

New regulations enable BVI companies to trial innovative fintech products

Insights - 31/07/2020

The British Virgin Islands recently introduced new regulations relating to products and services in the innovative fintech space, reaffirming its commitment to remaining a jurisdiction of choice for new financial products and services. These new regulations represent an exciting development in the approach taken by the BVI to the regulation of novel financial technology, representing a good balance between oversight and accountability on the one hand, and freedom to innovate on the other.

The Financial Services (Regulatory Sandbox) Regulations, 2020 (the **Regulations**) were introduced in June 2020 and commenced on 31 August 2020. The Regulations will provide a way for new, innovative fintech products to be trialled for a limited time by BVI companies, without the need to comply with the more onerous licensing requirements set out in more mainstream financial services regulations.

"Innovative Fintech" is defined in 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'*. In this context, financial services business relates to activities that would usually fall to be regulated and licensed, such as fund management, banking, money services, and operating an investment exchange. Where an entity that is engaged in innovative fintech is permitted to operate within the regulatory sandbox (the **sandbox**), such licensing requirements do not apply for so long as the entity is within the sandbox.

Application and Approval

An entity that wishes to be considered to operate within the sandbox needs to make an application to the Financial Services Commission (the **FSC**), which application must be accompanied by the following:

1. a written indication that the applicant is utilising or intends to utilise innovative fintech whereby the product or service is innovative and has the potential to:
 - (a) improve accessibility, efficiency, effectiveness, security and quality in the provision of financial services business;
 - (b) enhance the efficacy, efficiency and effectiveness of the management of risk by persons licensed, authorized or otherwise approved by the FSC to engage in financial services business; or
 - (c) address shortcomings in, open up new opportunities in, or promote, the conduct or provision of financial services business;
2. a detailed and comprehensive business proposal;
3. a written indication of the test scenarios the applicant has carried out, based on the applicant's business model, to demonstrate the usefulness, functionality and potential of the product or service, including the projected outcomes of the test scenarios and the appropriate indicators to be used in measuring such outcomes;
4. a statement of the maximum number of clients the applicant will have or engage while in the sandbox;
5. a written description of the risks that may be associated with the applicant's business model and the framework established or to be established to ensure an adequate management of the risks;
6. a written indication of the resources (financial, technological, human and otherwise) at the disposal of the applicant which the applicant intends to use to support participation in and testing within the sandbox, including ensuring the appropriate control and mitigation of potential risks and losses arising from offering the product or service that is the subject of innovative fintech; and
7. written strategies for exiting the sandbox, both (a) without seeking a licence under mainstream regulatory legislation, and (b) by transitioning to being a licensed entity, including an indication of the potential to realistically deploy the innovative fintech with respect to financial services business after the applicant has ceased to participate in the sandbox.

The fee for making such an application is currently US\$2,000, and a further fee is charged if the

application is approved, ranging from US\$2,000 for a simple business model to \$10,000 for a complex model. Where, after submitting an application, any of the submitted information changes, the FSC must be informed immediately. They may also request additional information to help them in making their decision.

If the FSC is satisfied that they have been given all requisite information outlined above (as well as any further information requested), that the applicant is 'fit and proper', and that granting the application is not against the public interest, they may grant approval for the applicant to participate in the sandbox. The 'fit and proper' criterion relates to the directors or senior managers of the applicant, and is assessed by the FSC based on their (i) honesty, integrity, and reputation, (ii) competence and capability, and (iii) financial soundness.

Where an application is granted, the FSC will tell the applicant for how long they will be permitted to operate within the sandbox, which, initially, will be a period no longer than 18 months, although there is scope for this period to be extended by a further six months if a good reason can be shown. During this time, the applicant may not change their business model without the prior approval of the FSC. They may, however, make an application to become a fully licensed regulated entity and leave the sandbox.

It should be noted that, once approval has been granted, the FSC may revoke such approval for a number of reasons, including where the applicant breaches their obligations under the Regulations, submits false reports, breaches data security, or is being liquidated.

Ongoing Obligations

A sandbox participant that is a BVI company must have at least two individual directors (as opposed to corporate directors), or two individual partners in the case of a limited partnership, and may not have more clients than were approved by the FSC during the application process. They must also take adequate measures to identify potential risks relating to their business and to take measures to address those risks (including prevention of money laundering and terrorist financing).

Where there is a development or change to the conduct of the participant's business, or change in the environment in which it operates, that has or is likely to have a material impact on its risk profile or obligations under the Regulations, the participant is required to immediately notify the FSC.

Participants in the sandbox will be required to keep adequate records and to file interim reports with the FSC, at such intervals as the FSC may determine. These reports must be signed by the chief executive officer (or equivalent) and are required to:

1. indicate the participant's level of compliance with the Regulations;

2. state the number and classification of the participant's clients;
3. state the aggregate monetary exposure of the participant's clients;
4. provide a summary of the participant's clients by geographical location;
5. outline the financial position of the participant;
6. indicate risks that have been encountered and how they have been resolved or are being resolved, including whether there has been any financial or other loss;
7. outline key performance indicators, achievements and any relevant statistical information;
8. outline any significant complaints (if any) by clients and how they were resolved (or, if they have not been resolved, the plan put in place to resolve them); and
9. where the test in the sandbox has failed, the lessons learnt by the participant, or where the test in the sandbox has been successful, the participant's plan after exiting the sandbox.

When soliciting clients, a participant will be required to alert the client to the fact that they are not licensed by the FSC, and disclose to the client or potential client the risks of participating in the sandbox, that the activities are being conducted pursuant to the participant's business proposal, and for how long the FSC has approved the participant operating within the sandbox.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Nathan Powell

Partner □□□

Hong Kong

E: nathan.powell@ogier.com

T: +852 3656 6054

Key Contacts



Simon Schilder

Partner

British Virgin Islands

E: simon.schilder@ogier.com

T: +44 1534 514298

Related Services

Corporate

Legal

Related Sectors

Technology and Web3