

SESSION 3

KEY CONSIDERATIONS IN DEVELOPING A REGULATORY SANDBOX

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16 APRIL 2019

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SANDBOX DEVELOPMENT: THREE LAYERS

1. Policy layer
2. Organisational layer
3. Operational layer
4. Discussion: key questions and takeaways

POLICY LAYER

- Why is a sandbox necessary/desirable?
 - Is there empirical evidence to support the need for a sandbox?
- What is the objective?
 - Understand the technology?
 - Modernise existing regulation?
 - Market development?
 - Promote local FinTech firms?
 - Invite foreign FinTech firms to offer their services in the jurisdiction?
 - Invite foreign FinTech firms to relocate to the jurisdiction?
 - Give signal to the industry?

POLICY LAYER

- Is sandbox an appropriate solution?
- Which alternative/supplementary measures should be implemented to achieve the objective?
 - Consultations/clarifications/informal steering
 - Innovation/FinTech hubs
 - Engagement with innovative firms
 - Engagement with other regulators (domestically/internationally)
 - Sector-specific
 - Competitions (eg FinTech challenges), hackathons

ALTERNATIVE/SUPPLEMENTARY MEASURES: NETHERLANDS CASE STUDY

- Partial authorisation
- Authorisation with requirements
 - “The AFM and DNB can offer bespoke arrangements by issuing authorisations with requirements and restrictions. These may differ on a case-by-case basis.”
 - Cf Australia’s restricted licenses
- Opt-in authorisation
 - For non-banks that wish to engage in investing received funds for their own account

POLICY LAYER

- Which regulator/regulators have the required mandate to achieve the objectives?
 - Narrow mandate may constrain the scope of the sandbox
 - Specific mandates (eg financial inclusion, competition) may lead to adjustment of objectives to promote them within the sandbox

POLICY LAYER

- Is there demand from the industry?
 - What are the perceived benefits of a sandbox for end-users?
- Which sandbox model?
 - Authorisation model
 - Notification model (Australia's example)

ORGANISATIONAL LAYER

- Who will determine eligibility?
 - central bank (eg Russia)
 - securities regulator (eg Canada)
 - market conduct regulator (eg Australia, UK)
- Does the regulator have the required authority?
 - To set up a sandbox
 - To exercise discretion (eg give waivers, issue no action letters)

ORGANISATIONAL LAYER

- What are the limits of regulator's authority?
 - Certain firms may have to be excluded from the sandbox
 - A problem for innovative financial services/products which may be potentially regulated by more than one regulator
 - Regulatory cooperation is important
 - If cooperation is required, is there legal authority to do so?

ORGANISATIONAL LAYER

- Does the regulator have sufficient human resources/funding?
 - How will the regulator assess the **degree of innovation**? Can it adequately **assess the underlying risks**? Will it be trapped in a **‘black box’ problem**?
 - If not, consider **alternatives** (innovation hub, better communication)
- Who bears the costs of sandbox establishment/participation?
 - Is there an element of cost recovery from participants?

ORGANISATIONAL LAYER

- Should multiple regulators join forces instead of operating separate sandboxes?
- What is the level of regulatory/political buy-in of the sandbox concept?
 - What level of regulatory/political support is desirable to achieve the sandbox objectives - in particular:
 - To allocate sufficient resources to the regulators
 - To give sufficient confidence to market participants
 - To motivate staff
 - At which level is the sandbox managed?

ORGANISATIONAL LAYER

- How will sandbox regulations be implemented?
 - Regulator has sufficient authority to implement the sandbox
 - Statutory changes are required
 - To set up a sandbox
 - To give sufficient authority to the regulator

ORGANISATIONAL LAYER

- How does **success** look like? Are any of these convincing?
 - Firms can delay obtaining authorisation for some time (eg a license)
 - Regulator can closely observe a limited test of a new service
 - Regulator can identify inadequate regulations/statute

OPERATIONAL LEVEL

- Who is eligible to apply?
- Which products/services can be tested?
- How does the selection process work?
- How to balance transparency and confidentiality?

OPERATIONAL LEVEL

- Are the selection criteria clear and straightforward?
- Single point of entry
- Pre-application consultation
- IP protection rules

OPERATIONAL LEVEL

- How to balance risk of failure and customer protection?
 - BNM: “Risk and failure are an integral part of innovation. Given that a regulatory sandbox (sandbox) operates in a live environment, failure may result in financial loss or other risks to the sandbox participants and their customers. It is therefore imperative for the sandbox to incorporate appropriate safeguards to manage the risks and contain the consequences of failure.”
 - Restrictions and ongoing obligations

POST-SANDBOX

- Publication of outcomes
- Review and publication of lessons learned
- Ongoing revision of the sandbox regime

DISCUSSION: KEY POLICY MATTERS

- What is the objective?
- Is sandbox the appropriate solution?
- Which alternative/supplementary measures should be implemented to achieve the objective?
- Which regulator/regulators have the required mandate to achieve the objectives
- Is there demand from the industry?
- Which sandbox model?

DISCUSSION: KEY ORGANISATIONAL MATTERS

- Who will determine eligibility?
- Does the regulator have the required authority?
- What are the limits of regulator's authority?
- Does the regulator have sufficient human resources/funding?
- What is the level of regulatory/political buy-in of the sandbox concept?
- How will sandbox regulations be implemented?

THANK YOU