

立法會

Legislative Council

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Paper for the House Committee Meeting on 3 January 2025

Legal Service Division Report on Stablecoins Bill

I. SUMMARY

- 1. The Bill**

The Bill seeks to:

 - (a) provide for the supervision of activities involving stablecoins;
 - (b) provide the Monetary Authority with investigatory and enforcement powers; and
 - (c) provide for incidental and related matters.

- 2. Public Consultation**

The Administration conducted a public consultation on the proposed licensing regime from December 2023 to February 2024. According to the Administration, overall, there is broad support for the policy objectives and the key proposals. Consultation conclusions were issued in July 2024.

- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on the legislative proposals on 8 April 2024. Members in general supported the legislative proposals and discussed various issues with the Administration.

- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new regulatory regime for activities involving stablecoins, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 18 December 2024. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref: B&M/4/1/44C) issued by the Financial Services and the Treasury Bureau on 11 December 2024 for further details.

Object of the Bill

2. The Bill seeks to:
- (a) provide for the supervision of activities involving stablecoins;
 - (b) provide the Monetary Authority (“MA”) with investigatory and enforcement powers; and
 - (c) provide for incidental and related matters.

Background

3. According to paragraph 5 of the LegCo Brief, noting that fiat-referenced stablecoins (“FRS”) could pose more imminent risks as compared to other types of stablecoins, the Administration sees the need to put in place a regulatory regime for FRS issuers. Further, as stated in paragraph 6 of the LegCo Brief, the Financial Stability Board (which was established to, among others, promote the reform of international financial regulations of which Hong Kong is a member) finalized in 2023 its recommendations on regulating stablecoins, and will conduct a review of the implementation progress attained by its member jurisdictions (including Hong Kong) in 2025. As announced in paragraph 99(iii) of the 2024 Policy Address, a bill on the regulation of FRS issuers will be introduced by the end of 2024. The Bill is therefore introduced into LegCo to establish a licensing regime for FRS issuers in Hong Kong.

Provisions of the Bill

Proposed supervision of activities involving stablecoins

4. The key features of the proposed new regulatory framework on stablecoins are set out in the ensuing paragraphs.

Proposed licensing requirement on carrying on stablecoin activity

5. Under the Bill, a person, unless exempted under clause 13(1)(a) of the Bill, would be required to have a licence granted by MA under clause 15 of the Bill in order to carry on, or to hold out as carrying on, a “regulated stablecoin activity” (clause 8 of the Bill).

6. For the purposes of the Bill:
- (a) a person would be regarded as carrying on a “regulated stablecoin activity” if the person (i) issues a “specified stablecoin” in Hong Kong in the course of business; (ii) issues a specified stablecoin in a place outside Hong Kong in the course of business, and the specified stablecoin purports to maintain a stable value with reference (whether wholly or partly) to Hong Kong dollars; or (iii) carries on an activity specified by MA under clause 5(4) of the Bill, after consulting the Financial Secretary (“FS”), by notice published in the Gazette (clause 5 of the Bill);
 - (b) a “specified stablecoin” is proposed to mean (i) a stablecoin that purports to maintain a stable value with reference wholly to (aa) one or more official currencies (e.g. the currency issued by the central bank of a jurisdiction), (bb) one or more units of account or stores of economic value specified by MA by notice published in the Gazette under clause 4(2)(a) of the Bill, or (cc) a combination of the items referred to in (aa) and (bb); or (ii) a digital representation of value, or a digital representation of value of a class, specified by MA by notice published in the Gazette under clause 4(2)(b) of the Bill (clause 4 of the Bill); and
 - (c) a “stablecoin” is proposed to mean a cryptographically secured digital representation of value that, subject to fulfilling other conditions, is expressed as a unit of account or store of economic value, is used (or intended to be used) as a medium of exchange accepted by the public for specified purposes including payment for goods or services, and purports to maintain a stable value with reference to a single asset (or a pool or basket of assets), but would not include certain digital representations of value (e.g. those issued by central banks) (clause 3 of the Bill).

Licensing criteria and conditions, and other licensing matters

7. Part 2 of the Bill contains the detailed criteria, conditions and other matters relating to the proposed licensing regime. For instance, a company as defined by section 2(1) of the Companies Ordinance (Cap. 622) (e.g. a company formed and registered under Cap. 622), or an authorized institution (e.g. a bank) incorporated outside Hong Kong would be eligible to apply for a licence to carry on a regulated stablecoin activity (clause 14 of the Bill). A licence, if granted, would remain in force until it is revoked under specified events as stated in clause 28 or 29 of the Bill (e.g. if MA is satisfied that a ground for revoking a licence specified in the proposed Schedule 4 to the Bill exists).

8. Various duties are proposed to be imposed on a licensee under the Bill. For instance, a licensee must ensure the fulfillment of the relevant minimum criteria (as specified in Part 2 of the proposed Schedule 2 to the Bill, such as redemption,

reserve assets management and audit requirements) (clause 24 of the Bill). A licensee must also pay a licence fee to MA of an amount specified in the proposed Schedule 3 to the Bill (i.e. HK\$113,020) within 14 days after the date on which the licence is to take effect and annually (clause 22 of the Bill). A licensee would require the prior consent of MA to appoint its controller, chief executive, director and stablecoin manager (clauses 37, 53, 58 and 66 of the Bill). A licensee must notify MA of any change of, among others, a manager of a licensee pursuant to clause 63 of the Bill (e.g. an individual appointed by the licensee to be principally responsible for the conduct of specified affairs (i.e. the affairs specified in the proposed Schedule 1 to the Bill) in relation to the licensee's licensed stablecoin activities (but not including, among others, a person or a person of a class of persons declared not to be manager(s) by MA by notice published in the Gazette under clause 2(2) of the Bill)).

Offering specified stablecoin

9. The Bill proposes that a person must not offer, or hold out as offering, a specified stablecoin, unless the person (if not exempted by MA) is a licensee or another permitted offeror (such as a licensed corporation that is licensed for a Type 1 regulated activity (i.e. dealing in securities) under the Securities and Futures Ordinance (Cap. 571) and an authorized institution), subject to fulfilling the relevant condition(s). Such relevant conditions would include that the issue of the specified stablecoin is authorized by a licence, or the person to whom the specified stablecoin is offered is a person, or a person of a class, specified by FS by notice published in the Gazette under clause 9(3) of the Bill (clause 9 of the Bill).

Designation of stablecoin entities

10. MA would be empowered to designate by notice published in the Gazette an entity which carries on a business outside Hong Kong of issuing specified stablecoins or provides (whether in Hong Kong or elsewhere) any services to a stablecoin payment system to be subject to the relevant requirements imposed under the Bill (Part 3 of the Bill).

Criminal offences and civil sanctions

11. A person who, without reasonable excuse, contravenes any requirement in relation to (a) carrying on a regulated stablecoin activity (see paragraph 5 above), or (b) offering a specified stablecoin (see paragraph 9 above) would commit an offence. Such offence would be punishable with, (a) on summary conviction, a fine of HK\$500,000 and imprisonment for two years and, in the case of a continuing offence, a further fine of HK\$10,000 for every day during which the offence continues, or (b) on conviction on indictment, a fine of HK\$5,000,000 and imprisonment for seven years and, in the case of a continuing offence, a further fine of HK\$100,000 for every day during which the offence continues (clauses 8(3) and 9(4) of the Bill). The Bill also proposes other criminal offences, such as the offences related to advertising a

regulated stablecoin activity and advertising the offering of a specified stablecoin. Such offences would be punishable with, on summary conviction, a fine at level 5 (HK\$50,000) and imprisonment for six months (clause 10 of the Bill).

12. MA would be empowered to impose civil sanctions on a licensee or designated stablecoin entity, or its officer, including the imposition of a pecuniary penalty (i.e. not exceeding an amount of HK\$10,000,000 or three times the amount of profit gained or loss avoided as a result of the relevant contravention (whichever is the greater)) (clauses 130 to 137 of the Bill).

Investigatory and enforcement powers of the Monetary Authority

13. The Bill seeks to confer various investigatory and enforcement powers on MA. For instance, MA could institute an investigation (e.g. by appointing an investigator) against a person in specified circumstances (e.g. where an offence under the Bill may have been committed by a person). Such an investigator would have various powers under the Bill, such as requiring the production of a record or document, and requiring an answer etc. to be verified by statutory declaration (Part 5 of the Bill). As to enforcement powers, MA could (after consulting FS) require the licensee to take certain actions (e.g. directing that the affairs, business or property of the licensee are to be managed by a statutory manager appointed by MA who would have certain powers including those set out in the proposed Schedule 5 to the Bill) in specified circumstances (e.g. the licensee is likely to become unable to meet its obligations) (clauses 77, 80 and 86 of the Bill).

Incidental and related matters

14. The Bill also seeks to provide for other related and miscellaneous matters. For instance, the Stablecoin Review Tribunal would be established under clause 139 of the Bill to review a decision specified in section 13 of the proposed Schedule 6 to the Bill (e.g. a decision of MA to attach a condition, or amend a condition attached, to a licence under clause 17 of the Bill) (Part 7 of the Bill). Transitional arrangements and consequential amendments are also provided for in the proposed Schedules 7 and 8 to the Bill.

15. Clause 171 of the Bill seeks to empower MA to make regulations for the better carrying out of the purposes of the Bill. Under clause 172 of the Bill, the Chief Executive in Council may, by notice published in the Gazette, amend the proposed Schedule 6 to the Bill (see paragraph 14 above), and FS may, by notice published in the Gazette, amend the proposed Schedules 1 to 5 to the Bill (see paragraphs 8, 7 and 13 above). Such regulations and notices (together with the notices published in the Gazette pursuant to clauses 2(2), 4(2), 5(4) and 9(3) of the Bill (see paragraphs 8, 6(b) and (a), and 9 above)) would be subsidiary legislation subject to the negative vetting procedure of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Commencement

16. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Public Consultation

17. As stated in paragraph 27 of the LegCo Brief, the Administration conducted a public consultation on the proposed licensing regime from December 2023 to February 2024. Overall, there is broad support for the policy objectives and the key proposals. According to the Administration, a majority of the respondents agreed that a well-regulated environment is a prerequisite for the sustainable and responsible development of the stablecoin ecosystem in Hong Kong, and shared the Administration's view that a risk-based and agile approach should be adopted to regulate FRS issuers, while ensuring a level playing field. Consultation conclusions were issued in July 2024.

Consultation with LegCo Panel

18. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel at its meeting on 8 April 2024 on the proposed regulatory regime for FRS issuers. Members supported the legislative proposals in general and discussed various issues including the proposed regulatory scope and various duties imposed on FRS issuers, such as redemption, reserve assets management and audit requirements.

Conclusion

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to establish a new regulatory regime for activities involving stablecoins, Members may wish to form a Bills Committee to study the Bill in detail.

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