

Hong Kong Institute of Physics  
22/F Room 2202  
Kaiser Centre  
18 Centre Street  
Sai Ying Pun, HONG KONG  
joequant@hkphysics.hk  
+852 6352 9195

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Henry Yu & Associates  
Tower Two, Lippo Centre  
89 Queensway  
Admiralty, HONG KONG

Fellow compatriot:

We have received a communication from your firm dated 11 March 2025 containing a legal analysis which argues that under the terms of the Stablecoin Bill currently before the Legislative Council that OTC stablecoin service providers may not be able to transact unlicensed stablecoins because of proposed restrictions on the offering of specified stablecoins in Hong Kong. Our organization is deeply concerned at this analysis.

The Hong Kong Institute of Physics is an organization engaged in a patriotic research program to develop financial technology in the Hong Kong Special Administrative Region to allow the Chinese nation to fully participate in the global endless frontier of scientific exploration. We are actively involved in developing the legal and financial infrastructure to enable Hong Kong to act as a virtual asset hub in support of critical national projects such as the Circular Electronic Positron Collider and the International Lunar Research Station.

Science and technology are the common heritage of mankind, and as patriotic scientists, our goal is the advancement of science and technology in China as part of a common human project to advance common prosperity and the collective national security of all the nations of a multipolar world. Much of our interest in virtual assets is to fight the weaponization of finance as a tool to deny nations access to the peaceful benefits of science and technology, which constitute the common heritage and birthright of all nations.

We are therefore keenly interested in the development of the capitalist system of the HKSAR in support of these national and global goals. Scientific technology, projects, equipment, and personnel cannot move across borders unless money and capital can also move, and as such, the capitalist system of Hong Kong plays a critical role in connecting the socialist system of the mainland of China to the global financial system and the development of Hong Kong's capitalist system is of paramount importance to the development of science and technology for the benefit of the Chinese nation,

We understand that the referenced analysis of the proposed legislation on stablecoin is a conservative interpretation that is made in the spirit of prudence and caution. Nevertheless, we are concerned that this analysis will interfere with our scientific and technology research programme and may contribute to the weaponization of the global financial system to thwart the efforts of our organization and other patriotic organizations to advance science and technology within the People's Republic of China. Our institute makes heavy use of stablecoins for the purpose of international payments, and any limitation on our ability to transact in stablecoins through Hong Kong will cause massive disruption in our activities.

As such, we wish to present an alternative analysis of the proposed legislation in which OTC trading of stablecoins issued outside of the HKSAR not only is not restricted but cannot be restricted without severe conflict with the Basic Law and the "one country, two systems" policy.

We began our analysis with the relevant sections of the Basic Law.

**Article 111** The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate.

The authority to issue Hong Kong currency shall be vested in the Government of the Hong Kong Special Administrative Region. The issue of Hong Kong currency must be backed by a 100 per cent reserve fund. The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region may authorize designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency.

**Article 112** No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue.

The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

Articles 111 and 112 of Basic Law provide a constitutional framework regarding the issuance and regulation of currency, which we assert is equally applicable to fiat currencies as it is to stablecoins. The legal and constitutional authority to regulate the issuance of stablecoin comes from Article 111, which is the same authority that allows it to regulate the issuance of the Hong Kong dollar, which the HKSAR exercises through Cap 65 the Legal Tender Notes Issuance Ordinance and Cap 66, the Exchange Fund Ordinance.

However, to maintain the proper function of the capitalist system, Article 112 Basic Law prohibits the HKSAR from applying foreign exchange controls, limiting the convertibility of the Hong Kong dollar, and mandates that the HKSAR government safeguard the movement of capital within, into, or out of Hong Kong. These limitations on the power of the HKSAR form an essential part of the capitalist system of the HKSAR, and contrasts sharply with the socialist system as practised in the mainland of China, where virtual assets and foreign exchange is highly restricted.

These two systems are not in conflict, as the capitalist system of the HKSAR allows the Communist Party of China to maintain the socialist system practised in the mainland of China while being able to maintain beneficial scientific, technological, and economic interactions with the global capitalist financial network. But for the “one country, two systems policy” to function, there is a sacred duty on patriotic forces in the Hong Kong Special Administration Region to develop the capitalist system of the HKSAR for the benefit of Hong Kong, China, and the world, and this includes defending the capitalist principles outlined in the Basic Law, including opposing restrictions on foreign exchange, defending the convertibility of the Hong Kong dollar, and safeguarding the free flow of capital within, into, and out of the HKSAR.

We also note that existing laws or regulations do not conflict with Basic Law Article 112. The Securities and Futures Ordinance (Cap 571) applies only to securities and futures and not foreign currency and does not restrict the flow of securities and futures between Hong Kong and outside sources. Laws such as the money services license in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) regulate how currency can be exchanged, but do not and cannot regulate the types of currency that can be exchanged.

The prohibition in Article 112 against foreign exchange controls and limits to the convertibility of the Hong Kong dollar apply as well to stablecoins as they do to fiat currency. Just as the HKSAR cannot restrict the conversion of Hong Kong dollars to US dollars, euros, renminbi, or any other external currency or their use in trade in Hong Kong, the HKSAR cannot restrict the conversion of Hong Kong dollars to stablecoins issued outside of Hong Kong or the circulation, use, or trading of stablecoins issued outside of the HKSAR for business transactions within the HKSAR.

We note that the language of Basic Law Article 112 suggests that prohibition against foreign exchange control policies and requirement that the Hong Kong dollar remain convertible is an absolute right and not subject to Hysan proportionality analysis. In any event, we assert that any presumed benefits that foreign exchange controls have on investor protection are far outweighed by the disruption to trade and commerce and the undermining of the “one country, two systems” policy.

While it may be unwise for a Hong Kong person to hold and transact in Zimbabwean dollars and Somali shillings, the Article 112 guarantees the right for a person in Hong Kong to do so and a Hong Kong person may find it essential to hold currencies of questionable value for the purpose of trade and commerce. Under the capitalist system of Hong Kong and in contrast to the socialist system of the Chinese mainland, the decision as to whether or not to transact in or hold Zimbabwean dollars, Somali shillings, Renminbi, Euros, or US dollars is a decision for market participants to make and not for HKMA or any other government authority to decide, and this principle applies to stablecoins as much as to fiat currency.

If the proposed legislation were to restrict the ability of virtual OTC traders to trade and circulate stablecoins issued outside of the HKSAR, this would create a grave and extreme conflict with the Basic Law and the “one country, two systems” policy. Given the extreme adverse effects of such restrictions on our scientific and technology research program, we would be compelled to challenge such regulations via judicial review and the subsequent uncertainty and controversy would pose extremely negative reputational consequences for Hong Kong’s status as a virtual asset hub and an international financial center.

These conflicts can be resolved if the restrictions on offering in the proposed legislation are interpreted so as not to restrict the OTC trading and circulation of stablecoins issued outside of HKSAR. The key issue is that the terms “offer” and “offering” have described two completely different financial transactions. “Offering” can be one of the elements in issuing a financial product, such as in the term “public offering.” At the same time, the terms “offer” and “offering” can be one element of the OTC trade of goods and services.

As the Basic Law allows the regulation of stablecoin issuance, but not of stablecoin trade and circulation, any constitutional conflict would be resolved if the bill were interpreted as to limit the transactions associated with the issuance of stablecoin in Hong Kong, but not the trading and circulation of stablecoin in the latter context. We assert this is the situation.

Clause 6 of the bill (C3717), gazetted on 6 December 2024, states:

For the purposes of this Ordinance, a person (person A) offers a specified stablecoin if person A makes, in the course of business, a communication to another person (person B) that presents sufficient information on **all of the following matters** so as to enable person B to decide whether to acquire the stablecoin from person A—

- (a) the stablecoin to be offered;
- (b) the terms on which the stablecoin will be offered;
- (c) the channels through which the stablecoin will be offered;

Emphasis ours.

Clause 9 of the bill makes it an offense for an unauthorized person to offer a specified stablecoin and Clause 10 of the proposed legislation makes it an offense to issue an advertisement that holds out an unauthorized person as offering a specified stablecoin. The persons which the legislation allows to offer a token are extremely limited, and even with licensed tokens, only those with a stablecoin license, SFC type 1 licenses, VASP licenses, entities with banking licenses may offer a stablecoin, and persons receiving an exemption from the HKMA.

The golden rule of statutory interpretation is that laws should not be interpreted in ways that result in an absurdity, and we note that an overly broad interpretation of Clause 6 would lead to absurd results. For example, it can be argued that using a stablecoin to buy a product such as a candy bar would require a communication containing the three elements, and therefore, even a licensed stablecoin could not be used as a medium of exchange. This result is clearly absurd and illustrates that the scope of Clause 6 must be limited to result in reasonable outcomes.

We assert that any interpretation of Clause 6 which results in a conflict with Basic Law Article 112 creates an absurd outcome and therefore is forbidden by the golden rule. Clause 6 can be and should be interpreted to apply in situations where a stablecoin issuer issues a document, such as a term sheet or prospectus, as part of a transaction analogous to an “offering” of securities, but should not apply to transactions and communications typically used in OTC trading.

Although the bill creates a specific statutory definition of “offer” in Clause 6, this definition should be

read in the context of the meaning of the term “offer” in standard legal terminology. Under Hong Kong law, communications to sell goods in an OTC context are generally not offers but merely constitute an “invitation to treat” (see *Partridge v. Crittenden* [1968] 1 WLR 1204 and *Grainger & Son v. Gough* [1896]). For a communication to constitute a contractual offer, it must be clear, complete, and final, and OTC communications generally lack these elements of specificity. In addition, in an OTC context, it is generally not the seller of goods that makes the contractual offer for a transaction but the buyer that does so. As such, the proposed restrictions on offering stablecoins may not affect most OTC transactions.

By contrast, communications in the context of transactions similar to the sale of securities generally **are** contractual offers rather than a mere “invitation to treat.” Because the legal context for an OTC sale of a good or service is entirely different from the context concerning transactions similar to the sale of securities, and because Basic Law Article 112 prohibits restrictions on the former and not the latter, we argue that Clause 6 must be read to include the former and not the latter.

To strengthen our argument, we note that OTC communications generally do not contain all the elements needed to constitute an offer in the stablecoin bill. In most OTC communications, the seller does not specify the exact amount of stablecoin to be sold. Therefore, this communication lacks the specificity to constitute a contractual offer and lacks element (a). A communication that states that stablecoins are available for sale without discussing terms would likewise lack element (b). A quote by a seller of stablecoin for a price would lack element (c). In contrast to communications analogous to those involved the sale of securities, communications typical of OTC trading typically consist of a series of communications from various sources that do not satisfy a strict interpretation of Clause 6.

We note that for a communication to constitute an offer under the stablecoin bill, all three elements must be present, and this requirement may be interpreted to include transactions that are typical of issuing a financial product, but to exclude those that are typical of OTC trade and circulation.

Finally, we note that if it were the intent of either the administration or the Legislative Council to prevent OTC trading of stablecoin issued outside of Hong Kong, the proposed limitations can be easily circumvented.

Instead of providing a service to sell stablecoin in exchange for Hong Kong dollar, an OTC vendor could provide a service to buy Hong Kong dollars in exchange for stablecoin, or instead of transacting in fiat-referenced stablecoins, the vendor could transact or quote prices in yield-bearing stablecoins, which are not regulated by the proposed bill. Additionally, while the proposed restrictions may limit communications necessary to sell stablecoins, there are no restrictions on communications intended to buy stablecoins and a vendor can advertise a service to purchase stablecoin with the implicit and unstated implication that a service to sell stablecoins are available.

Finally, Clause 6 may be circumvented by having a third party (“Person C”) provide or receive some of the information necessary to undertake a stablecoin transaction. For example, Clause 6 does not apply if a third party (“Person C”) provides the buyer (“Person B”) the information necessary to acquire stablecoins from a seller (“Person A”), and it would be trivial to create corporate structures by which the seller of stablecoin is a different legal entity than the person undertaking the communications.

Given the creativity of the capitalist system, we are confident that circumvention mechanisms will be quickly developed, and that the Hong Kong markets in stablecoins issued outside of Hong Kong cannot be shut down without resorting to extreme and heavy-handed measures which clearly violate Basic Law Article 112. However, we believe that efforts to use these measures to prevent the circulation and use of unlicensed stablecoins issued outside of Hong Kong would merely add inefficiency and confusion and would serve no public policy goals and leave Hong Kong at a competitive and reputational disadvantage as an international financial center at a very critical time.

For these reasons, we argue that Clause 6 of the proposed legislation should be interpreted narrowly in a manner that would not restrict the OTC trading or circulation of stablecoins issued outside of Hong Kong and would apply only to communications and transactions which are similar to those found in the sale of securities products. This would avoid grave and severe constitutional issues in the proposed legislation and the need for elaborate and inefficient circumvention mechanisms.

Under the proposed stablecoin legislation, the offenses regarding offering in Clause 9 in the proposed bill are offenses that are intended to be subject to the fourth Kulemesin alternative, in which the defenses to criminal liability are statutorily prescribed in the legislation, and under the terms of Clause 9, criminal

liability will not attach if the defendant can demonstrate a “reasonable excuse” subject to the burden of proof requirements in Clause 165.

Until such time as there is an authoritative alternative analysis of the law either by judicial interpretation or by an authoritative regulatory guidance by either the administration or the Legislative Council, which contradicts the conclusion that the proposed stablecoin legislation does not and indeed cannot restrict the sale of non-Hong Kong stablecoin via OTC, we believe that the legal analysis that we have presented may be sufficient for a defense of “reasonable excuse.”

We welcome your firm’s efforts to increase awareness of the laws regarding virtual asset regulation, and welcome alternative views as to the interpretation of applicable law, and look forward to a vigorous discussion on these topics.

In the spirit of open debate and discussion, you may forward this letter to any persons you see fit.

Faithfully yours,

A handwritten signature in blue ink, reading "Joseph C. Wang". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. Joseph Chen-yu WANG  
Senior Research Scientist  
Hong Kong Institute of Physics