased payment facilities to reduce barriers to growth, Alipay urges the Council to consider the advantages of a single licensing regime by which the tiered approach would be applied. This would be preferable to the current approach of overlapping responsibilities between APRA, ASIC and the RBA with further inconsistencies under the ePayments Code and under the AML/CTF Act administered by AUSTRAC.

Also, it is submitted that this recommendation should be aligned with APRA's own phased "sandbox" approach to licensing ADIs articulated in APRA' discussion paper dated 15 August 2017.

7. What is the appropriate regulatory approach to emerging products and services?

Mobile devices

In order to cater for emerging products and services, payments regulation needs to be technology neutral. As such regulatory definitions should not be dependent upon the technology of the day. For example, the use of mobile devices as a tool to use an SVF should not affect the definitions. Generally mobile devices, like plastic cards, are just devices for communicating instructions. They do not offer "deposit-like" functionality (as suggested in the consultation paper) which can only be derived from the underlying nature of the claims which the user has against the issuer, not from the device used to draw on the facility.

Technology neutrality is more likely to be achieved if the drafting focusses on the nature of the claims against the issuer without reference to the devices or interfaces by which a user exercises rights in relation to those claims.

Closed loop facilities

The consultation paper invites comment on “closed loop” systems and it identifies Alipay as an example on the basis that money can be transferred between users of the system. This functionality is available to Alipay users however it is only one function of the wallet. For example, Alipay provides “open loop” services by enabling payments via Australian bank accounts to Australian merchants using Australian merchant terminals.

The stated concern about a float being beyond scope of oversight of APRA is unfounded. If, for example, Alipay were to offer a wallet to Australian consumers, it would, under the current regulatory framework, be regulated in Australia and would be subject to Australian regulatory oversight which is likely to involve compliance with local prudential controls.

8. How could transparency and communication of regulation be improved?

Transparency and communication of the regulations relating to SVFs in Australia can be improved by way of having a single regulatory regime which is governed by a single regulator. It would also provide clarity if the definitions in the overlapping statutes are aligned and the thresholds applicable to a tiered system are clearly defined. This would reduce much of the need for regulations, class order exemptions and regulatory guidance. It would also reduce the number of regulatory approvals or exemptions required and encourage the use of SVFs in Australia.

9. Are there other issues relating to the regulation of retail payment service providers which could potentially be improved or clarified?

The main shortcoming of SVF regulations in Australia is the multitude of inconsistent and overlapping regulatory frameworks:

- The Banking Act and its prudential standards are suitable for full service banking institutions with large exposures to individual customers. It is not suitable for a provider of SVFs;



- Part 4 of the Payment Systems (Regulation) Act hasn't been adopted as a regulatory framework, instead it has been used for granting exemptions and has become a redundant layer of regulation;
- Chapter 7 of the Corporations Act is an effective and comprehensive framework for licensing product issuing and regulating conduct. It imposes a mix of prudential and general conduct controls including product disclosure for retail clients. While the various exemptions for remittance and prepaid facilities complicates its application to SVFs, its otherwise comprehensive scope negates any justification for a role to be performed by other regulators;
- While the above statutes all seek to protect the interests of customers, the AML/CTF Act serves a very different purpose and should continue to apply to SVFs subject to risk based thresholds. However, there is no logical justification for it having its own unique definition of "stored value card". This should be aligned.

It is submitted the licensing and conduct framework under Chapter 7 of the Corporations Act is sufficient for the regulation of providers of SVFs. We further submit that prudential regulation by APRA should only apply if the aggregate balance of stored value exceeds \$50 million.

Thank you again for the opportunity to make this submission. We look forward to participating further in the consultation process.

Yours sincerely,

George Lawson – Country Manager, Alipay Australia & NZ

