

BVI Regulatory Sandbox Launched to Support Innovative FinTech

In August 2020, the Financial Services (Regulatory Sandbox) Regulations 2020 (the "Regulations") came into force in the British Virgin Islands (the "BVI") to launch a regulatory sandbox (the "Regulatory Sandbox") designed to support and facilitate innovation in the financial technology sector and allow businesses to trial new products and services which amount to "Innovative FinTech", for a limited period, under the supervision of the BVI Financial Services Commission (the "FSC"), without the need to apply for a licence to conduct financial services business in the BVI.

Eligibility

"Innovative FinTech" is defined under and for the purposes of the Regulations as 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"* – and BVI business companies; foreign companies; limited partnerships; micro business companies; existing licensees; or any other person that the FSC has otherwise approved to participate in a Regulatory Sandbox, that is engaged in, or proposes to engage in, Innovative FinTech may now apply to the FSC for approval as a Regulatory Sandbox participant.

Applications

Applications to participate in the Regulatory Sandbox will need to include the following:

- (a) a written indication that the applicant intends to utilise Innovative FinTech which has the potential to:
 - (i) improve accessibility, efficiency, effectiveness, security and quality in the provision of financial services business;
 - (ii) enhance the efficacy, efficiency and effectiveness of the management of risk by persons licensed, authorised or otherwise approved by the FSC to engage in financial services business; or
 - (iii) address shortcomings in, open up new opportunities in, or promote, the conduct or provision of financial services business;
- (b) a detailed and comprehensive business proposal;
- (c) a written indication of the test scenarios the applicant has carried out to demonstrate the usefulness, functionality and potential of its Innovative FinTech;

- (d) a stipulation regarding the maximum number of clients the applicant intends to engage during its time in the Regulatory Sandbox;
- (e) a written description of the risks associated with the applicant's business model and the framework established (or to be established) to adequately manage such risks;
- (f) a written indication of the resources, i.e. financial, technological, human and otherwise, at the applicant's disposal and which the applicant intends to use to support its participation in, and testing within, the Regulatory Sandbox; and
- (g) written strategies for exiting the Regulatory Sandbox, to cover potential exits:
 - (i) without seeking a full licence to continue conducting financial services business under applicable regulatory legislation; and
 - (ii) by transitioning to being an entity licensed to carry on financial services business under applicable BVI regulatory legislation; and
- (h) any further information that the FSC considers necessary to facilitate its decision regarding the relevant application.

Approval and Test Periods

The FSC may approve an applicant as a Regulatory Sandbox participant, subject to such conditions as it may consider fit, if the FSC is satisfied that:

- (a) it has received all requisite information (as outlined above) from the applicant;
- (b) the applicant is 'fit and proper', i.e. in accordance with Schedule 1A to the BVI Regulatory Code 2009 (as amended); and
- (c) approving the applicant in question is not against the public interest.

Where an applicant is approved to participate in the Regulatory Sandbox, the FSC will specify the dates through which such applicant will be allowed to operate within the Regulatory Sandbox (the "Test Period").

The maximum initial Test Period permitted under the Regulations is 18 months; although, an application to extend this by up to 6 months may be submitted to the FSC (by no later than 30 days before the end of the initial Test Period).

Fees

The fee payable for making an application to participate in the Regulatory Sandbox is currently US\$2,000. A further fee is payable on approval ranging from US\$2,000 (for a participant with a simple business model) to US\$10,000 (for a participant with a complex business model).

Participant Obligations

A Regulatory Sandbox participant will be required, throughout its Test Period, to:

- (a) have at least two (2) individual directors (or, in the case of a limited partnership, at least two (2) individual partners); or
- (b) in other cases, have at least one individual at a senior level who manages the business of the Regulatory Sandbox participant;

- (c) have no more than the maximum number of clients approved by the FSC;
 - (d) notify the FSC immediately of any development or change to the conduct of the its business or the environment in which it operates that has, or is likely to have, a material impact on its risk profile or its obligations under the Regulations;
 - (e) take adequate measures to identify and appropriately address potential risks to financial services business, and consumers of financial services business, that may arise from the testing of its products or services (including risks relating to money laundering, terrorist financing and proliferation financing);
 - (f) maintain clear records and, at such intervals as the FSC may determine, file interim reports regarding the tests it is carrying out in the Regulatory Sandbox, detailing:
 - (i) the level of its compliance with the Regulations;
 - (ii) the number, classification and geographical location of its clients;
 - (iii) the aggregate monetary exposure of its clients;
 - (iv) an outline of its own financial position;
 - (v) any risks it has encountered and how these have been / are being resolved;
 - (vi) key performance indicators, achievements and any other relevant statistical information;
 - (g) at the time of making offers to, or soliciting, clients (or potential clients), disclose to such clients (or potential clients) the potential risks of participating in the Regulatory Sandbox; that it does not hold a licence issued by the FSC; that its business activities will be conducted in accordance with the business proposal it has submitted to the FSC; that its product or service is being tested within the Regulatory Sandbox; its approved Test Period; and such other information as the FSC considers appropriate to be disclosed to the Regulatory Sandbox participant's clients.
 - (vii) any significant complaints (if any) it has received from its clients and how any such complaints have been resolved (or what plan it has put in place to resolve them); and
 - (viii) such other information as the FSC may require;
- A Regulatory Sandbox participant's business proposal may not be modified during its Test Period without the FSC's prior approval, which the FSC may grant if: there is good reason for the requested modification; the modification does no substantially alter the participant's original business proposal; and it is not against the public interest for the FSC to grant the modification.

Revocation of Approval

The FSC may revoke a Regulatory Sandbox participant's approval to participate in (and test within) the Regulatory Sandbox where, at any time, the FSC is satisfied that such participant:

- (a) has contravened the Regulations;

- (b) has submitted a false, misleading or inaccurate report or information to the FSC;
- (c) has concealed or failed to disclose any material fact in its application for approval, or in any report, to the FSC;
- (d) is undergoing or has undergone liquidation;
- (e) has breached any data security;
- (f) is carrying on business in a manner that is, or may be, detrimental to its clients or to the public generally; or
- (g) is no longer fit and proper.

The FSC may also revoke a Regulatory Sandbox participant's approval to participate in the Regulatory Sandbox where the FSC is satisfied that it is not in the public interest that such participant should continue to be approved as such.

Where an approval to participate in the Regulatory Sandbox is revoked by the FSC, the affected participant must:

- (a) immediately cease taking on new clients;
- (b) invoke its exit strategy and cease participating in (and testing within) the Regulatory Sandbox within 30 days from the date of the FSC's revocation of its approval to do so; and
- (c) notify its clients of the FSC's revocation of its approval to participate in the Regulatory Sandbox.

The Regulations provide that the FSC may however, where it considers it to be appropriate

and justified to do so, grant an extension, of 30 days, for a Regulatory Sandbox participant whose approval has been revoked to exit the Regulatory Sandbox and cease testing in an orderly fashion.

Exiting the Regulatory Sandbox

At the end of a Regulatory Sandbox participant's Test Period, the participant may elect to either: apply to become a fully licensed entity under applicable BVI regulatory legislation; or cease its Regulatory Sandbox operations.

Where a Regulatory Sandbox participant intends to apply to be licensed under applicable BVI regulatory legislation, it must notify the FSC (in writing) of such intention at least 60 days before the end of its Test Period.

Within 30 days after the end of its Test Period, a Regulatory Sandbox participant must, in any event, submit a final report to the FSC identifying:

- (a) key outcomes, key performance indicators against its business proposal and the successes and failures it experienced within the Regulatory Sandbox;
- (b) any significant complaints (if any) made by its clients and how any such complaints have been resolved (or what plan it has put in place to resolve them);
- (c) where its test in the Regulatory Sandbox has failed, the lessons it has learnt by being a Regulatory Sandbox participant;
- (d) where its test in the Regulatory Sandbox has been successful, its plan(s) for after exiting the Regulatory Sandbox; and

- (e) such other information as the FSC may require.

If you would like further information, please liaise with your regular Maples Group contact or any of the persons listed below.

British Virgin Islands

Richard May
+1 284 852 3027
richard.may@maples.com

Guy Williamson
+1 284 852 3012
guy.williamson@maples.com

Amel Wehden
+1 284 852 3034
amel.wehden@maples.com

Cayman Islands

Martin Byers
+1 345 814 5463
martin.byers@maples.com

Dubai

Philip Ireland
+971 4 360 4073
philip.ireland@maples.com

Hong Kong

Ann Ng
+852 3690 7475
ann.ng@maples.com

Sharon Yap
+852 2971 3079
sharon.yap@maples.com

London

Heidi de Vries
+44 20 7466 1651
heidi.devries@maples.com

Joanna Russell
+44 20 7466 1678
joanna.russell@maples.com

Singapore

Michael Gagie
+65 6922 8402
michael.gagie@maples.com

January 2021
© MAPLES GROUP

This update is intended to provide only general information for clients and professional contacts of Maples Group. It does not purport to be comprehensive or to render legal advice.