

香港特別行政區政府
財經事務及庫務局
財經事務科
香港添馬添美道二號
政府總部二十四樓



LC Paper No. CB(1)195/2025(04)
FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

24TH FLOOR
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
TAMAR
HONG KONG

電話 TEL.: 2810 2067
圖文傳真 FAX.: 2527 0790
本函檔號 OUR REF.: B&M/4/1/44C
來函檔號 YOUR REF.: LS/B/31/2024

10 February 2025

Mr Mark LAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr LAM,

Stablecoins Bill

Thank you for the letter dated 20 January 2025 (the “letter”). Below please find our response to your comments.

Clause 3 of the Bill

(Paragraphs 1 to 2 of the letter)

2. Taking into consideration the constantly evolving nature of cryptography as well as the technologies that encompass cryptographic techniques (e.g. distributed ledger technology) and the fact that “consensus mechanism” and “network node” are terms generally understood in their context, we are of the view that it is more appropriate for these terms to be interpreted in light of the latest technological developments and market consensus than to explicitly define these terms in the Bill. The Monetary Authority (“MA”) will provide further guidance to the industry as appropriate.

Clause 5(1)(a)(i) and (ii) of the Bill
(Paragraphs 3 to 5 of the letter)

3. In determining whether a specified stablecoin is issued in Hong Kong in the course of business, the MA will take a holistic approach and consider all relevant factors including but not limited to the following: (a) where the day-to-day management and operations of the issuer take place; (b) where the issuer is incorporated; (c) where the minting and burning of the specified stablecoin takes place; (d) where the reserve assets are managed; and (e) where the bank account for processing the cash flows arising from minting/redemption requests is maintained. Such determination will be made based on the facts and circumstances of each case.

4. The MA will issue and publish in the Gazette guidelines under clause 170 of the Bill to provide guidance on the factors the MA will take into consideration in determining whether a specified stablecoin is issued in Hong Kong.

Clauses 5(2) and 6(3) of the Bill
(Paragraphs 6 to 8 of the letter)

5. In determining whether a person actively markets to the public that the person carries on, or purports to carry on, an activity that would, if carried on in Hong Kong, constitute a regulated stablecoin activity or the offering of a specified stablecoin, the MA will take a holistic approach and consider all relevant factors including but not limited to the following : (a) the language used in the marketing messages; (b) whether the message is targeted at a group of people that resides in Hong Kong; (c) whether a Hong Kong domain name is used for the marketing website; and (d) whether there is a detailed marketing plan to promote the activity. Such determination will be made based on the facts and circumstances of each case.

6. The MA will issue and publish in the Gazette guidelines under clause 170 of the Bill to provide guidance on the factors the MA will take into consideration in determining whether a person is actively marketing to the public for the purposes of clauses 5(2) and 6(3) of the Bill.

Proposed offences under the Bill

(Paragraphs 9 to 10 of the letter)

7. We are considering in consultation with the Department of Justice the issues raised in paragraphs 9 to 10 of the letter in detail and will reply as soon as practicable.

Clause 9 of the Bill

(Paragraph 11 of the letter)

8. The legislative intent to limit the offering of specified stablecoins issued by an entity that is not licensed by the MA to professional investors only is implemented through clause 9(2)(b) of the Bill. The persons to whom specified stablecoins issued by an entity other than a licensee may be offered will be specified for the purpose of clause 9(2)(b)(iii), by the Financial Secretary by notice published in the Gazette pursuant to clause 9(3) of the Bill.

9. As for the requirement to indicate that such specified stablecoins are not issued by a licensee, the MA and the Securities and Futures Commission (“SFC”), as the regulatory authority for virtual asset trading platforms, will coordinate further on the way in which such requirement will be implemented. The MA and the SFC will consider issuing a circular to require permitted offerors (as defined in clause 9(5) of the Bill, who will be regulated by either the MA or the SFC) to so indicate in the course of their offering of such specified stablecoins.

Clause 78 of, and the proposed Schedule 8 to, the Bill

(Paragraphs 12 to 14 of the letter)

10. In determining the level of penalty for the proposed offence under clause 78 of the Bill, reference was made to section 8ZF of the Payment Systems and Stored Value Facilities Ordinance (Cap.584) (“PSSVFO”), which provides that the MA may, in specified circumstances, require a stored value facility licensee (not being an authorized institution) to take an immediate action relating to its affairs, business or property that the MA considers necessary. A licensee that fails to comply with such a requirement commits an offence under section 8ZF(3) of the PSSVFO. Such offence, on summary conviction, is punishable with a fine

at level 6 (HK\$100,000) and imprisonment for six months (and in the case of a continuing offence, a further fine of HK\$10,000 for every day during which the offence continues).

11. Given that the proposed offence under clause 78 of the Bill is similar to the offence under section 8ZF of the PSSVFO, and that both offences are only applicable to a licensee that is not an authorized institution, we have adopted the same level of penalty as section 8ZF of the PSSVFO.

Clause 117 of the Bill

(Paragraphs 15 to 17 of the letter)

12. Under Clause 117 of the Bill, an investigator directed or appointed by the MA will be empowered to require certain persons to produce a record or document that is specified in a notice issued by the investigator and to give the investigator all assistance in connection with the investigation that the person is reasonably able to give.

13. Clause 117 of the Bill is similarly worded as section 183 of the Securities and Futures Ordinance (Cap. 571) (“SFO”). *Cheung Ka Ho Cyril v Securities and Futures Commission* [2020]1 HKLRD 859 (“*Cheung*”) is a case on section 183 of the SFO. The Court of First Instance held in *Cheung* (paragraphs 41, 42 and 48) that upon their true construction in the context of section 183(1) of the SFO, the words “record” and “document” defined in section 1 of Part 1 of Schedule 1 to the SFO are given very wide meanings, are not confined to record or document in paper or traditional forms, and are sufficiently wide to cover the digital devices seized by the SFC in that case.

14. While unlike the SFO, the Bill has not defined the terms “record” and “document”, a reference to how “document” is defined in the Interpretation and General Clauses Ordinance (Cap. 1) (“IGCO”) (which generally applies save where the contrary intention appears) would point to the same direction that “document” should be sufficiently wide to cover digital devices. Under the IGCO, “document” means “*any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means*”; and “publication” means “... (b) any record,

tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed...". "Digital devices" would arguably fall within limb (b) of the meaning of "publication" in the IGCO as contrivances by means of which words or ideas may be electronically represented or conveyed and in turn be classified as a "document" as widely defined in the IGCO.

15. *Cheung* further held that:

- (a) (paragraph 68) the SFC is empowered, under section 183(1) of the SFO (as which clause 117(1) to (4) of the Bill is similarly worded), to require the production of means of access to email accounts and digital devices which contain, or are likely to contain, information relevant to its investigations even though the email accounts and digital devices would likely also contain other personal or private materials which are not relevant to the SFC's investigations; and
- (b) (paragraphs 65, 67-69) as a matter of principle, where a warrant authorises the seizure of a particular document, the empowered officer is lawfully entitled to seize the whole file containing the document for the purpose of examination, without having to separate the individual sheet authorised to be seized, provided what he does is reasonable in the circumstances. Such principle has been extended to authorise the seizure of, or the taking of an image of, a computer hard disk containing relevant documents, even though it would almost inevitably contain vast amounts of personal or private materials which are not relevant to the investigation. The reasoning behind such extension of the above principle is driven by the practical reality that information, documents and records are nowadays mostly kept in digital or electronic forms and stored in (inter alia) email accounts and digital devices which (i) would almost inevitably contain large amounts of personal or private, but irrelevant, materials, and (ii) are often also protected by specific login names/IDs and passwords.

16. As explained by the Court, the reasoning of the relevant decisions discussed in *Cheung* is driven by practical reality. Having considered the above, it is more appropriate for the investigator's power to require the production of "records" and "documents" and means of access to email accounts and digital devices under clause 117 of the Bill to be interpreted according to the wide meanings of the relevant definitions under the IGCO as well as the case law, so that the power may catch up with any development of the case law that may evolve with technological developments.

Clause 124 of the Bill

(Paragraphs 18 to 19 of the letter)

17. A person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66), if directed under clause 116(2)(a) of the Bill, is an "investigator" as defined in clause 2(1) of the Bill. Noting the overlap in that regard between clause 124(2)(a) and 124(2)(b) of the Bill, we will review the clauses and, if necessary, move a committee stage amendment ("CSA") to this effect.

Clause 132 of the Bill

(Paragraphs 20 to 22 of the letter)

18. The legislative intent is for the notice under clause 132(2) of the Bill ("Sanction Notice") to include the time at which the sanction is to take effect and the terms in which the regulated person is to be cautioned, warned or reprimanded (if applicable). A person is entitled under clause 140(1) of the Bill to refer a decision made under clause 131(1) of the Bill to the Stablecoin Review Tribunal for review (being a "specified decision"). The legislative intent is that a statement to that effect will be included in a Sanction Notice. We will move a CSA to this effect.

Clause 140 of the Bill

(Paragraph 23 of the letter)

19. We consider it appropriate, in respect of all specified decisions, to give the Stablecoin Review Tribunal the power to stay the execution of a specified

decision (subject to such conditions as the Stablecoin Review Tribunal considers appropriate) on application by the person who applies for a review of the decision. We will move a CSA to this effect.

Clause 145 of the Bill

(Paragraph 24 of the letter)

20. We will move CSAs to replace “section 142(3)” with “section 142(5)” in clause 145(4)(a) and (5) of the Bill.

Proposed Schedule 2 to the Bill

Fit and proper person (paragraphs 25 to 27 of the letter)

21. In respect of fulfilling the “fit and proper” requirement, in general, the standards required of a person will vary considerably, depending on the particular position held, or to be held, by the person concerned in a licensee. In determining whether a person who holds the position of chief executive, director, stablecoin manager or controller of a licensee is fit and proper, the MA will take into account a number of considerations, including but not limited to: (a) whether the person has a record of non-compliance with regulation, or has been censured, disciplined, publicly criticised or investigated by regulators; (b) whether the person has the commitment and ability to devote sufficient time and attention to the licensee’s business; (c) whether the person has been convicted of a criminal offence; and (d) whether the person has an adverse financial position that could undermine the operations of the licensee. In line with the practice of administering the regulatory regime for authorized institutions and issuers of stored value facilities, the MA will issue and publish in the Gazette guidelines under clause 170 of the Bill to provide guidance on the factors that the MA will consider in determining a person’s fitness and propriety for each of the positions concerned.

Disclosures – issuance of the white paper (paragraphs 28 to 30 of the letter)

22. As regards the disclosures to be made in the white paper, as the contents of the white paper may vary from time to time due to the evolving industry development and business models of a licensee, our intention is for the MA to

issue and publish in the Gazette guidelines under clause 170 of the Bill to provide guidance on the information that should be included in the white paper, which may include information regarding the mechanism and procedures for the issuance of specified stablecoins, the distribution and redemption of specified stablecoins, the rights of potential holders of specified stablecoins, and the underlying technology employed, etc.

Non-interest bearing (paragraphs 31 to 33 of the letter)

23. In relation to questions surrounding interest payment, it will be the responsibility of a licensee to ensure that its offering of marketing incentives does not constitute payment of interest. Transaction-based market incentives which are not based on the length of the holding period of the specified stablecoin, the par value of the specified stablecoin and/or the market value of the specified stablecoin, could be permitted. On the other hand, net compensation or discounts that are linked to the length of the holding period of a specified stablecoin would likely be regarded as interest for the purposes of section 15(1) of the proposed Schedule 2 to the Bill. The MA will provide further guidance on this matter as appropriate.

Proposed Schedule 6 to the Bill
(Paragraphs 34 to 35 of the letter)

24. The rationale for excluding the decisions referred to in paragraph 34 of the letter from the list of specified decisions under section 13 of the proposed Schedule 6 to the Bill is as follows -

(a) a decision to direct that the specified shares in the licensee be subject to certain restrictions under clause 46(2) of the Bill

25. The MA may, in limited circumstances, impose restrictions on specified shares under clause 46(2) of the Bill, for example, if the MA has objected to the person concerned becoming a controller or the person has become a controller without the MA's consent. The purpose is to prevent such controller from exerting undue influence over the licensee through the transfer of shares or exercise of rights in the shares of the licensee. We consider that subjecting the

MA's decision to the review procedures of the Stablecoin Review Tribunal could unduly delay the necessary swift action.

26. Notwithstanding this, the controller affected by the restrictions may through an order from the Court of First Instance, to have the same lifted pursuant to clauses 51 and 52 of the Bill.

27. The approach in this Bill aligns with that taken in respect of similar decisions that may be made by the MA under the PSSVFO (e.g. section 8ZZN (*Monetary Authority may impose restrictions regarding specified shares in licensee, etc.*)) and the Banking Ordinance (Cap. 155) (e.g. section 70B (*Restrictions on and sale of shares*)), which are not subject to review by the Payment Systems and Stored Value Facilities Appeals Tribunal and the Banking Review Tribunal, respectively.

(b) a decision to refuse an application to modify or waive the minimum criteria under clause 99(1) of the Bill

28. It is our legislative intent that the MA may grant a modification or waiver of any of the minimum criteria under clause 99(1) of the Bill on the application of a licence applicant or licensee who is issuing specified stablecoins under comparable supervision and regulation outside Hong Kong, provided that the MA is satisfied that such decision does not pose material risks to holders or potential holders of specified stablecoins or the monetary or financial system of Hong Kong.

29. As the minimum criteria are designed to provide protection to holders of specified stablecoins and address the risks, in particular monetary and financial stability risks, in relation to the issue of specified stablecoins, it is important that a licensee fulfills all of the minimum criteria, save in the circumstances referred to in the preceding paragraph.

30. The approach in this Bill aligns with that taken in respect of a comparable decision that may be made by the MA under section 11 (*Power of Monetary Authority to exempt designated system established outside Hong Kong*) of the PSSVFO to exempt a designated system (as defined in section 2 of the PSSVFO) established in a place outside Hong Kong from certain obligations imposed on

such designated system under the PSSVFO, and the decision made thereunder by the MA is not subject to review by the Payment Systems and Stored Value Facilities Appeals Tribunal.

(c) a decision to revoke the designation of a designated stablecoin entity under clause 106(1) of the Bill

31. In general, the revocation of the designation of a designated stablecoin entity under clause 106(1) of the Bill would release such entity from certain obligations under the Bill, including, amongst others, the operational and financial resources requirements applicable to designated stablecoin entities under clause 107 of the Bill.

32. In light of the foregoing, we do not see the need to include a decision of the MA under clause 106(1) of the Bill on the list of specified decisions under section 13 of the proposed Schedule 6 to the Bill.

(d) a decision to give a rejection notice under section 4(2) of the proposed Schedule 7 to the Bill

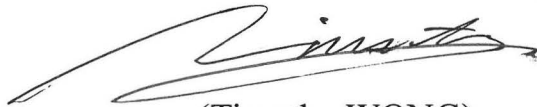
33. If the MA decides to issue a rejection notice to a specified entity under section 4(2) of the proposed Schedule 7 to the Bill (“Rejection Notice”), the entity may under section 5(2) of the proposed Schedule 7 to the Bill object to the decision within the applicable objection period following which the MA must then determine the licence application in accordance with clause 15 of the Bill. If the MA subsequently decides to refuse to grant a licence under clause 15(1)(b) of the Bill, the entity has the right to refer such specified decision to the Stablecoin Review Tribunal for review.

34. Given that the entity is entitled to object to the MA’s decision to give a Rejection Notice within the objection period, and ultimately has the right to refer any decision of the MA to refuse to grant a licence to the Stablecoin Review Tribunal, we do not see the need to include the decision to issue a Rejection Notice in the list of specified decisions under section 13 of the proposed Schedule 6 to the Bill.

Proposed Schedule 7 to the Bill
(Paragraphs 36 to 37 of the letter)

35. In considering whether an entity has a reasonable prospect of successfully demonstrating to the MA its capability to comply with the applicable regulatory requirements, relevant considerations will include whether the entity can substantially meet the minimum criteria set out in proposed Schedule 2 to the Bill as well as applicable regulatory requirements at the time of the grant of a provisional licence. The MA will provide further guidance to the industry as appropriate

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Wong', with a stylized flourish extending from the end.

(Timothy WONG)
for Secretary for Financial Services
and the Treasury