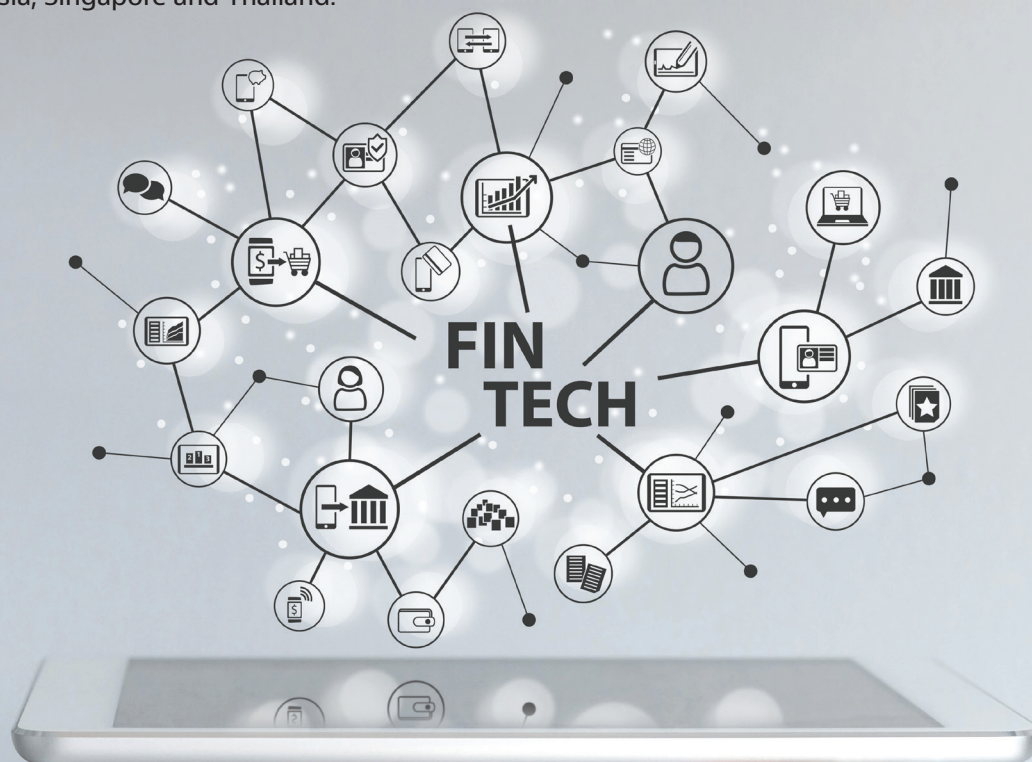


Introduction

In a nutshell, against the backdrop of whether innovation meets regulatory requirements, a sandbox regime allows entities to test their products, services or solutions in the market under a more relaxed regulatory environment but within a well defined space and duration agreed with the regulators.

This guide seeks to provide an overview and comparison of the regulatory sandbox regimes in Australia, Hong Kong, Malaysia, Singapore and Thailand.



FAQS ON FINTECH REGULATORY SANDBOXES

AUSTRALIA

1 WHO can apply to be in the sandbox?

Fintech businesses who are looking to provide financial services or engage in credit activities, and are likely to be regulated by the Australian Securities and Investments Commission ("ASIC").

Australia's regulatory sandbox is based on three key exemptions, designed to allow businesses to test products and services without the holding the usual Australian financial services licence ("AFSL") or Australian credit licence ("ACL").

Businesses should also note the Australian Government has recently released further draft legislation and regulations which will enhance the current fintech licensing exemption. It is likely the legislation and regulations will come into effect mid-2018.

To rely on the current licensing exemptions, businesses must:

- have no more than 100 retail clients;
- have a total client exposure not exceeding AUD5 million;
- comply with consumer protection requirements;
- have adequate compensation arrangements; and
- have both internal and external dispute resolution procedures in place.

These requirements remain unchanged in the exposure draft legislation and regulations.

There are no specific admissibility requirements for businesses seeking individual relief. However, ASIC has made it clear that it is unlikely to provide individual relief where a business has more than 100 retail clients or where granting relief would put consumers at risk.

Businesses which seek to rely on ASIC's existing exemptions must meet the criteria set out in the relevant ASIC class order or legislative instrument. Foreign financial services providers who are already regulated in jurisdictions outside Australia often rely on the "passporting exemption", noting that the "passporting exemption" applies only to the provision of financial services to wholesale clients.

2 WHAT are the main benefits of the sandbox?

The sandbox allows businesses to enter the Australian market with unprecedented speed.

Generally, businesses will have to obtain an AFSL or ACL before they can test their products or services. This process can take several months. The sandbox exemptions allow businesses to begin testing their products immediately and to enter the market while applying for the necessary licences. Products and services can be developed and improved before spending the money and time involved in obtaining a licence.

3 WHAT are some of the examples of how FIs may benefit from the sandbox?

A common predicament facing new entrants seeking to obtain an AFSL or ACL are the organisational competency requirements involved. The licensing exemption enables new fintech entrants to start business in the Australian market without having to necessarily meet the high threshold of training and qualification for responsible managers.

4 HOW to apply to be in the sandbox?

No formal application is needed to rely on the fintech licensing exemption.

However, an entity must give written notice to ASIC informing it of the intention to rely on the exemption. You must also provide company and contact details and a description of the services or products to be provided to consumers, along with bankruptcy and criminal history checks. When the new regulations commence there will also be specific requirements to include a description of the procedures, memberships and arrangements through which the business will meet their dispute resolution and compensation obligations, and the names of any persons (other than employees or directors) who will be responsible for making significant decisions about the ongoing provision of the financial services or credit activities.

ASIC's Innovation Hub has taken a facilitative approach, allowing fintech businesses which are considering reliance on individual relief to discuss their proposals with representatives from the Innovation Hub before lodging an application for relief. Businesses should first consider arranging a call or meeting with the Innovation Hub. To apply for individual relief, businesses must submit a written application electronically and include the prescribed fee.

The application process for ASIC's existing exemptions varies. Business wishing to rely on one of these exemptions should consult the relevant class order or legislative instrument and ASIC Regulatory Guide 51.

5 WHEN to apply to be in the sandbox?

Anytime.

Further, under the new regulations, businesses will be able to rely on the fintech licensing exemption for each new type of financial product and/or credit activity. Neither the provider, nor a related body corporate, can use an exemption a second time to test the same kind of financial service for the same type of financial product, or to test the same credit activity.

6 WHAT is the evaluation criteria?

On the whole, ASIC is largely concerned with balancing the protection of consumers and maintaining consumer trust, as well as driving innovation in Australia. For existing ASIC exemptions and individual relief, ASIC will consider whether the commercial benefits of granting relief outweigh the regulatory detriments.

For the fintech licensing exemption, ASIC will have regard to the type of product or service the business is providing. In relation to financial services, the exemption will apply for businesses providing financial product advice or dealing in financial products. It will not apply for businesses seeking to issue financial products. The type of financial products eligible are payment products issued by Authorised Deposit-Taking Institutions (with a maximum of AUD10,000 balance), deposit products (with a maximum of AUD10,000 balance), listed Australian securities or simple schemes (with a maximum AUD10,000 exposure) and general insurance products for personal property and home contents (with a maximum of AUD50,000 insured).

In relation to credit activities, the fintech licensing exemption will apply for businesses acting as an intermediary or providing credit assistance for credit contracts which have a loan size not more than AUD25,000, a maximum annual rate of 24% and are not consumer leases or subject to certain responsible lending obligations.

Under the new regulations, the fintech licensing exemption will be expanded to allow testing of additional products and services. A person providing financial services to wholesale clients will be able to rely on the exemption for all financial products, except for derivatives and margin lending facilities. A person providing financial services to retail clients will be able to rely on the exemption for general insurance products (except for consumer credit products), life insurance products, superannuation products, an interest in a simple managed investment scheme, a Commonwealth debenture, stock or bond, a listed domestic or international security, a deposit-taking facility, and a non-cash payment facility. For credit activities, the exemption will apply (subject to certain limitations) in relation to the provision of credit contracts and credit services for credit contracts of a term not more than 4 years and with a credit limit of AUD25,000.

7 HOW long will ASIC take to process sandbox application?

As a general rule, ASIC will take approximately 3 to 4 weeks to process an application for existing class order and legislative instrument relief. It is likely that an application for individual relief by a new entrant fintech business may take a bit longer. ASIC may consider such applications "new policy applications" and may seek out their own legal advice on the extent of relief sought.

8 WHAT is the duration of the sandbox?

12 months for the fintech licensing exemption. However, ASIC will consider applications for an extension of the testing period for an additional 12 months. Though not prescribed, it is likely to be the same length of time for individual relief.

Separate durations may apply for ASIC's existing exemptions.

The exposure draft regulations will extend the exemption period, allowing businesses to test eligible products and services for 24 months. The exemption period will begin from the fourteenth day after the notification is lodged.

9 WHAT happens after the sandbox?

The exemption can no longer be relied upon. Businesses should ensure that they apply for an ACL or AFSL during the exemption period, before the testing period expires.

10 Any other issues to be mindful of?

NA.

FAQS ON FINTECH REGULATORY SANDBOXES

HONG KONG

1 WHO can apply to be in the sandbox?

Banks authorized by the Hong Kong Monetary Authority ("HKMA") can apply to be in the sandbox operated by the HKMA.

Firms licensed by the Hong Kong Securities and Futures Commission ("SFC") and start-up firms that intend to be licensed by the SFC can apply to be in the sandbox operated by the SFC.

Insurers authorized by the Hong Kong Insurance Authority ("IA") can make applications to the IA under the IA's insurtech sandbox. In addition, a licensing fast track for on-line-only insurance companies will be introduced.

If a firm intends to conduct a pilot trial of a cross-sector fintech product, it may apply to seek access to the sandbox it considers most relevant. The relevant regulator will act as the primary point of contact and assist in liaising with the other regulators for the firm to access the other sandboxes concurrently.

2 WHAT are the main benefits of the sandbox?

Banks which operate within the HKMA's sandbox are allowed to conduct a pilot trial of their initiatives involving actual banking services without the need to achieve full compliance with the HKMA's usual supervisory requirements during the trial period subject to certain parameters.

The SFC's sandbox aims to enable qualified firms, through close dialogue with and supervision by the SFC, to identify and address any risks or concerns associated with their regulated activities before their services can be provided to the wider public in Hong Kong. To minimise risk exposure to investors, the SFC may impose licensing conditions such as limiting the types of clients these firms serve or each client's maximum exposure. In addition, they are expected to have adequate investor protection measures in place.

Insurtech applications will be considered by the IA as to whether they can broadly meet the relevant suspending requirements, without the need of full compliance. The "fast track" will expedite the authorization process of the IA.

3 WHAT are some of the examples of how financial institutions may benefit from the sandbox?

Banks which operate within the HKMA's sandbox will be able to conduct more timely live tests of their fintech initiatives before their formal launch. This will enable them to gather real-life data and user feedback on their new fintech products or services more easily in a controlled environment, so that they can make refinements to them as appropriate.

Firms which operate within the SFC's sandbox will be able to, through close dialogue with and supervision

by the SFC under the licensing regime, readily identify and address any risks or concerns relevant to their regulated activities.

Insurers testing new fintech initiatives within the sandbox can gain real market data and information of user experience in a controlled environment before launching them into the market.

4 HOW to apply to be in the sandbox?

Banks that wish to be in the HKMA's sandbox should write to the HKMA at hkma_sandbox@hkma.gov.hk.

Firms that wish to be in the SFC's sandbox should get in touch with the SFC fintech Contact Point (which is part of the function of the Licensing Department of the Intermediaries Division of the SFC) by completing the fintech Enquiry Form (<https://www.sfc.hk/web/EN/sfc-fintech-contact-point/submit-your-questions-or-ideas.html>).

Insurers that wish to be in the IA's sandbox should write to the Insurtech Facilitation Team at insurtech@ia.org.hk.

5 WHEN to apply to be in the sandbox?

Anytime. However, applicants should have completed its own due diligence and evaluation on how they will meet the objectives and principles of the sandbox and the evaluation criteria prescribed by the regulators, as applicants are required to demonstrate how they will meet these requirements in the application.

6 WHAT is the evaluation criteria?

Banks which are allowed to use the HKMA's sandbox, should ensure that:

- (i) *Boundary*: There are clear definitions about the scope and phases (if any) of the pilot trial, timing and termination arrangements;
- (ii) *Customer protection measures*: Adequate measures will be put in place to protect the interests of customers during the trial, including proper process for selecting customers who understand the associated risks and voluntarily join the trial, enhanced complaint handling procedures, a mechanism for timely and fair compensation of customers' financial losses caused by any failures of the trial, and appropriate arrangements for customers to withdraw from the trial;
- (iii) *Risk management controls*: Compensating controls to mitigate the risks arising from less than full compliance with supervisory requirements and the risks posed to the bank's production systems and other customers; and
- (iv) *Readiness and monitoring*: Readiness of the systems and processes involved in the trial and close monitoring of the trial.

The SFC's sandbox is available to firms which are fit and proper, utilize innovative technologies and be able to demonstrate a genuine and serious commitment to carry on regulated activities through the use of fintech. The establishment or activities of these firms should also increase the range and quality of products and services for investors and benefit the Hong Kong financial services industry.

The following principles apply to the IA's sandbox:

- (i) *Well-defined boundary and conditions:* There should be a clearly defined scope of the trial, including timing and duration, or expected official launch date of the initiative to the market, size and type of insurance business, and targeted users, technology involved and expected outcome and success criteria of the trial;
- (ii) *Risk management controls:* There should be adequate control procedures to achieve the objectives of the relevant supervisory requirements of the IA;
- (iii) *Customer protection:* Adequate safeguard should be in place to protect the interests of customers during the trial;
- (iv) *Resources and readiness of the insurer:* The insurer should be ready for the test in the sandbox with adequate resources and should be able to demonstrate that the insurtech initiative is ready for testing; and
- (v) *Exit strategy:* The insurer should present to the IA an exit strategy for the pilot run if it has to be terminated without success.

7 HOW long will the regulators take to process sandbox application?

The regulators did not specify any particular timeframe for the processing of sandbox applications.

8 WHAT is the duration of the sandbox?

Varies.

9 WHAT happens after the sandbox?

Banks may proceed to formally launch their services and products on a broader scale provided that they could comply with supervisory requirements that are applicable outside the sandbox regime.

In respect of firms operating in the SFC's sandbox, once a qualified firm has demonstrated that its technology is reliable and fit for purpose, and its internal control procedures have adequately addressed the risks identified, the firm may apply to the SFC for removal or variation of some or all of the licensing conditions imposed, so that it may conduct regulated activities and be subject to supervision by the SFC on the same basis as licensed corporations which operate outside the sandbox. If the SFC considers that a qualified firm operating in the sandbox is not fit and proper to remain licensed, its licence may be revoked.

Similarly, insurers may proceed to formally launch their services and products on a broader scale provided that they could comply with supervisory requirements that are applicable outside the sandbox regime.

10 Any other issues to be mindful of?

Generally speaking, the regulatory sandbox is not to be used by financial institutions as a means to bypass applicable supervisory requirements.

Financial institutions and fintech players should be mindful of licensing issues and regulatory landscape in jurisdictions outside Hong Kong if the solution targets or has the potential to reach a wider range of customers.

Other legal issues such as data privacy, data transfers, cyber security, enforceability of e-contracts, and consumer protection laws to name a few, are also often prevalent in the use of big data, artificial intelligence/machine learning, distributed ledger/blockchain, cloud computing and e-payments. These issues cut across other regulators and agencies, so financial regulations cannot be considered in isolation.

FAQS ON FINTECH REGULATORY SANDBOXES

MALAYSIA

1 WHO can apply to be in the sandbox?

Financial institutions ("FIs") and fintech companies that are looking to provide financial services (whether on their own or in collaboration with FIs) that are or are likely to be regulated by Bank Negara Malaysia ("BNM").

2 WHAT are the main benefits of the sandbox?

BNM may exempt FIs and fintech companies from specific regulations for the sandbox duration. This will facilitate FIs and fintech companies who face challenges in meeting all regulatory requirements to experiment or roll out their products and services under a more relaxed regulatory framework, but within a well defined space and duration agreed with BNM.

During the testing period when the applicant is participating in the sandbox, it is anticipated that the applicant will have the opportunity to engage with BNM and provide information on the technological solutions/services may help shape a more practical regulatory framework in future.

3 WHAT are some of the examples of how FIs may benefit from the sandbox?

FIs may face challenges in complying fully with risk management or outsourcing requirements when collaborating with emerging technology and software companies. Existing conduct of business rules may not fall neatly to financial services that adopt artificial intelligence or big data solutions which involves a substantial amount of automation. FIs may explore the possibility of relaxing some of these rules with the BNM for the agreed duration.

New players looking to obtain a licence but do not meet the requisite track record or capital resources requirements may seek exemptions from these requirements.

4 HOW to apply to be in the sandbox?

All applications must be submitted to the Director of Financial Sector Development of BNM using the prescribed form. Electronic submissions are encouraged.

5 WHEN to apply to be in the sandbox?

Anytime. However, applicants should have completed its own evaluation on the functionality of the product, and identified the risks posed by the product and the safeguards that will be implemented. The applicants should also have a business plan to support their proposed roll out of the product.

6 WHAT is the evaluation criteria?

BNM will consider whether the functionality of the product, service or solution is genuinely innovative to create measurable benefits to consumers and

the industry, whether the applicant has a well-developed test plan and the necessary resources to support the test scenarios and expertise to manage potential risks, and whether there is a realistic business plan after exit.

7 HOW long will BNM take to process sandbox application?

BNM endeavours to inform applicants of their eligibility to participate in the sandbox within 15 working days upon receipt of the application. If the applicant is eligible, it will enter into a preparation stage with BNM to determine the parameters, measures to determine success or failure of the test, and a clear exit and transition strategy before commencement of the test period. BNM will inform the participant if it is approved at the end of the preparation stage. If the participant is approved, it may thereafter launch its product, service or solution to its customers.

8 WHAT is the duration of the sandbox?

12 months from the date of commencement unless extension is approved by BNM.

9 WHAT happens after the sandbox?

The regulatory flexibilities accorded by BNM to the participants will expire. The participant can proceed to deploy the product, service or solution on a wider scale provided it is able to meet all the legal and regulatory requirements prescribed by BNM.

10 Any other issues to be mindful of?

The sandbox framework does not apply to a proposed product, solution or service involving regulated activities under the purview of the Securities Commission Malaysia (e.g. fund management, peer-to-peer lending, equity crowd funding). A separate licensing and regulatory regime would apply.

FIs and fintech companies should also be mindful of licensing issues and regulatory landscape in jurisdictions outside Malaysia if the solution targets or has the potential to reach a wider range of customers.

Other legal issues such as data privacy, data transfers, cyber security, enforceability of e-contracts, and consumer protection laws to name a few, are also often prevalent in the use of big data, artificial intelligence/machine learning, distributed ledger/blockchain, cloud computing and e-payments. These issues cut across other regulators and agencies, so financial regulations cannot be considered in isolation.

FAQS ON FINTECH REGULATORY SANDBOXES

SINGAPORE

1 WHO can apply to be in the sandbox?

Both regulated financial institutions ("FIs") and unregulated firms that are looking to provide financial services that are or are likely to be regulated by the Monetary Authority of Singapore ("MAS").

2 WHAT are the main benefits of the sandbox?

MAS may exempt FIs and fintech players from specific regulations for the sandbox duration. This will facilitate FIs and fintech players who face challenges in meeting all regulatory requirements to experiment or roll out their products and services under a more relaxed regulatory framework, but within a well defined space and duration agreed with the MAS.

As an aside, the opportunity to engage with the MAS and the bilateral sharing of information may help shape a more practical regulatory framework in future. At the very least, it may lend insights into regulator's expectations on the application of existing regulations.

3 WHAT are some of the examples of how FIs may benefit from the sandbox?

Banks and other FIs may face challenges in complying fully with technology risk management or outsourcing guidelines when collaborating with emerging technology and software companies. Existing conduct of business rules may not fall neatly to financial services that adopt artificial intelligence or big data solutions which involves a substantial amount of automation. Banks and FIs may explore the possibility of relaxing some of these rules with the MAS for the agreed duration.

New players looking to obtain a licence but do not meet the requisite track record or capital resources requirements may seek exemptions from these requirements.

4 HOW to apply to be in the sandbox?

Existing FIs should approach their institutions' MAS case officer. New players should write to the MAS Fintech Office.

All applications must be submitted in writing, in the template prescribed by the MAS.

5 WHEN to apply to be in the sandbox?

Anytime. However, applicants should have completed its own due diligence and evaluation on how they will meet the objectives and principles of the sandbox and the evaluation criteria prescribed by MAS, as applicants are required to demonstrate how they will meet these requirements in the application.

6 WHAT is the evaluation criteria?

MAS will consider if the solution involves the use of technology in an innovative way and bring benefits to consumers or the industry, whether the applicant will deploy the solution in Singapore on a broader scale, whether there are clearly defined test scenarios, expected outcomes and boundary conditions, any significant risks involved and whether there is a clearly defined exit and transition strategy.

7 HOW long will MAS take to process sandbox application?

MAS endeavours to inform applicants of their potential suitability for a sandbox within 21 working days upon receipt of the application. If an applicant is deemed suitable, it will then enter into an evaluation stage with MAS where the boundaries and duration of the sandbox are discussed and formulated. MAS will inform the applicant if the sandbox is approved at the end of the evaluation stage. If the sandbox is approved, the applicant may then launch its solution to its customers within the agreed parameters.

8 WHAT is the duration of the sandbox?

Varies.

9 WHAT happens after the sandbox?

The legal and regulatory requirements relaxed by MAS will expire. The sandbox entity can proceed to deploy the financial services on broader scale provided that it is able to meet all the legal and regulatory requirements and both MAS and the entity are satisfied that the sandbox has achieved its intended test outcomes.

10 Any other issues to be mindful of?

FIs and fintech players should be mindful of licensing issues and regulatory landscape in jurisdictions outside Singapore if the solution targets or has the potential to reach a wider range of customers.

Other legal issues such as data privacy, data transfers, cyber security, enforceability of e-contracts, and consumer protection laws to name a few, are also often prevalent in the use of big data, artificial intelligence/machine learning, distributed ledger/blockchain, cloud computing and e-payments. These issues cut across other regulators and agencies, so financial regulations cannot be considered in isolation.

FAQS ON FINTECH REGULATORY SANDBOXES

THAILAND

1 WHO can apply to be in the sandbox?

For the Bank of Thailand's (BOT's) regulatory sandbox, applicants can be financial institutions; companies within the financial business group of financial institutions; non-banks under the supervision of the BOT; fintech firms; or technology firms. However, these firms must be juristic persons incorporated in Thailand; have directors, executives, and employees with managerial powers with specified qualifications and good corporate governance; and have obtained relevant licenses if required under applicable laws. Applicants should also be offering products relating to borrowing/lending, payment, other similar financial transactions or related innovation, or any other financial transactions approved by the BOT.

2 WHAT are the main benefits of the sandbox?

The BOT may exempt applicants from specific regulations for the duration of the sandbox, allowing applicants to test their innovative financial products and services in a live but limited environment, without being fully subject to all requirements that are normally applicable. For the BOT, it allows them to facilitate financial innovations while still ensuring consumer protection and financial system stability.

3 WHAT are some of the examples of how FIs may benefit from the sandbox?

Offering new technology, especially in the early stages, may not be successful and is a high risk both for the operators and the public. The sandbox allows for such technologies to be tested in a limited environment before wider release. The specific lenient rules will depend on what the applicant specifies in their application as the BOT will grant permission on a case-by-case basis.

Additionally, offering the new technology through the sandbox may help provide assurance for consumers as they will be aware that the technology passed a BOT evaluation and remains under BOT supervision. Hence, issues like consumer protection measures and data security are heavily emphasized, which may make them less hesitant to try the products or services.

Examples of projects that are currently being implemented under the BOT's sandbox are use of blockchain for letter of guarantee and cross-border fund transfer, use of iris recognition for identity verification, and QR Code payment.

4 HOW to apply to be in the sandbox?

An applicant must submit the application form and a complete set of supporting documents/information, such as technologies to be used, the scope of the test (e.g. target group, transaction volume and value, duration), innovation tests or research results, benefits to the service providers, consumers and financial systems, consumer protection measures and regulatory requirements that the applicant wants to be relaxed, with supporting reasons, to the BOT.

5 WHEN to apply to be in the sandbox?

Anytime, so long as the application and its supporting documents are completed.

6 WHAT is the evaluation criteria?

The BOT emphasizes that products or services must be innovation involving new technology not already available in Thailand or that will enhance the efficiency of existing products or services. They will look at the applicants need for the sandbox and evaluate the research demonstrating the feasibility of the product or service. The BOT will also look at how the product or service will be beneficial for the ecosystem.

7 HOW long will BOT take to process sandbox application?

The consideration process will take no longer than 45 business days from the date on which the BOT receives the application and a complete set of supporting documents.

8 WHAT is the duration of the sandbox?

Varies. The duration is as specified by the applicant in its test plan approved by the BOT, which should not be more than one year. However, the BOT is allowed to consider granting an extension to the test period, provided that the applicant applies for an extension no less than 30 days before the expiration date, specifying the reason for and period of the extension.

9 WHAT happens after the sandbox?

The lenient rules will expire unless an extension period is granted. If the test results meet the goals initially presented to the BOT, the participant must submit an application for permission to offer the service or introduce the product as required by the law. If goals are not met, or the applicant fails to comply with the conditions agreed to during participation, the applicant must stop its service after notifying its consumers and submit a report detailing the cessation of services to the BOT.

10 Any other issues to be mindful of?

During the test, operators must demonstrate sufficient consumer protection measures, risk management and disclosure of information, including that it is a test in the regulatory sandbox, as well as compliance with other applicable laws. Moreover, they will have to submit a report to the BOT on test results, indicators, statistical data, information on risks or errors, or the occurrence of dishonest acts or complaints received from consumers as frequently as mutually agreed upon, during the test and after the test is completed.

Additionally, fintech players should be aware of regulatory sandboxes provided by other regulators, namely, the Securities and Exchange Commission (SEC) and the Office of Insurance Commission (OIC). fintech business operators should apply to the regulatory sandbox that is relevant to their products or services which could under the supervision of different regulators.

The current regulatory sandboxes provided by the SEC comprise:

- a regulatory sandbox for securities and derivatives businesses - innovative products like robo-advisors, algorithm trading, and algorithm-based investment advice may benefit from this sandbox;
- a regulatory sandbox for securities clearing houses, depositories, and registrars, focusing especially on the use of blockchain technology to provide these supporting functions;
- a know-your-customer regulatory sandbox; and
- a regulatory sandbox for e-trading platforms.

Application for the OIC sandbox was open since 1 June 2017, allowing insurers, agents, and fintech/insurtech players to beta test their InsurTech Innovations.