DEACONS
的近律師行

Newsletter

Banking and Finance

8 October 2024

What's inside?

Consultation Conclusions for Legislative Proposal to Implement Regulatory Regime for Stablecoin Issuers in Hong Kong

Simon Deane and Crystal Choi

On 17 July 2024, the Financial Services and the Treasury Bureau ("**FSTB**") and the Hong Kong Monetary Authority ("**HKMA**") jointly issued their consultation conclusions regarding the legislative proposal for a regulatory framework for fiat-referenced stablecoin ("**FRS**") issuers in Hong Kong.

During the two-month public consultation that concluded in February this year, 108 submissions were received from market participants, industry associations, business organizations and other stakeholders. The vast majority of respondents agreed that, due to the growing prevalence and development of virtual assets, a regulatory framework for FRS issuers was necessary effectively to manage potential monetary and financial stability risks, as well as providing transparent and suitable guardrails. The proposed regulatory requirements and implementation plans received broad support, with additional enhancement suggestions included in the feedback.

The FSTB and HKMA will consider the feedback and suggestions from respondents while finalizing the legislative proposals for the regulatory regime, aiming to introduce a bill to the Legislative Council as soon as possible.

The HKMA is also processing the applications for the stablecoin issuer sandbox, with the list of sandbox participants to be announced shortly. Sandbox participants may test their proposed business models within a limited scope specified by the HKMA, and further engage with the HKMA on future compliance with the proposed regulatory regime.

The consultation conclusions can be found here.

UK Digital Assets Bill

Simon Deane and Ruby Hui

Owing to the growing importance of digital assets nowadays, at the request of the UK Government, the Law Commission made various recommendations to ensure that English law is able to accommodate digital assets (including crypto-tokens) so that the development of this type of technology would not be limited by legal constraints.

The Law Commission published the final report on 28 June 2023, with a conclusion that the common law system in England and Wales is capable of providing a coherent and globally relevant regime for existing and new types of digital assets. It also set out some recommendations in the final report, such as legislation and establishment of a panel of experts for guidance on technical and legal issues in connection with digital assets.

The full final report can be found here.

Subsequently on 30 July 2024, the Law Commission released a supplemental report and a draft Bill on digital assets as personal property, with a view to implementing its recommendations. In the draft Bill, the existence of a “third category” of personal property rights is confirmed so that various digital assets such as crypto-tokens can be accommodated. Meanwhile, the supplemental report serves as an explanation of the rationale behind the draft Bill and sets out unique features of digital assets that do not belong to the two traditional categories of personal property, namely “things in action” and “things in possession”. Additionally, the supplemental report emphasises that by describing the boundaries of the “third category” of personal property and the rights attached thereto, the draft Bill would leave the further development of the legal nature of such personal property to the courts.

The full supplemental report and draft Bill can be found here.

HKMA commences Phase 2 of e-HKD Pilot Programme and expands Project e-HKD to explore new forms of digital money

Simon Deane and Kelly Poon

On 23 September 2024, the HKMA officially commenced Phase 2 of the e-HKD Pilot Programme (“**Phase 2**”), which explores innovative use cases for new forms of digital money, including e-HKD and tokenised deposits. This initiative is part of the newly renamed Project e-HKD+ to reflect the evolving fintech landscape and the HKMA's commitment to maximizing the potential of digital currency.

Under Phase 2, 11 firms from various sectors will investigate use cases for e-HKD and tokenised deposits across three themes: (i) settlement of tokenised assets; (ii) programmability; and (iii) offline payments. The selected firms will assess the commercial feasibility of new digital money forms in real-world settings, assisting the HKMA in addressing the practical issues related to designing and operating a digital money ecosystem that includes both publicly and privately issued digital money for potential future use by individuals and corporations.

The HKMA will establish the e-HKD Industry Forum to create a collaborative platform for institutions to discuss common issues and explore the scalable implementation of new digital money forms. Industry-led working groups will initially focus on issues related to programmability. Similar to Phase 1, an e-HKD sandbox will also be provided to pilot participants to enhance prototyping, development and testing of use cases.

Over the next 12 months, the HKMA will work closely with the selected firms, aiming to share key lessons with the public by the end of 2025.

The press release can be found here.

Review of Virtual Banks – Where Are We Now?

Simon Deane and Natalie Chan

In 2020, the HKMA granted banking licences to eight virtual banks in Hong Kong. The HKMA recently carried out a review ("**Review**") to look into the operations and performance of the virtual banks. The Review reveals that the development of virtual banks in Hong Kong has so far achieved the three policy objectives of introducing virtual banking – namely: (i) promoting fintech and innovation, (ii) offering new customer experiences and (iii) promoting financial inclusion. In terms of market acceptance, since the official launch of the eight virtual banks in 2020, the HKMA has seen a growing acceptance in the market, evidenced by a total number of 2.2 million depositors as at the end of 2023.

Overall, the HKMA considers that the current structure of the virtual bank sector should be maintained with a view to facilitating long-term development of virtual banks as well as maintaining a healthy competitive landscape in the banking industry. However, the HKMA concluded that there is no strong justification to issue more virtual bank licences at the moment as doing so may hamper the development of the virtual bank sector for the existing market participants.

The HKMA also proposes to rename "virtual banks" as "digital banks" better to reflect the current banking model and to clear any public misconception of the term. The public consultation on the proposal to change the name ended in September 2024.

The full Review can be found here.

Want to know more?

Erica Wong
Partner
erica.wong@deacons.com
+852 2825 9418

Simon Deane
Consultant
simon.deane@deacons.com
+852 2825 9209