

Singapore's "regulatory sandbox" – new consultation

Summary

On 6 June 2016, the Monetary Authority of Singapore ("**MAS**") issued a new **consultation paper** (the "**CP**") setting out proposed new guidelines to be established in respect of Singapore's proposed regulatory sandbox mechanism. The development of a regulatory sandbox regime, which will allow institutions to operate on a test basis with relaxed regulatory obligations, is an important step by the MAS to encourage technological innovation in the financial services industry and will be amongst the first regulatory sandbox regimes in the world.

Consultation

This development is important to any institutions which are interested in leveraging on new or existing technology in an innovative way to provide financial products or services in Singapore. FinTech is a rapidly expanding area of the financial services industry. This consultation makes the MAS only the second regulatory authority in the world to consult on the concept of a regulatory sandbox. It follows the UK's Financial Conduct Authority ("**FCA**"), which opened its regulatory sandbox to applications on 9 May 2016, and was followed closely by the Australian Securities and Investments Commission ("**ASIC**") which released a consultation paper on its own regulatory sandbox licensing exemption two days after the MAS on 8 June 2016.

Contextually, this CP fits into Singapore's ambition to become a 'Smart Nation', including a smart financial centre. The development of Singapore as a regional FinTech hub is important on a broad scale to almost any institution operating in Singapore with an interest in technology.

What is a regulatory sandbox?

Conceptually, the objective of a regulatory sandbox should be to construct a well-defined space, for a limited duration, within which institutions can experiment with innovative new FinTech solutions in a relaxed regulatory environment and with the support of a national regulator. Failure is often a feature of experimental FinTech solutions, and the aim of a sandbox should not be to prevent failure, but rather to provide appropriate protections to limit

Contents

Summary	1
Consultation.....	1
What is a regulatory sandbox?	1
Key proposals of MAS	2
Impact on your business...	5
Further information	5

the impact of failure on consumers. This is what the draft guidelines in the CP seek to achieve, but, as explored further below, there are different ways of implementing this conceptual idea into national regulatory regimes.

Key proposals of MAS

We outline below key aspects of the MAS' proposal for the sandbox, setting out both the Singapore position and, where relevant, points of comparison with the FCA's and the ASIC's approach.

- **Status** – this is the first time that the MAS has released concrete materials on the sandbox, after indicating support for the concept in speeches in late 2015 and 2016. Following the conclusion of this consultation, the guidelines will be finalised and institutions will be able to submit sandbox applications to the MAS.
- **Timing** – the consultation period closes on 8 July 2016 and, following that, there is no explicit timeline. However, given the policy underlying the publication of the CP, we would expect the MAS to maintain momentum and progress implementation of the regulatory sandbox swiftly.

A brief overview of the proposals in the CP is as follows.

General approach

The MAS intends that the sandbox would be deployed and operated by the applicant institution (the “**Applicant**”), with the MAS providing appropriate regulatory support by relaxing certain specific legal and regulatory requirements to which the Applicant would ordinarily be subject. The precise relaxations would be determined by the MAS on a case-by-case basis following an application by an institution.

This somewhat *ad hoc* approach appears to be subtly different from the approach taken by the FCA, which operates in a manner more akin to a FinTech “accelerator” programme (i.e. taking in prescribed cohorts at set points throughout the year). This flexible approach from the MAS is an encouraging sign for established financial institutions and start-ups alike who can apply for a sandbox at any time.

Conversely, the ASIC have proposed an approach that exempts an institution from licensing requirements as long as certain prescribed conditions and limitations are adhered to. Whilst still an *ad hoc* approach, this may be more limited in scope than the sandbox mechanisms in the UK and Singapore, but will only require a notification to, rather than approval from, the ASIC.

Supportive actions available to the MAS

As noted above, the MAS intends to provide support by relaxing certain legal and regulatory requirements. The precise relaxations would be determined by the MAS on a case-by-case basis in consultation with the Applicant. At Annex A of the CP, the MAS has given an indication of what legal and/or regulatory requirements might be relaxed as part of the sandbox framework. The MAS'

current proposal is that requirements such as minimum liquid assets and paid-up capital, asset maintenance and cash balances, credit ratings, reputation and track record (all of which can be major obstacles to start-ups and emerging FinTech companies) may be relaxed in certain cases, whereas more fundamental obligations including confidentiality of client information, fit and proper criteria and prevention of money laundering would not be relaxed.

Comparatively, the FCA has a broader range of supportive actions available to it. As well as being able to waive certain FCA rules and issue guidance, the FCA may also (in rare cases where waiver or guidance is not possible) issue a “no enforcement” letter, giving a conditional undertaking that the FCA will not take disciplinary action against a sandbox institution.

In its consultation paper, the ASIC also notes that the proposed regulatory sandbox licensing exemption is complemented by other supportive powers. In particular, the ASIC notes that it is empowered to provide individual relief from the laws they administer and can, in some circumstances, issue no-action letters in relation to breaches of the law.

Whilst the MAS’ proposed powers do not currently include some of those granted to ASIC or the FCA, the MAS is, in the CP, seeking suggestions on additional forms of support that could be offered during the sandbox to encourage experimentation.

Eligibility for the sandbox

In the CP, the MAS has set out in broad terms how it will determine the eligibility of applicants, divided into criteria by which it will evaluate applications (“**Evaluation Criteria**”) and circumstances where the sandbox will not be suitable (“**Non-Suitability Circumstances**”). These are broadly similar to the criteria that the FCA uses to determine eligibility for its sandbox. For further reference, we have set out the Evaluation Criteria and the Non-Suitability Circumstances, in comparison with the FCA’s eligibility criteria, in the Appendix below.

Conversely, the ASIC has proposed more prescriptive criteria for the application of the regulatory sandbox licensing exemption, which will assist firms in self-assessing whether the exemption will apply. For example, the ASIC has proposed prescribed limits on number of investors and exposure limits. Whilst this necessarily entails less flexibility, it will increase legal certainty for firms relying on the exemption. A particular point of interest is that the ASIC has proposed requiring a testing business to have a “sandbox sponsor” which would be a not-for-profit industry association or other recognised entity, and would play a “gatekeeper” role by helping to ensure that the testing business has sound business model and is operated by fit and proper persons. A written confirmation of sponsorship would be a condition for the operation of the exemption.

Exiting from the sandbox

Upon exiting the sandbox, the MAS proposes that Applicants (if approved) will be able to deploy their FinTech solution more broadly in Singapore, as

long as (a) the sandbox has achieved its intended test outcomes; and (b) the institution is able to fully comply with all relevant legal and regulatory obligations (meaning that any relaxation of regulatory obligations that applied in the sandbox would be lifted). The MAS will also have powers to end the sandbox in certain circumstances (for example, breach of a condition of the sandbox, or the discovery of a critical flaw in the FinTech solution that cannot be resolved within the sandbox period).

This is broadly similar to the approach taken by the FCA and the ASIC, which also require institutions to become fully compliant with relevant laws and regulations following expiry of the sandbox, if such institution intends to keep offering the product or service in the UK or Australia, as appropriate. The FCA and the ASIC also reserve the right to terminate the testing at any time.

This common approach, requiring full regulatory compliance upon exiting the sandbox framework, means that, whilst these sandboxes are a positive development for start-ups who may not immediately be able to fulfil regulatory requirements such as maintaining significant levels of capital, these start-ups will eventually (and potentially quite quickly) need to scale-up to succeed outside of the sandbox. In fact, the ASIC specifically acknowledges in its consultation paper that testing businesses “may need to cease operations for a period of time following the testing period until they can comply with the usual licensing obligations”.

Application and approval process

The MAS’ proposed process is set out in some detail in the CP, as the MAS has provided a draft of the form to accompany a proposal (see Annex B of the CP) and a case-study application (see Annex C of the CP). As noted above, the MAS’ approach to applications is somewhat *ad hoc*, which means that the process is similar to a reduced licence application, which appears to be streamlined and user friendly. The precise timing for the MAS approving an application will vary on a case-by-case basis, although the MAS will aim to give a preliminary view within 21 working days of receiving a complete application.

As noted above, this is in contrast to the approaches taken by the ASIC and the FCA. The FCA still requires applications to be made, but imposes prescribed timelines and then selects firms for bi-annual cohorts. The ASIC does not require application or approval at all, but instead requires a notification when an institution chooses to rely on its proposed regulatory sandbox licensing exemption, although the ASIC would be empowered to “switch off” the exemption if it is not satisfied that the institution satisfies the limitations and criteria for exemption (which may mean that the ASIC must, in reality, approve of the sandbox proposal in order for it to proceed, regardless of whether it is required to give formal approval).

Impact on your business

The establishment of a regulatory sandbox regime is a positive development to be welcomed, and is an important step by the MAS to encourage technological innovation in the financial services industry.

For established financial institutions, start-ups and emerging companies, the sandbox will provide an opportunity to develop new and more efficient financial services and products, and innovative ways of servicing customers.

If you are an institution interested in developing FinTech solutions, then you should consider how you might take advantage of the sandbox when it becomes operational, as Singapore will become one of a small group of jurisdictions where it is possible to test ideas in a supportive, reduced regulatory and less capital-intensive environment. You may wish to start considering whether any ideas you are already developing would be (a) suitable for the sandbox and (b) consistent with the Evaluation Criteria, in order to be well prepared when the MAS begins accepting sandbox applications.

Further information

If you would like to discuss the above, feel free to contact [Peiying Chua](mailto:peiying.chua@linklaters.com) or [Adrian Fisher](mailto:adrian.fisher@linklaters.com) or any of your other Linklaters contacts.

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Appendix – Evaluation Criteria, Non-Eligibility Circumstances and FCA eligibility criteria

The table below compares the various criteria that will be considered by the MAS and the FCA when an institution applies to enter the regulatory sandbox in Singapore and/or the UK, respectively. Broadly, the criteria are similar, although there are certain areas where they diverge. The ASIC’s regime is not included in the comparison below, as the MAS’ and FCA’s conditions are designed to give the MAS and the FCA discretion when determining whether to approve an application. As described above, ASIC’s proposed regime is conceptually different as the conditions must be adhered to in order to take advantage of the licensing exemption, which necessitates that such conditions are more prescriptive, and less directly comparable.

MAS Evaluation Criteria / Non-Eligibility Circumstances	FCA eligibility criteria
<p><i>Evaluation Criteria (a) – innovation</i></p> <p>FinTech solution is technologically innovative or applied in an innovative way.</p>	<p><i>“Genuine Innovation” Criteria</i></p> <p>Innovation is ground-breaking or constitutes a significantly different offering in the market.</p>
<p><i>Evaluation Criteria (b) – consumer / industry benefit</i></p> <p>FinTech solution addresses a significant problem or issue, or brings benefits to consumers or the industry.</p>	<p><i>“Consumer Benefit” Criteria</i></p> <p>Innovation offers a good prospect of identifiable benefit to consumers (either directly or via heightened competition).</p>
<p><i>Evaluation Criteria (c) – intent to broadly deploy</i></p> <p>Applicant has the intention and ability to deploy the FinTech solution in Singapore on a broader scale following exit from the sandbox.</p>	<p><i>“In Scope” Criteria</i></p> <p>Applicant is looking to deliver innovation which may be a regulated business, or may support regulated businesses, in the UK. Under this criterion, it is a ‘negative indicator’ if the innovation does not appear to be intended for use in the UK.</p>
<p><i>Evaluation Criteria (d) – clear testing plans</i></p> <p>Test scenarios and outcomes from the sandbox should be clearly defined, and the applicant should report to the MAS on the test progress based on an agreed schedule.</p>	<p><i>“Ready for Testing” Criteria</i></p> <p>Business is ready to test in a live environment. This is a broad criterion, and a ‘positive indicator’ is that testing plans are well-developed with clear objectives, parameters and success criteria.</p>
<p><i>Evaluation Criteria (e) – sandbox boundary conditions</i></p> <p>The appropriate boundary conditions should be clearly defined in order for the sandbox to be meaningfully executed while sufficiently</p>	<p><i>N/A</i></p> <p>The FCA’s sandbox is organised and deployed by the FCA, meaning that there is no need for firms to set out boundary conditions at the</p>

MAS Evaluation Criteria / Non-Eligibility Circumstances	FCA eligibility criteria
protecting the interests of consumers and maintaining the safety and soundness of the industry.	outset.
<p><i>Evaluation Criteria (f) – safeguarding against risks</i></p> <p>Major foreseeable risks arising from the FinTech solution are assessed and mitigated.</p>	<p><i>“Ready for Testing” Criteria</i></p> <p>Another ‘positive indicator’ under this criterion that that the applicant has sufficient safeguards in place to protect consumers and provide appropriate redress if necessary. This would necessarily include an assessment of foreseeable risks.</p>
<p><i>Evaluation Criteria (g) – exit and transition strategy</i></p> <p>An acceptable exit and transition strategy should be clearly defined in the event that the FinTech solution needs to be discontinued, or can proceed to be distributed on a broader scale after exiting the sandbox.</p>	<p><i>“Ready for Testing” Criteria</i></p> <p>An exit and transition strategy may assist in demonstrating that the innovation is ready for testing, although the FCA does not require anything as prescriptive.</p>
<p><i>Non-Suitability Circumstance (a) – similarity to other offerings</i></p> <p>FinTech solution is considered to be similar to those already offered in Singapore.</p>	<p><i>“Genuine Innovation” Criteria</i></p> <p>It will be a ‘negative indicator’ if there are numerous examples similar to the innovation already on the market.</p>
<p><i>Non-Suitability Circumstance (b) – due diligence</i></p> <p>Applicant has not conducted due diligence to test and verify the viability of the FinTech solution, such as testing the FinTech solution in a laboratory environment or obtaining external validation.</p>	<p><i>“Ready for Testing” Criteria</i></p> <p>It will be a ‘negative indicator’ if little or no testing has been conducted as at the date of the application to the sandbox.</p>
<p><i>Non-Suitability Circumstance (c) – genuine need for sandbox</i></p> <p>Applicant can reasonably and effectively experiment with the FinTech solution in a laboratory or test environment.</p>	<p><i>“Necessity” Criteria</i></p> <p>Applicant has a genuine need to test the innovation on consumers, and in the FCA sandbox. The FCA indicates that a need for live testing (as opposed to lab testing) must be shown.</p>
<p><i>Non-Suitability Circumstance (d) – intent to broadly deploy</i></p> <p>Applicant has no intention to deploy the FinTech solution in Singapore on a broader scale after exiting the sandbox.</p>	<p><i>“In Scope” Criteria</i></p> <p>As described above. It will be a ‘negative indicator’ in the innovation does not appear to be intended for use in the UK.</p>