

## RE: GAZETTAL OF STABLECOINS BILL

## BACKGROUND &amp; OVERVIEW

The Stablecoins Bill (the “**Bill**”) with respect to, amongst other things, the introduction of a regulatory regime for the issuance and offering of stablecoins (the “**Stablecoins Regime**”), was published in the Gazette on 6 December 2024 and introduced into the Legislative Council for first reading on 18 December 2024. The Bill is primarily based on the consultation conclusions (the “**Consultation Conclusions**”) published by the Financial Services and the Treasury Bureau (the “**FSTB**”) and the Hong Kong Monetary Authority (the “**HKMA**”) on 17 July 2024<sup>1</sup> but with certain notable modifications.

In this Client Alert, we will discuss the key features and updates introduced by the Bill and share our observations on the subject.

**A. Definitions***(a) Definition of “stablecoin”*

Taking reference from the definition of “virtual asset” under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (the “**AMLO**”), the term “stablecoin” as defined in the Bill refers to a cryptographically secured digital representation of value, operated on a distributed ledger or similar information repository, which purports to maintain a stable value with reference to a single asset or a pool or basket of assets. “Distributed ledger” means an information repository that uses a technology through which records of transactions are: (i) held in a ledger; (ii) shared across a network; (iii) verified among network participants using a consensus mechanism; and (iv) synchronised between network nodes.

*(b) Definition of “Specified Stablecoin”*

For the purposes of the Bill, “specified stablecoin” (hereinafter, “**Specified Stablecoin**”) is defined to mean a stablecoin which purports to maintain a stable value with reference wholly to: (i) one or more official currencies (i.e. fiat); (ii) one or more units of account or stores of economic value specified by the HKMA; or (iii) a combination of any of the foregoing (each a “**Reference Asset**”).<sup>2</sup>

**B. Scope of Regulation***(a) Regulated Stablecoin Activity*

A person carrying on any of the following activities (each a “**Regulated Stablecoin Activity**”) will be subject to regulation and be required to obtain a licence (the “**Licence**”) under the Stablecoins Regime:

- (i) issuing, in the course of business, a Specified Stablecoin within Hong Kong; or
- (ii) issuing, in the course of business, a Specified Stablecoin which purports to maintain a stable value with reference (whether wholly or partly) to the Hong Kong dollar (“**HKD**”) outside Hong Kong.<sup>3</sup>

*(b) Designated Stablecoin Entities*

Pursuant to the Bill, the HKMA is empowered to, by publication of notice in the Gazette, designate as a “designated stablecoin entity” any person (hereinafter, “**Designated Stablecoin Entity**”) who: (i) not being prohibited by the Bill from doing so, carries on a business *outside* Hong Kong of issuing Specified Stablecoins; or

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<sup>1</sup> The Consultation Conclusions took into account feedback of respondents to the consultation paper on the proposed stablecoin licensing regime dated 27 December 2023 (the “**Consultation Paper**”). For further information on the Consultation Paper and the Consultation Conclusions, please refer to our previous client alerts dated 16 January 2024 and 16 August 2024, respectively.

<sup>2</sup> The HKMA is also empowered to expand the types of assets to which a Specified Stablecoin may be referenced and to designate any other digital representation of value as a Specified Stablecoin by the publication of a notice in the Gazette.

<sup>3</sup> The HKMA may also, by way of publication of a notice in the Gazette, specify any other activity as a Regulated Stablecoin Activity having regard to, amongst other things: (i) the materiality of such activity to the monetary or financial stability of Hong Kong and the functioning of Hong Kong as an international financial centre; and (ii) whether matters of significant public interest are involved (the “**Materiality Test**”).

(ii) provides, whether in Hong Kong or elsewhere, any services to a payment system for any Specified Stablecoin (the “**Stablecoin Payment System**”).<sup>4</sup>

A Designated Stablecoin Entity will be required to comply with certain regulatory requirements pursuant to the Bill, including, amongst other things, the requirements to: (i) comply with regulations to be published by the HKMA; (ii) maintain adequate financial resources; and (iii) have in place and implement appropriate systems of control for reserve management, disclosures and risk management.

### *(c) Offer of Specified Stablecoins*

In line with the Consultation Conclusions, only certain types of licensed entities may offer Specified Stablecoins, namely: (i) holders of a Licence (each a “**Licensee**”); (ii) authorised institutions<sup>5</sup> (each an “**AI**”) licensed under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) (the “**BO**”); (iii) corporations licensed under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the “**SFO**”); and (iv) VA service providers (each a “**VASP**”) licensed under the AMLO (collectively, the “**Permitted Offerors**”).

A person (the “**Offeror**”) will be regarded as “offering” a Specified Stablecoin if the Offeror, in the course of business, makes a communication to another person (the “**Offeree**”) which presents sufficient information on each of the following to enable the Offeree to decide whether to acquire the Specified Stablecoin from the Offeror, including: (i) the Specified Stablecoin to be offered; (ii) the terms of the offer; and (iii) the channels through which the Specified Stablecoin will be offered (collectively, the “**Offer Information**”).

Further, a Specified Stablecoin which is not issued by a Licensee (a “**Unlicensed Specified Stablecoin**”) may only be offered to persons specified by the HKMA by notice published in the Gazette (the “**Permitted Offerees**”).

## **C. Licensing and Regulatory Requirements**

The following sets out some of the key regulatory requirements applicable to Licensees under the Bill:

- (a) **A Licensee (other than an AI) is required to maintain at all times a paid-up share capital of not less than HK\$25,000,000.** This represents a slight relaxation of the minimum share capital requirement (particularly for issuers of Specified Stablecoins with a larger circulation volume) as previously stated in the Consultation Conclusions, which required Licensees to maintain a paid-up share capital of HK\$25,000,000 or 1% of the par value of Specified Stablecoin in circulation, whichever is the higher.
- (b) **A Licensee must, for each type of Specified Stablecoin issued by it, maintain at all times a pool of reserve assets (the “Reserve Asset Pool”) having a market value at least equal to the par value of all outstanding Specified Stablecoins of that type in circulation (i.e. full backing).** The Reserve Asset Pool must comprise assets which are: (i) of high quality and high liquidity with minimal investment risk; and (ii) unless the prior written approval of the HKMA is obtained, held in the same Reference Asset. Further, the Reserve Asset Pool must be adequately protected against the other creditors of the Licensee and be segregated from any other funds paid to, maintained or received by the Licensee (including any other Reserve Asset Pool).
- (c) **A Licensee is required to make adequate and timely disclosures to the public in respect of its reserve assets,** including: (i) its reserve asset management policy; (ii) composition and market value of its reserve assets; (iii) assessment of the risks arising from its reserve assets and the management of such risks; and (iv) the results of regular independent attestation and audit of its reserve assets. We expect that further guidance as to the manner and frequency of such disclosures will be provided by the HKMA in due course.
- (d) **A Licensee must, as soon as practicable upon receipt of a valid redemption request, honour such request by payment to the holder of the par value of the Specified Stablecoin being redeemed** (less any reasonable redemption fees) in the Reference Asset. Whilst the HKMA previously proposed that redemption requests should be fulfilled within one (1) business day, it is expected that further guidance will be provided by the HKMA as to the specific timeframe within which a Licensee will be required to fulfil redemption requests.

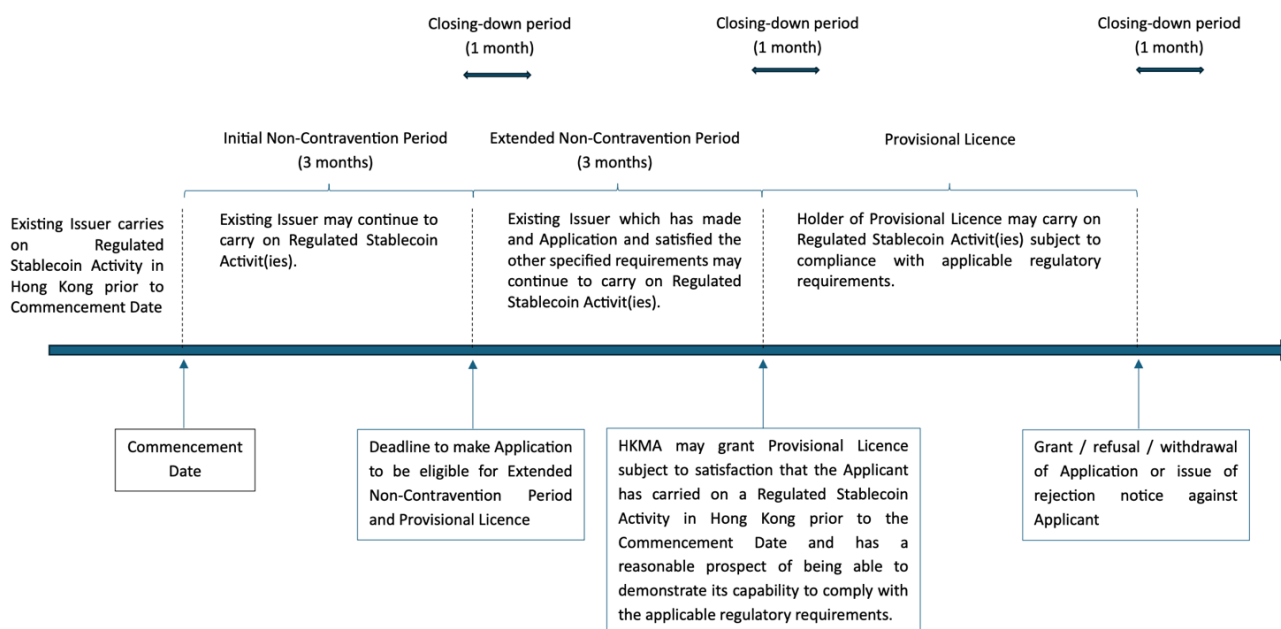
<sup>4</sup> The HKMA may only exercise such power if it is of the opinion that the issue of Specified Stablecoins or the provision of services to a Stablecoin Payment System by that person satisfies the Materiality Test.

<sup>5</sup> The term “authorised institution” is defined in section 2 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong).

- (e) **A Licensee must not make interest payments to users of Specified Stablecoins.** It is further clarified that “interest” refers to any profit, income or other return represented to arise or to be likely to arise from the holding of the Specified Stablecoin on the basis of the length of the holding period and/or the par value or market value of the Specified Stablecoin.<sup>6</sup>
- (f) **A Licensee must implement adequate and appropriate risk management policies and procedures** to manage the risks arising from the carrying on of Regulated Stablecoin Activit(ies), covering, amongst other things: (i) the safety and integrity of data (in particular, personal data) and records; (ii) fraud detection; (iii) contingency arrangements; and (iv) other appropriate operational and security safeguards.
- (g) **A Licensee is required to appoint: (i) a stablecoin manager; (ii) at least one (1) chief executive; and (iii) at least one (1) alternative chief executive** to manage and supervise its conduct of business activities. Each of these key personnel may only be appointed with the prior consent of the HKMA and must be ordinarily resident in Hong Kong. Whilst the Bill does not specify the roles and responsibilities of these key personnel, we expect further clarification to be provided by the HKMA in due course.

#### D. Transitional Arrangements

The Bill provides certain transitional arrangements (the “**Transitional Arrangements**”) for persons (each an “**Existing Issuer**”) carrying on a Regulated Stablecoin Activity in Hong Kong prior to the commencement of the Stablecoins Regime (the “**Commencement Date**”), including: (a) a three (3)-month non-contravention period (the “**Initial Non-Contravention Period**”) which may be extended to six (6) months (the “**Extended Non-Contravention Period**”); and (b) a provisional licence (the “**Provisional Licence**”) which may be granted to an Existing Issuer which makes an application for the Licence (the “**Application**”) within the Initial Non-Contravention Period and satisfies the specified requirements, as illustrated in the following diagramme:



<sup>6</sup> However, it was stated in the Consultation Conclusions that market incentives would be permitted so long as these do not amount to payment of interest.

## E. Observations

The introduction of the Stablecoins Bill is a welcome development that is expected to fortify Hong Kong's status as an international virtual asset hub, with a number of leading market participants<sup>7</sup> already admitted to the Stablecoin Issuer Sandbox launched by the HKMA in July 2024. Most recently, Standard Chartered Bank, Animoca Brands and Hong Kong Telecommunications have announced their plans to establish a joint venture for the purpose of applying for the Licence and issuing a HKD-backed stablecoin.<sup>8</sup> In the following, we set out some of our observations regarding the Stablecoins Bill:

- (1) ***Stablecoins Regime may encompass stablecoins operated on distributed ledgers with varying degrees of decentralisation.*** The requirement in the definition of “distributed ledger” for the verification of transaction records among multiple network participants appears to be intended to reflect the intention of the FSTB and HKMA, as stated in the Consultation Conclusions, that the Stablecoins Regime should focus on the regulation of stablecoins operated on ledgers operated in a decentralised manner. However, the definition does not specify any minimum number of network participants required to be involved, nor does it require such network participants to be independent of the issuer or the owner or developer of the blockchain network. Thus, it is possible (or even intended) that the Specified Stablecoins to be regulated under the Stablecoins Regime may be operated on a ledger that is controlled by a small number of participants associated with the issuer. Indeed, it may be considered appropriate for a Licensee to exercise some degree of control over the operation of the ledger and/or impose certain restrictions as to participation in the network (for example, via deployment of a permissioned blockchain), particularly in view of requirements in relation to risk management and security under the Stablecoins Regime.
- (2) ***Unlicensed VA over-the-counter (“OTC”) service providers may not be able to offer Specified Stablecoins in Hong Kong.*** Despite concerns expressed by a number of respondents to the Consultation Paper, the Bill has retained the FSTB and HKMA's proposal that only certain specified types of entities licensed by the HKMA and the Securities and Futures Commission (the “SFC”) would be permitted to offer Specified Stablecoins. This could mean that, upon the commencement of the Stablecoins Regime, VA OTC service providers (unless licensed by the HKMA or the SFC under the Stablecoins Regime or other regulatory regimes under the SFO, the AMLO and/or the BO)<sup>9</sup> may no longer be able to offer or sell to customers any Specified Stablecoins, including USDT, USDC and other widely circulated fiat-referenced stablecoins which are commonly traded through OTC venues. However, in a policy statement issued by the SFC on 19 February 2025,<sup>10</sup> it is suggested that VA OTC service providers may be regulated by the SFC (instead of the Customs and Excise Department as originally proposed)<sup>11</sup> under a new licensing regime (the “**Proposed VA OTC Regime**”) to be introduced, such that VA OTC service providers which are licensed under the Proposed VA OTC Regime may fall within the meaning of Permitted Offerors as defined in the Bill. Nevertheless, given that the Proposed VA OTC Regime is currently still in consultation phase, it seems likely that there would be a gap period pending the implementation and commencement of the Proposed VA OTC Regime during which unlicensed VA OTC services providers would not be able to offer Specified Stablecoins.
- (3) ***Offer and active marketing of Unlicensed Specified Stablecoins to Hong Kong public may be prohibited.*** Pursuant to the Bill, Unlicensed Specified Stablecoins may only be offered to certain Permitted Offerees to be specified by the HKMA. These Unlicensed Specified Stablecoins are likely to include, amongst others, USDT, USDC and other Specified Stablecoins which are not referenced to the HKD (the “**Non-HKD-Referenced Stablecoins**”) and issued outside Hong Kong. Given that the HKMA previously indicated in the

<sup>7</sup> Current participants of the Stablecoin Issuer Sandbox include: (i) JINGDONG Coinlink Technology Hong Kong Limited; (ii) RD InnoTech Limited; and (iii) Standard Chartered Bank (Hong Kong) Limited, Animoca Brands Limited, Hong Kong Telecommunications (HKT) Limited.

<sup>8</sup> See <https://www.scmp.com/business/article/3299034/standard-chartered-animoca-brands-hkt-pursue-hong-kong-dollar-backed-stablecoin>.

<sup>9</sup> For example, OSL Exchange and HashKey Exchange, operated by OSL Digital Securities Limited and Hash Blockchain Limited, respectively, which are VASPs licensed under the SFO and the AMLO, also offer off-platform VA OTC services in addition to VA trading services available on their respective automatic trading platforms.

<sup>10</sup> Please refer to paragraph 34 of the statement entitled “‘A-S-P-I-Re’ for a brighter future: SFC’s regulatory roadmap for Hong Kong’s virtual asset market” issued by the SFC dated 19 February 2025.

<sup>11</sup> Please refer to the consultation paper initially published by the FSTB on 8 February 2024. For details, please see to our previous client alert dated 22 February 2024.

Consultation Conclusions that these Permitted Offerees would include professional investors,<sup>12</sup> it seems likely that, upon the commencement of the Stablecoins Regime, the avenues through which retail investors could lawfully acquire Unlicensed Specified Stablecoins would be extremely limited and may include only peer-to-peer trading platforms (to the extent that the parties are not engaging in the transaction in the course of business), potentially leading retail investors to turn to unregulated VA exchanges and OTC service providers (particularly those based overseas).

Further, the Bill also prohibits the act of holding oneself out as carrying on a Regulated Stablecoin Activity unless specified conditions (eg. being a Licensee) are satisfied, whereby “holding out” includes any active marketing to the public of Hong Kong that such person carries on or purports to carry on an activity which, *if carried on in Hong Kong*, would constitute a Regulated Stablecoin Activity.<sup>13</sup> Significantly, this means that, although the issuance of a Non-HKD-Referenced Stablecoin *outside* Hong Kong would not normally fall within the scope of regulation under the Stablecoins Regime, the active marketing of the issuance of such Non-HKD-Referenced Stablecoin to the Hong Kong public would nevertheless be prohibited unless the issuer is licensed by the HKMA to carry on such activity or is exempted from the requirement to obtain a Licence.

- (4) **Existing Issuers should take steps to comply with requirements under Stablecoins Regime and apply for Licence as soon as practicable.** According to the Transitional Arrangements provided by the Bill, Existing Issuers are required to submit an Application within the first three (3) months after the Commencement Date and meet other specified requirements in order to be eligible for the Extended Non-Contravention Period and the Provisional Licence. Therefore, Existing Issuers are recommended to start taking steps to achieve compliance with the requirements set out in the Bill and any further guidance materials to be published by the HKMA and to make an Application as soon as practicable upon the commencement of the Stablecoins Regime in order to enhance their prospects of successfully obtaining a Provisional Licence and, ultimately, the Licence.

We have been advising a number of clients on their virtual asset-related activities and applications for regulatory licences. Should you have any queries regarding the Stablecoins Bill or this Client Alert, please do not hesitate to reach out to a member of us to discuss further at [hyu@lylawoffice.com](mailto:hyu@lylawoffice.com) or at +852 2115 9525.

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*Disclaimer: The information provided in this article is not intended to be, nor does it constitute, legal advice and is not a substitute for obtaining proper legal advice in respect of any specific issue.*

<sup>12</sup> The term “professional investor” is defined in the Schedule 1 to the SFO.

<sup>13</sup> The HKMA previously stated in the Consultation Conclusions that, In determining whether there has been active marketing, it would reference the approach adopted by the SFC and would take into account, amongst other things, the language used in the marketing messages, whether the message is targeted at a group of people that resides in Hong Kong and whether a Hong Kong domain name is used for its website.