

UPDATE

BVI regulatory sandbox comes into play

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A regulatory sandbox (the **Sandbox**) launched in the British Virgin Islands (**BVI**) on 31 August 2020, pursuant to the Financial Services (Regulatory Sandbox) Regulations, 2020 (the **Regulations**). The Sandbox allows businesses to trial new ideas under the supervision and monitoring of the Financial Services Commission (**FSC**) without the need to apply initially for a full licence to conduct financial services business.

What is the purpose of the Sandbox?

The introduction of the Sandbox in the BVI encourages a greater balance between innovation and regulation. The flexibility and safety of the Sandbox offers benefits to the BVI financial services industry, new businesses and consumers alike. Before taking steps towards becoming a fully licensed entity, new businesses will now have the opportunity to test their business models with reduced licensing obligations during the Sandbox test period.

Where stringent regulatory requirements may have served as a barrier to entrepreneurs in the past, this new opportunity to trial ideas in a regulated environment before committing to meeting those requirements opens a gateway for greater competition, attracting a generation of new business models to the jurisdiction. Further, the risks presented to customers from new products and services are minimised by the supervision of the regulator.

Who can apply?

An application for approval as a Sandbox participant can be made to the FSC by any of the following entities proposing to engage in, or engaged in, innovative FinTech¹:

- BVI business companies;
- foreign companies;
- limited partnerships;
- micro business companies;
- existing licensees; and
- any other person otherwise approved by the FSC.

What is the application process?

An application to participate in the Sandbox must be accompanied by the following:

- a written indication that the applicant intends to utilise innovative FinTech;
- a detailed and comprehensive business proposal;

¹ **Innovative FinTech** is defined in the Regulations as meaning "the development or implementation of a new system, mechanism, idea, method, or other arrangement through the use of technology to create, enhance or promote a product or service with respect to the conduct or provision of a financial services business".

- a written indication of the test scenarios that the applicant has carried out;
- the maximum number of clients that the applicant wishes to have during the Sandbox period;
- a description of the risks associated with the applicant's business model and the proposed framework to ensure adequate management of such risks;
- a written indication of the resources (financial, technological, human and otherwise) at the disposal of the applicant;
- written strategies for exiting the Sandbox (either without seeking a licence or transitioning into a licensed entity);
- the application fee of US\$2,000; and
- any further information necessary to facilitate the FSC's decision.

The FSC will approve the application with appropriate conditions imposed, if it is satisfied that: (i) the application complies with the above requirements; (ii) the applicant is fit and proper in accordance with Schedule 1A of the Regulatory Code, 2009 (as amended); and (iii) the granting of approval is not against the public interest.

The fees for approval as a Sandbox participant vary as follows:

- standard business model – US\$2,000
- moderately complex business model – US\$5,000
- complex business model – US\$10,000

The FSC will determine the dates on which the applicant's participation within the Sandbox will start and finish. The maximum initial period allowed for participation is 18 months; however, an application to seek an extension of up to 6 months may be submitted to the FSC no later than 30 days prior to the end of the specified period.

What are the ongoing obligations?

Sandbox participants are required to uphold numerous obligations throughout the Sandbox period.

- Participants must have at least two individual directors (in the case of a BVI business company), two individual partners (in the case of a limited partnership) or, in any other case, at least one individual at a senior level who manages the business of the Sandbox participant.
- In the event that any change should occur to any information provided in the Sandbox application, the FSC will require written notification of such change. Similarly, if there is any development or change in the participant's circumstances, the conduct of the business or the environment in which the participant operates, the participant must notify the FSC immediately.
- There is an ongoing duty imposed upon participants to take adequate measures to identify and address any potential risks to financial services business and their clients that may occur from the products or services being tested in the Sandbox. This includes measures relating to the prevention of money laundering, terrorist financing and proliferation financing.
- Clear records must be maintained by participants at all times throughout the Sandbox period.
- Participants are required to file interim reports with the FSC detailing:
 - the level of compliance with the requirements of the Regulations;
 - the number, classification and geographical location of the participant's clients;
 - the aggregate monetary exposure of the participant's clients;
 - the financial position of the participant;
 - risks that have been encountered and measures taken to resolve any risks;
 - key performance indicators, achievements and any relevant statistical information;
 - any significant complaints by clients and measures taken to resolve such complaints; and
 - such other information as the FSC may require.
- The number of a participant's clients must not exceed the maximum amount approved by the FSC in the application.
- At the time of making offers to or soliciting clients or potential clients, participants must disclose to their clients and potential clients:

- any potential risks associated with participating in the Sandbox;
- that the participant does not hold a licence to provide the business activity being tested;
- that the business activities will be conducted pursuant to and in accordance with the business proposal;
- that the product or service is being tested within the Sandbox;
- the period in which the participant is authorised to test within the Sandbox; and
- such other information as the FSC considers appropriate to be disclosed.
- Business proposals cannot be modified during the Sandbox period without obtaining prior approval from the FSC. The FSC may grant approval for the modification of a business proposal if there is good reason for the alteration, the original business proposal is not substantially altered and it is not against the public interest to grant the modification.

What happens after the Sandbox period has ended?

At the end of the Sandbox period and any approved extension period, the participant may choose to transition to become a licensed entity or wind down its Sandbox operations. If a participant wishes to become licensed, they must provide 60 days' notice to the FSC before the Sandbox period ends.

Within 30 days after the Sandbox period ends, the participant must submit a final report to the FSC identifying:

- key outcomes, key performance indicators against the participant's business proposal and the successes and failures relating to the test within the Sandbox;
- any significant complaints by clients and how such complaints have been resolved (including plans to resolve any outstanding complaints);
- where the Sandbox testing has failed, the lessons learnt by the participant;
- where the Sandbox testing has been successful, the plan after exiting the Sandbox; and
- such other information as the FSC may require the participant to provide.

Revocation of approval of a Sandbox participant

The FSC may revoke the Sandbox approval at any time where a participant:

- has contravened a provision of the Regulations;
- has submitted a false, misleading or inaccurate report or information to the FSC;
- has concealed or failed to disclose any material fact in the application or any report to the FSC;
- is undergoing or has undergone liquidation;
- has breached any data security,
- is carrying on business in a manner that is or may be detrimental to clients or the public generally;
- is no longer fit and proper; or
- it is not in the public interest that the participant should continue to be approved.

If approval is revoked, participants must not take on any new clients and, within 30 days from the date of revocation of approval, must notify clients of the revocation and invoke their exit strategy to cease participation in the Sandbox.

An application may be made to the FSC to grant an extension of 30 days to exit the Sandbox and cease testing.

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