
# PAYMENT SERVICES BILL EXTENDS LICENSING NET TO INCIDENTAL REMITTANCES

The Money-changing and Remittance Businesses Act (MCRBA) regulates the business of accepting money for transmission to persons outside Singapore and the High Court in *Chinpo Shipping Co (Pte) Ltd v Public Prosecutor* [2017] SGHC 108 (Chinpo) held that remittance activities that are carried on as incidental to their core business would not be caught by the licensing requirement under the MCRBA. The legislative position will change under the Payment Services Bill (PSB), which was passed by Parliament on 14 January 2019.

**Key issues**

- The judgment in *Chinpo* means that remittance activities that are carried on purely incidentally to a primary business would not constitute the carrying on of a remittance "business" under the MCBRA.
- The legislative position will change under the PSB, which expressly provides that where a person provides a payment service while carrying on a primary business, such person will be presumed to carry on a secondary business of providing that type of payment service.
- The presumption will not be rebutted by proof that the provision of the payment service is related and/or incidental to the primary business.

## Chinpo Shipping Co (Pte) Ltd v Public Prosecutor [2017] SGHC 108

In the High Court case of *Chinpo*, the appellant, Chinpo Shipping Co (Pte) Ltd, carried on the business of ship agency and ship chandelling. Amongst other things, Chinpo Shipping Co (Pte) Ltd was charged with, and convicted, of a breach of Section 6(1) of the Money-changing and Remittance Businesses Act (Cap. 187) (MCRBA) in connection with 605 outward remittances it had made on behalf of various Democratic People's Republic of Korea entities from its bank account. Chinpo Shipping Co (Pte) Ltd had charged a fee of at least US$50 per remittance on most occasions and the total value of the 605 remittances was US$40,138,840.87.

In respect of the MCRBA charge, the High Court provided detailed guidance on the licensing framework for "remittance business" under the MCRBA in its judgment.

For this purpose, the key provisions of the MCRBA of note were:

- Section 2(1), which defines "remittance business" as the business of accepting moneys for the purpose of transmitting them to persons resident in another country or a territory outside Singapore;
- Section 2(2)(b) of the MCRBA, which provides that a person shall be deemed to be carrying on remittance business if he offers to transmit money on behalf of any person to another person resident in another country; and
- Section 6(1) of the MCRBA, which prohibits a person from carrying on or advertising that he carries on remittance business unless he is in possession of a valid remittance licence.

The High Court observed that the MCRBA does not define the circumstances in which the acceptance of moneys for the purpose of transmitting them to persons outside Singapore will constitute the carrying on of a "business" of remittances that attracts the licensing requirements under Section 6(1) of the MCRBA.

In this regard, the High Court noted that the legislative debates reflect that the intent of Parliament was to regulate the remittance industry (i.e., persons who offer remittances as a service in their own right rather than simply as incidental to their core business) and that the focus of Section 6 of the MCRBA is on payor-remitter relationships that have as their primary purpose the making of remittances.

In the same vein, the High Court noted that at common law (*Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [38], citing *Chow Yoong Hong v Choong Fah Rubber Manufactory* [1962] AC 209 at 218), the test for determining if a business is being carried on is that the relevant transactions are undertaken with "some degree of system and continuity". On the other hand, where the transactions are undertaken only incidentally to the provision of other services, the common law view would be that the requisite degree of system and continuity to constitute a "business" would generally not be established (*Subramaniam Dhanapakiam v Ghaanthimathi* [1991] 1 SLR(R) 164 at [10], citing *Litchfield v Dreyfus* [1906] 1 KB 584 at 590). This would ultimately be a question of fact.

It was further noted by the High Court that there is a distinction between the executing of remittances as an activity related and incidental to a core business (which would fall outside the legislative ambit of the MCRBA) and the executing of remittances as an activity unrelated and secondary to a core business (which would fall within the legislative ambit of the MCRBA).

The High Court then went on to set out the following general approach for determining whether a person who has accepted money for transmission to persons outside Singapore has fallen afoul of Section 6 of the MCRBA:

- The prosecution must prove that the remitter was not in possession of a valid remittance business license at the time when he made the remittances in question.
- The prosecution must prove further that the remitter, in making the remittances in question, carried on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore. The prosecution may rely on the presumption under Section 2(2)(b) of the MCRBA to discharge this burden if it can establish that the remitter offered to transmit money on behalf of any person to another person resident in another country.
- The burden then shifts to the remitter to prove on a balance of probabilities that he did not carry on the business of accepting moneys for the purpose of transmitting them to persons outside Singapore. This can be achieved by, *inter alia*, providing that the remittances were undertaken only as incidental to a main business, but not if the making of the remittances is so unrelated to the main business as to constitute a secondary business.

The position in *Chinpo* remains good law as at the date of this client briefing.

## Payment Services Bill

The PSB was passed by Parliament on 14 January 2019 and will repeal and replace the MCRBA in due course once the Payment Services Act 2019 (PSA 2019) comes into effect, which will be on a date to be appointed by notification in the Gazette. Under the PSA 2019, remittance activities will be regulated within the ambit of the regulated payment service of "cross-border money transfer services".

Section 5(1) of the PSB is worded in a broadly similar manner to Section 6(1) of the MCRBA, and prohibits a person from carrying on a business of providing any type of payment service in Singapore, unless the person has in force a licence that entitles the person to carry on a business of providing that type of payment service, or is an exempt payment service provider in respect of that type of payment service.

However, Section 5(2) of the PSB then provides that, for the purposes of Section 5(1), where a person provides any type of payment service while that person carries on any business (Primary Business), the person is presumed to carry on a secondary business of providing that type of payment service, regardless of whether the provision of that type of payment service is related or incidental to the Primary Business, and the presumption is not rebutted by proof that the provision of that type of payment service is related and/or incidental to the Primary Business.

The Explanatory Statement to Section 5(2) of the PSB clarifies that the presumption has been introduced due to the *Chinpo* decision, which, as described above, held that the undertaking of remittances that are purely incidental to a primary business of ship agency and ship chandelling does not constitute the carrying on of a remittance business for the purpose of Section 6(1) of the MCRBA.

Accordingly, once the PSA 2019 comes into operation, unlicensed persons that carry on remittance activities incidentally to their primary business should be mindful that they could fall afoul of Section 5 of the PSB in view of Section 5(2), which

disapplies the position in *Chinpo* on this specific point. Such persons should also be aware that the savings and transitional periods set out under Part 10 of the PSB are only available to persons who have been granted a statutory exemption under Section 31(3) of the MCRBA – and not to persons who carry on remittance activities within the limited scope described in *Chinpo*.

Parties who currently carry on payment services which involve the transmission of funds to recipients outside Singapore but who do not hold a remittance licence under the MCBRA should hence seek to avail themselves of a licence or statutory exemption to avoid inadvertently breaching the provisions of the PSB once the PSA 2019 comes into effect.

In this connection, the MAS has advised that it will consult further on certain measures that it intends to impose pursuant to regulations and notices under the PSA 2019 once enacted, including class exemptions for entities that provide payment services that carry low money laundering / terrorism financing risks. The MAS's Consultation Paper on the Proposed Payment Services Bill published in November 2017 proposed that such low risk payment services include cross-border money transfer services where the payment services user is only allowed to pay for goods or services, and where the payment is funded from an identifiable source, being an account with a financial institution regulated for anti-money laundering / countering the financing of terrorism requirements.

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