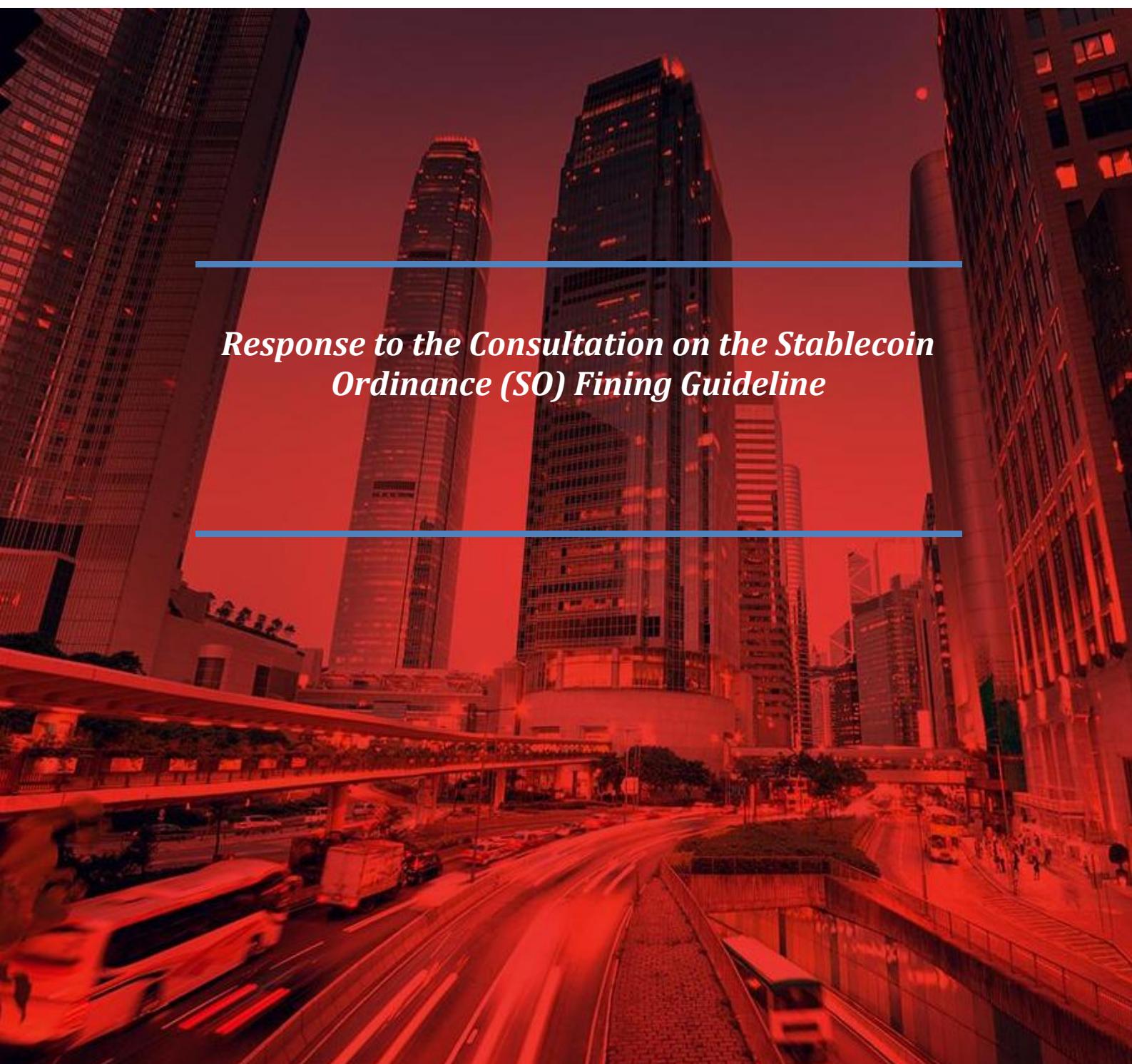




FINTECH ASSOCIATION
OF HONG KONG

*Response to the Consultation on the Stablecoin
Ordinance (SO) Fining Guideline*



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FTAHK Consultation Response to the Stablecoin Ordinance (SO) Fining Guideline

The FinTech Association of Hong Kong (FTAHK) is a **member-driven, independent, not-for-profit, & diverse** organisation that is the voice of the FinTech community in Hong Kong. It is organised and led by the community, for the community, through a series of committees and working groups.

Our objective is to promote Advocacy, Communication and Education in the wider FinTech ecosystem.

Build the community.
Be the connector.

FTAHK Consultation Response to the Stablecoin Ordinance (SO) Fining Guideline

A. FOREWORD

The **Fintech Association of Hong Kong (FTAHK)** welcomes the opportunity to comment on the Hong Kong Monetary Authority's (HKMA) draft *Guideline on Exercising Power to Order a Pecuniary Penalty*. We appreciate the HKMA's transparent approach in outlining the framework for administrative sanctions, which provides essential clarity for the burgeoning stablecoin ecosystem.

Our observations on the proposed framework are centered on three key pillars:

1. Evolution of the Regulatory Perimeter

The Association notes with interest the "hybrid" regulatory philosophy adopted here, which effectively blends traditional banking oversight with the enforcement rigor typically seen in securities markets.

- **Individual Accountability:** By expressly including "officers" as **regulated persons**, the Guideline solidifies a shift toward holding natural persons directly accountable for corporate wrongdoing. This alignment with the SFC's "Responsible Officer" (RO) model first introduced under the Payment Systems and Stored Value Facilities Ordinance (PSSVFO) represents a significant evolution from historical approaches.
- **Administrative-First Enforcement:** While this model was introduced under the PSSVFO, its application to digital assets via the SO signals a clear enforcement strategy: an administrative-first model for individual officers, marking a departure from the traditional reliance on criminal proceedings under older frameworks like the AMLO.

2. Consistency and Deterrence

We recognize the HKMA's efforts to maintain a cohesive regulatory landscape by mirroring established protocols:

- **Dual-Track Penalty System:** The two-track system for pecuniary penalties closely follows the blueprint set under the PSSVFO.
- **Alignment with Existing Frameworks:** The proposed administrative fines for SO violations align fully with those established under the PSSVFO and AMLO, ensuring a level playing field across different license types.
- **Justification for Higher Criminal Sanctions:** We observe that criminal fines under the SO are materially higher than those in the PSSVFO. The FTAHK supports this distinction, recognizing the heightened risk to **monetary and financial stability** that stablecoin-related malfeasance poses compared to traditional stored value facilities.

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3. Key Recommendations

While the draft provides a comprehensive list of factors for consideration, the Association proposes the following enhancements:

- **Tiered Penalty Framework:** We suggest exploring a **tiered approach** for administrative pecuniary penalties—similar to the structure of criminal penalties—to ensure fines reflect the specific level of risk to the market and the financial resources of the regulated person.
- **Collaborative Education and Industry Onboarding:** Many FTAHK members are emerging fintechs navigating both a nascent industry and a novel regulatory landscape. Given the technical complexity of the Stablecoins Ordinance, there is a critical need for ongoing education and "regulatory sandbox" style communication between the industry and the HKMA.
- **The FTAHK as a Strategic Bridge:** As a representative industry body, the FTAHK is eager to facilitate this dialogue. We offer our platform to connect the public and private sectors, ensuring that new market entrants fully understand their compliance obligations—such as the internal mechanisms intended to prevent contraventions—before punitive measures become necessary.

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B. Member Feedback

The Fintech Association of Hong Kong (FTAHK) has gathered feedback from our members. Our feedback is categorized into specific areas requiring further technical clarification and strategic recommendations for the final Guideline.

I. Areas for Technical Clarification

Our members have identified four key areas where additional guidance would benefit the industry by reducing regulatory uncertainty:

1. **Defining "Financial Jeopardy":** The draft states that penalties should not place a regulated person in "financial jeopardy". We request concrete metrics or examples of how this assessment differs between a startup and an established bank. For a nascent issuer, "jeopardy" may specifically relate to the inability to maintain mandatory minimum capital requirements.
2. **Quantifying "Loss Avoided":** While the Guideline identifies "loss avoided" as a factor in determining the maximum penalty, we seek clarity on how this is calculated within stablecoin operations. Specifically, does this include costs saved through delayed compliance or operational efficiencies gained via technical shortcuts?
3. **Exceptions to Publication:** The Guideline notes that the MA will "usually" publish all fining decisions. We request clarification on the specific circumstances where publication might be withheld—for instance, if the public disclosure itself could trigger a "run" on the stablecoin or otherwise threaten broader financial stability.
4. **Apportionment of Group Liability:** Paragraph 11(d) considers whether a contravention was committed as part of a group. Members are seeking clarity on how liability is apportioned between the corporate entity and individual officers to ensure transparency regarding potential "double jeopardy" for the same operational oversight.

II. Strategic Recommendations for Implementation

The FTAHK advocates for an enforcement approach that is **progressive, iterative, and proportionate**, particularly as issuers navigate the "learning curve" associated with new technology and regulatory frameworks.

1. A Progressive "Learning Phase" Approach

We recommend a focus on guidance and rectification during the initial implementation stages of the Stablecoins Ordinance.

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- **Recommendation:** For breaches where there is no evidence of malicious intent or consumer harm, the HKMA should prioritize remedial action over immediate punitive measures.
- **Industry Support:** As an industry bridge, the FTAHK is eager to co-organize information sessions with the HKMA to ensure the private sector fully understands its compliance obligations before penalties are enacted.

2. Elevating "Intent" and "Mens Rea"

While the draft considers the "circumstances" and "knowledge" of a regulated person, we suggest more explicit language regarding intent.

- **Recommendation:** The Guideline should more heavily weigh whether a breach was the result of willful misconduct versus an inadvertent technical error arising from the novelty of the underlying technology.

3. Formalizing Warning Letters and Rectification Orders

To align with the principle that penalties should not cause financial jeopardy, we suggest formalizing the escalation ladder.

- **Recommendation:** Except in cases of severe systemic risk, a pecuniary penalty should be a secondary step. The HKMA should formalize the use of Warning Letters or Rectification Orders for first-time or minor technical breaches, preserving an issuer's capital for necessary compliance improvements.

4. Establishing "Mandatory Bottom-Lines" and Safe Harbors

While we support a case-by-case assessment, excessive discretion can lead to market uncertainty.

- **Recommendation:** We propose the introduction of "safe harbors." For example, if an issuer has met predefined compliance thresholds or relied on a specific third-party audit previously sanctioned by the MA, the penalty should be automatically capped or waived to ensure fairness across the industry.

5. Stronger Incentives for Self-Reporting

Paragraph 9 identifies self-reporting as a mitigating factor.

- **Recommendation:** To foster a culture of transparency, the Guideline should define a tangible "discount" (e.g., a specific percentage range reduction) for regulated persons who promptly and completely bring contraventions to the MA's attention.