CLIFFORD CHANCE

Cavenagh Law LLP

Briefing note

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Building castles in sandboxes - Australia and Singapore sign fintech cooperation agreement

In June 2016, the Australian Securities and Investments Commission (ASIC) and the Monetary Authority of Singapore (MAS) entered into a cooperation agreement to assist Australian and Singaporean fintech businesses to expand into each other's markets by creating dedicated teams to provide advice, support and approvals in relation to regulatory matters. The announcement of the agreement coincides with other major regulatory initiatives being undertaken in this space, including joint ones being undertaken by ASIC and the MAS.

Key Issues

- Australia and Singapore's corporate regulators have entered into a fintech cooperation agreement.
- ASIC and MAS will dedicate teams to provide regulatory advice, support and approvals for fintech businesses seeking to enter each other's market.
- Other regulatory initiatives are being undertaken by Australia and Singapore in this space.
- Regulatory sandboxes are being designed to allow businesses to test their business models, products and services.

Overview

Fintech is the du jour term describing the technology ecosystem focusing on financial services. Accenture found that, from 2013 to 2014 fintech global investment tripled to USD12.2 billion[1] and EY found that a market size of over GBP20 billion (USD27 billion) across seven global regions (including Australia and Singapore) existed in 2014.[2] Not surprisingly, governments are hastening to position their economies to take advantage of the financial services digital revolution underway.

"For the short-term, corporate investment in fintech will likely take center stage as corporates pursue longer term objectives associated with the perceived value that fintech can provide to their own organizations."[3]

Well-known fintech advancements include cyptocurrency (eg Bitcoin), crowdfunding (including equity funding), robo-advice and P2P and micro-lending platforms. While offering exciting opportunities, the proliferation of such digital disruption has given rise to challenges for international regulators to respond to whilst nurturing growth, and at the same time protecting users from potential risks.

In November 2015, Greg Medcraft (ASIC's Chairman) stated that "Often disruptive businesses have innovative business models that may not fit neatly within existing regulatory frameworks or policy ... over recent years, there has been significant growth in the number and severity of cyber attacks around the world."

Cooperation agreement

The ASIC/MAS agreement is almost identical to agreements both of these regulators entered into with the UK Financial Conduct Authority (FCA) earlier in the year. Interestingly, the ASIC/MAS agreement is distinguishable from the FCA agreements by an additional clause which states that ASIC and the MAS "undertake to consider participating in joint innovation projects on the application of key technologies such as digital and mobile payments, blockchain and distributed ledgers, big data, flexible platforms, and other areas of new technologies."

The key substance of the agreement is that ASIC's Innovation Hub created in 2015 and the MAS' and SG-Innovate's Fintech Office created in 2016 will cross-refer approved fintech businesses that would like to expand to the other jurisdiction, whereupon dedicated staff will provide regulatory advice, support and authorisation(s) before, during and for one year after, the authorisation process. In a clear effort to promote regulatory nimbleness, the agreement provides that authorisation may include the implementation of an undefined specialised process.

The obvious aim of these measures is to reduce regulatory uncertainty and potentially time to market. More broadly, it is geared to facilitate effective regulation in this developing space, which is critical to promote competition and consumer confidence.

The agreement also provides that ASIC and the MAS undertake to confidentially share information about innovations regarding fintech in their respective markets where appropriate, including in relation to emerging market trends and regulatory issues. As fintech is characterised by prodigious evolution without the degree of traditional constraint imposed by geographical borders, this feature of the agreement is designed to help the regulators keep pace.

We expect Hong Kong, Australia and Singapore's closest fintech national rival, to enter into similar agreements in the near future. The Hong Kong Monetary Authority established the Fintech Facilitation Office in March 2016. It is the equivalent of the aforementioned Innovation Hub and Fintech Office.

Australian initiatives

In June 2016, ASIC released its consultation paper on its proposed measures to facilitate innovation in financial services. It identified that the primary barriers faced by fintech start-ups seeking to enter the financial services market were:

- speed to market; and
- meeting the organisational competence requirements required under the financial services licensing regime.

Start-ups also face difficulties with accessing capital, which exacerbates their ability to go to market and attract experienced responsible managers.

To help break down these barriers ASIC has proposed to:

- provide additional guidance on how ASIC assesses organisational competence of a licensee applicant;
- modify ASIC policy on organisational competence, to allow small, heavily automated businesses to appoint third-parties to provide compliance sign-off; and
- implement a limited industry-wide regulatory sandbox to allow start-ups to test certain financial services for six months without holding a financial services licence.

Building castles in the sandbox

The regulatory sandbox is designed to allow businesses to test their business models before incurring significant compliance costs and increase competition by removing barriers to entry into the financial services market.

ASIC's licensing exemption is proposed to be limited to giving financial advice about, or arranging for other persons to deal in, certain liquid products. Other proposed requirements to qualify for the regulatory sandbox exemption include:

- the testing business must have a recognised sponsor;
- the service being limited to 100 retail clients;
- allowing up to AUD10,000 investment per retail client in listed securities, deposits and simple managed investment schemes;
- a cap on total investments from wholesale clients of AUD5 million;
- compliance with a modified set of conduct and disclosure obligations;
- being a member of an external dispute resolution scheme;
- having adequate compensation arrangements for retail clients; and
- the testing business must not be an existing licensee.

The closing date for submissions on ASIC's consultation paper is Friday 22 July 2016.

ASIC expects to finalise its regulatory guidance in December 2016.

Singaporean initiatives

The MAS has been actively introducing fintech related initiatives in line with its commitment to the creation of a Smart Financial Centre.

These include the formation of a new Fintech & Innovation Group within the MAS' organisational structure from August 2015, the launch of the new Fintech Office in May 2016 to serve as a one-stop virtual entity for all fintech matters and to promote Singapore as a fintech hub, and the announcement by the MAS of the inaugural Singapore Fintech Festival which is to be held in November 2016 in partnership with the Association of Banks in Singapore. In the 2016 budget it was also announced that the Standards, Productivity and Innovation Boad (SPRING) will offer a new Automation Support Package to help firms scale-up their automation efforts. It is anticipated that the Automation Support Package will provide support of over SGD400 million over the next three years.

Like Australia, the MAS has recently proposed a regulatory sandbox for both financial institutions and non-financial institutions to experiment with innovative fintech solutions. In connection with this, the MAS has released a consultation paper on proposed guidelines for the "regulatory sandbox" that aims to set out the objectives and principles of the regulatory sandbox, provide guidance on the application process, and articulate the possible ways in which the MAS can provide regulatory support to interested firms.

Other collaborations include the signing of a Memorandum of Understanding (MoU) between the Singapore FinTech Consortium with the FinTech Center of Korea under which the two institutions will provide aid to fintech companies from the partner country in June 2016, as well as the signing of a MoU on cybersecurity cooperation between the Cyber Security Agency of Singapore and the National Cyber Security Centre of the Netherlands in July 2016.

[1] Julian Skan *et al*, *The Future of FinTech and Banking* (2015) Accenture

[2] Imran Gulamhuseinwala *et al, UK Fintech – On the cutting edge* (2016) EY

[3] The Pulse of Fintech, 2015 in Review (2016), KPMG and CB Insights

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