

29 February 2024

## RE: ASIFMA response to the HKMA/FSTB Consultation on the Legislative Proposal to Implement the Regulatory Regime for Stablecoin Issuers in Hong Kong

Dear Sir/Madam,

The Asia Securities and Financial Markets Association (“**ASIFMA**”) <sup>1</sup> appreciates the opportunity to respond to the consultation questions set out in the Financial Services and the Treasury Bureau (“**FSTB**”) and the Hong Kong Monetary Authority’s (the “**HKMA**”) Consultation Paper on Legislative Proposal to Implement the Regulatory Regime for Stablecoin Issuers in Hong Kong published on 27 December 2023 (the “**Consultation Paper**”). Feedback set out in this response has been collected from ASIFMA’s Fintech Working Group and Crypto Sub-Working Group, which has been closely following global, regional, and local developments relating to virtual assets in recent years. We are grateful to ASIFMA law firm member Latham & Watkins LLP for their support in drafting this response based on input from ASIFMA’s Fintech Working Group and Crypto Sub-Working Group.

ASIFMA wishes to thank the HKMA and the FSTB for the opportunity to share this feedback on the Consultation Paper. As a general comment, ASIFMA members (“**Members**”) support the FSTB and the HKMA’s proposal to establish a licensing regime for fiat-referenced stablecoin (“**FRS**”) issuers in Hong Kong. Our comments on specific consultation questions are set out in detail below. Our Members continue to be supportive of the HKMA and the FSTB’s further dialogue with the industry as the regulatory regime is developed, and we welcome the opportunity to comment on further developments and refinements to the stablecoin regulatory regime.

Unless otherwise defined herein, the terms used in this response have the meanings assigned to them in the Discussion Paper. If you have any further questions or would like to discuss our response in further detail, please contact Laurence Van der Loo, Managing Director, Head of Technology & Operations, at [lvanderloo@asifma.org](mailto:lvanderloo@asifma.org).

Sincerely,



Laurence Van der Loo  
Managing Director, Head of Technology and Operations  
Asia Securities Industry and Financial Markets Association (ASIFMA)

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 160 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. More information about ASIFMA can be found at: [www.asifma.org](http://www.asifma.org).

## Responses to the Consultation Questions

<b>Question 1</b>	<b>Do you agree with the proposed definition of “stablecoin” and “FRS”?</b>
<p>Our Members generally agree with the proposed definitions, but we think it would be helpful to have clarification that the definitions are not intended to capture derivative instruments or assets where the underlying is or references a stablecoin.</p> <p>For example, it is possible to set up a smart contract where a stablecoin can be “deposited” or “locked”, and where a new token or asset is minted in connection with the locked stablecoin which does not purport to maintain a stable value to a fiat currency. A person (not being the stablecoin issuer) who sets up such a smart contract should not be regarded as an issuer of an FRS.</p>	
<b>Question 2</b>	<b>Do you have any comments in relation to the scope of regulated stablecoin activity?</b>
<p>We agree with the approach for the new scope of regulated stablecoin activity to be focused on the stablecoin issuer that issues FRS.</p> <p>We would also appreciate confirmation as to (i) whether any regulatory regime will regulate non-FRS, noting it currently falls outside of the scope of the proposed regime; and (ii) whether the manner of offering, sales and distribution of such FRS are intended to be regulated under the proposed legislation (or rules or guidance issued under such legislation).</p>	
<b>Question 3</b>	<b>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 activities as appropriate in the future?</b>
<p>Yes, we agree with the proposed approach. We look forward to providing our feedback on the draft legislation in due course.</p>	
<b>Question 4</b>	<b>Do you agree with the proposed exclusion of issuance of FRS from certain regulatory regimes, such as those for securities and SVFs to avoid subjecting FRS issuer to multiple regulatory regimes?</b>
<p>Yes, we agree with the proposed exclusions. We thank the FSTB and the HKMA for considering our comments on the previous discussion paper and excluding deposits (including tokenised or digitally represented forms), central bank digital currencies and other already-regulated financial instruments from the definition of “stablecoin”.</p>	
<b>Question 5</b>	<b>Do you have any comments on the proposed licensing regime for FRS issuers?</b>
<p>We understand the intention of the proposed licensing regime is to regulate the following activities:</p> <p>(i) issue, or hold oneself out as issuing, an FRS in Hong Kong <i>i.e.</i>, this will capture the issuing of FRS in and from Hong Kong irrespective of the referenced fiat currency (or basket of currencies); or</p>	

- (ii) issue, or hold oneself out as issuing, a stablecoin that purports to maintain a stable value with reference to the value of the Hong Kong dollar *i.e.*, this will capture (a) any onshore and offshore issuance of FRS which purports to maintain a stable value to the Hong Kong dollar only (but does not include a stablecoin which has the Hong Kong dollar as part of its basket of currencies) and (b) such HKD-referenced stablecoins irrespective of whether they are actively marketed to the Hong Kong public or not; or
- (iii) actively market its issuance of FRS to the public of Hong Kong *i.e.*, this will capture any onshore and offshore issuance of FRS irrespective of the referenced fiat currency (or basket of currencies) that is actively marketed *by the stablecoin issuer* to the Hong Kong public.

We would be grateful for confirmation that the above understanding is correct.

We also understand that the intention is to only regulate the primary issuance of stablecoins by the stablecoin issuer. We believe it would be helpful to have further clarification or guidance to confirm that secondary dealings, transactions and offering of a stablecoin by a person who is not the stablecoin issuer would not cause the stablecoin issuer to be brought within scope of the licensing regime.

We also refer to footnote 14 which sets out guidance on the proposed term “actively markets”, which is similar to the existing guidance set out by the Securities and Futures Commission in connection with the term used in the Securities and Futures Ordinance and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.<sup>2</sup> To promote greater certainty, we would suggest the HKMA closely align with the existing guidance on that term.

**Question 6**

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

***FRS referencing a basket of currencies***

It is unclear how an FRS referencing a basket of currencies should comply with the requirement for full backing, investment limitations and redemption requirements. For example, if the stablecoin references a basket of currencies, will there be a requirement to hold and make redemptions in each of the referenced currencies (and, if so, will the redemption currencies need to be proportionate to the composition of the basket of reference currencies, subject to rounding and *de minimis* adjustments)?

***Prudential treatment of cryptoasset exposures***

Under the Basel Committee on Banking Supervision’s (“**Basel Committee**”) final standard on the *Prudential treatment of cryptoasset exposures*<sup>3</sup> issued on 16 December 2022 (which is intended to be implemented into Hong Kong by 1 January 2025<sup>4</sup>) (“**Basel Cryptoassets Framework**”), there are two broad groups of cryptoassets *i.e.*,

- Group 1 cryptoassets consist of qualifying tokenised assets and stablecoins, which are generally subject to the risk-based capital requirements of the existing Basel capital

<sup>2</sup> <https://www.sfc.hk/en/Welcome-to-the-Fintech-Contact-Point/Virtual-assets/Virtual-asset-trading-platforms-operators/Regulatory-requirements/FAQs-on-licensing-related-matters/Actively-markets-under-section-115-of-the-SFO-and-section-53ZRB-of-the-AMLO/Actively-markets-under-section-115-of-the-SFO-and-section-53ZRB-of-the-AMLO#3B6FC723104C4D20BBE7365E031ABD3>

<sup>3</sup> <https://www.bis.org/bcbs/publ/d545.pdf>

<sup>4</sup> <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2022/20221220e2.pdf>

framework. Group 1 cryptoassets include tokenised traditional assets (Group 1a) and cryptoassets with effective stabilisation mechanisms (Group 1b); and

- Group 2 cryptoassets are cryptoassets that fail to meet all of the Group 1 classification conditions.

Under the Basel Cryptoassets Framework [SCO 60.20], banks, on an ongoing basis, are responsible for assessing and classifying the cryptoassets to which they are exposed as Group 1a, Group 1b, Group 2a or Group 2b cryptoassets. Banks will need to have appropriate policies and procedures to evaluate the cryptoassets, fully document their assessment and make this available to supervisory authorities on request. In addition, banks are required to inform their supervisor of their classification decisions.

The Basel Committee has recently proposed revisions to the Basel Cryptoassets Framework<sup>5</sup> (“**Basel Stablecoins Proposal**”) to ensure that stablecoins qualifying as Group 1b cryptoassets have high-quality and liquid reserve assets that enable the issuer to meet redemption requests, including during times of stress. We understand that aspects of the Consultation Paper relating to reserve assets, stabilisation mechanisms and redemptions are based on the Basel Cryptoassets Framework, as modified by the Basel Stablecoins Proposal. We also note the HKMA’s consultation paper on *Cryptoasset Exposures* published on 7 February 2024 setting out its proposal to implement new regulations on the prudential treatment of cryptoasset exposures which incorporates some of the Basel Stablecoins Proposal, pending conclusion of that consultation process.<sup>6</sup>

Since the HKMA will be the supervisor under both the FRS regime (including consenting to the issuance of FRS by licensees) and the banking regime (including the Basel Cryptoassets Framework as implemented in Hong Kong), we respectfully request that the HKMA’s capital and other prudential rules implementing the Basel Cryptoassets Framework should provide that an authorized institution can automatically classify any FRS issued by an HKMA-licensed FRS issuer as a Group 1b cryptoasset.

### ***Custody of reserve assets***

The Consultation Paper provides that the reserve assets should be of high quality and high liquidity, generally held in the referenced currency, and placed in an effective trust arrangement to ensure that the reserve assets of the FRS issuer are segregated from its other assets (e.g., to preserve the legal right and priority claim of the reserve assets in the event of an insolvency of the issuer). We understand that the reserve assets would include deposits and cash.

In the case of reserve assets which are held as cash with a custodian bank, these are generally treated as a deposit liability of the bank to the client. As such, the bank cannot segregate client cash in a way that makes it bankruptcy remote. This means that, in effect, custodian banks would not be permitted to offer their services to custody stablecoin reserve assets.

<sup>5</sup> <https://www.bis.org/bcbs/publ/d567.htm>

<sup>6</sup> [https://www.hkma.gov.hk/media/eng/regulatory-resources/consultations/CP24\\_01\\_Cryptoasset\\_Exposures.pdf](https://www.hkma.gov.hk/media/eng/regulatory-resources/consultations/CP24_01_Cryptoasset_Exposures.pdf)

We would want to clarify that the requirement for segregation does not extend to cash that is held with a custodian bank as part of their safekeeping and asset administration services (but the FRS issuer should be required to carefully monitor the credit risk of the bank)<sup>7</sup>.

### **Direct redemptions**

The Consultation Paper provides that where channels for FRS users to exchange their FRS into fiat currency/currencies become unavailable (e.g., in the case of disruption to an intermediary or infrastructure), the FRS issuer must ensure direct redemption for all FRS users at par in a reasonably timely manner. As the FRS issuer may, during periods of market disruption, receive a high volume of redemption requests, we would suggest that the obligation be amended to: *“in an orderly and reasonably timely manner, taking into account the prevailing circumstances”*.

### **Register of licensees**

As the name of the stablecoin may be different from the legal name of the stablecoin issuer, we would suggest that the central register of all licensees should make clear (i) the approved stablecoins issued by the stablecoin issuer and (ii) a link to the website of the stablecoin issuer.

### **Authorized Institutions**

Members understand that authorized institutions will be required to be additionally licensed under the new stablecoin regime, but will have exemptions from certain licensing criteria and conditions. It would be helpful to confirm whether authorized institutions will benefit from any expedited or simplified licensing process (e.g., similar to the stored value facility regime).

<b>Question 7</b>	<b>Do you have any comments on the proposed power given to the MA to impose additional licensing conditions?</b>
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Members have no comments.

<b>Question 8</b>	<b>Do you have any view on the proposed arrangements for the offering of FRS?</b>
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Members seek clarification as to whether:

- licensed entities can provide custody services to non-professional investors who are existing holders of FRS issued by entities not licensed by the HKMA; and
- whether non-professional investors who hold FRS issued by entities not licensed by the HKMA can enter into trading pairs with such FRS.

<b>Question 9</b>	<b>Do you support granting the authorities necessary powers to adjust the parameters of in-scope stablecoins and activities, similar to the VASP regime?</b>
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<sup>7</sup> In this respect, we note that the Basel Stablecoins Proposal expressly permits reserve assets to be in the form of deposits held with a bank and does not require such deposits to be bankruptcy remote from the deposit-taking bank itself. Instead, the deposits need only be bankruptcy remote from the deposits of the issuer, manager and operator of the stablecoin and the deposits should not be overly concentrated at one banking group. In addition, the deposit-taking bank should be subject to the Basel framework, including the liquidity coverage ratio. Specifically, page 3 of the Basel Stablecoin Proposal states that reserve assets can include: “deposits at high credit quality banks with safeguards, such as: a concentration limit applied at group level that include entities with close links; bankruptcy remoteness of the deposits from any party that issues, manages or is involved in the stablecoin operation; and the banks apply the Basel Framework (including the liquidity coverage ratio).”

Members have no comments.	
<b>Question 10</b>	<b>Do you consider the proposed criteria and factors relevant and appropriate for the authorities to take into account when exercising such powers?</b>
Members have no comments.	
<b>Question 11</b>	<b>Do you have any comments on the proposed supervisory powers of the MA on licensed FRS issuers?</b>
Members have no comments.	
<b>Question 12</b>	<b>Do you have any comments on the proposed investigation powers of the MA in respect of licensed FRS issuers?</b>
Members have no comments.	
<b>Question 13</b>	<b>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?</b>
Members have no comments.	
<b>Question 14</b>	<b>Do you have any comments on the proposed transitional arrangement?</b>
Members have no comments.	