



Consultation Paper on Legislative Proposal to Implement the Regulatory Regime for Stablecoin Issuers in Hong Kong

The Law Society's Submissions

The Financial Services and the Treasury Bureau (“FSTB”) and the Hong Kong Monetary Authority (“HKMA”) jointly issued the “Consultation Paper on Legislative Proposal to Implement the Regulatory Regime for Stablecoin Issuers in Hong Kong” on 27 December 2023 (“Consultation Paper”).

In response, the Law Society provides the following submissions. Unless otherwise defined, the same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

General Observations

We have two general observations:

- 1) Virtual Assets, as an asset class, will be regulated by various regulatory bodies – these include, we understand, the Securities and Futures Commission (which will oversee virtual assets services providers), HKMA (which will regulate stablecoin issuers), and most recently the Hong Kong Customs and Excise Department (which will be in charge of over-the-counter crypto shops). At the moment, it is not clear whether the proposed legislation would group all virtual assets activities together, for the purpose of supervising and overseeing these assets. We consider it important that concerted efforts be initiated by and be coordinated by one single policy bureau viz. FSTB which could align all the licensing and supervision of virtual assets generally, in order to provide a uniformed approach to this important matter, and also a level playing field for stakeholders.
- 2) Currently, the Consultation Paper provides only high-level principles, which are agreeable in general. More details and information about the proposals are required and should be made available for further consultation and deliberation.

Consultation Questions

As for the consultation questions, our responses are as follows.

Q1. *Do you agree with the proposed definition of “stablecoin” and “FRS [Fiat-referenced stablecoin]”?*

Law Society's response:

Yes, we agree with the proposed definitions.

Q2. *Do you have any comments in relation to the scope of regulated stablecoin activity?*

Law Society's response:

We have no comment.

Q3. *Do you agree with the proposed approach of introducing a new piece of legislation to implement the regulatory regime for FRS issuers, and potentially cover the regulatory regime for other VA [Virtual Assets] activities as appropriate in the future?*

Law Society's response:

Yes, we agree with the proposed approach. This would give more clarity and certainty to market participants, which would in turn facilitate the development of virtual assets in Hong Kong in the long run.

Q4. *Do you agree with the proposed exclusion of issuance of FRS from certain regulatory regimes, such as those for securities and SVFs [stored value facilities] to avoid subjecting FRS issuer to multiple regulatory regimes?*

Law Society's response:

Yes, we generally agree. In practice, however, business models evolve and the classification of which regime an innovative business model falls under may not be entirely clear.

Q5. *Do you have any comments on the proposed licensing regime for FRS issuers?*

Law Society's response:

Yes, we generally agree.

Q6. *Do you have any comments on the proposed licensing criteria and conditions?*

Law Society's response:

For risk management and controls, in addition to putting in place appropriate risk management processes and measures for the operations of FSR issuers, there should be requirements in the licensing conditions for immediate (i) reporting and (ii) disclosure by FSR issuers if they experience a cyber attack, data breach, system compromise, fraud or irregular large scale redemptions which could significantly impact upon their operation, FSR users and the public's confidence in stablecoins / cryptocurrencies and activities. Such disclosure requirements may additionally complement MA's investigation, audit and supervisory powers and they also enable MA to exercise its powers more effectively.

For the financial resources requirement, however, we note that it may be difficult to calculate the exact amount representing the fixed percentage of the "par value of FRS in circulation" since this amount may fluctuate especially when there are frequent subscriptions and redemptions for a particular FRS. As such, it might be desirable to link the fixed percentage to (i) another benchmark, or (ii) a monetary range of value of FRS in circulation.

Q7. *Do you have any comments on the proposed power given to the MA [Monetary Authority] to impose additional licensing conditions?*

Law Society's response:

We agree that the proposed power be given to the Monetary Authority.

Q8. *Do you have any view on the proposed arrangements for the offering of FRS?*

Law Society's response:

We have no comment.

Q9. *Do you support granting the authorities necessary powers to adjust the parameters of in-scope stablecoins and activities, similar to the VASP [Virtual Assets Service Providers] regime?*

Law Society's response:

Yes, we generally agree that from a regulatory perspective, the authorities should be granted such powers. However, the factors set out in paragraph 8.2 of the Consultation Paper are quite vague. To promote market certainty, we suggest giving more guidance on the situations/thresholds which would trigger the authorities exercising their powers.

Q10. *Do you consider the proposed criteria and factors relevant and appropriate for the authorities to take into account when exercising such powers?*

Law Society's response:

Yes, we generally agree.

Q11. *Do you have any comments on the proposed supervisory powers of the MA on licensed FRS issuers?*

Law Society's response:

We have no comment.

Q12. *Do you have any comments on the proposed investigation powers of the MA in respect of licensed FRS issuers?*

Law Society's response:

We have no comment.

Q13. *Do you have any comments on the proposed offence and sanction provisions, in particular the sanctions and pecuniary penalty proposed, as well as the appeal arrangements?*

Law Society's response:

We have no comment.

Q14. *Do you have any comments on the proposed transitional arrangement?*

Law Society's response:

We have no comment.

**The Law Society of Hong Kong
20 February 2024**