

THE NEW ITALIAN FINTECH SANDBOX OPENS

The Italian securities exchange regulator, Consob; central bank, Banca d'Italia; and insurance regulator IVASS, on 1 October 2021 announced the term during which applications can be filed for admission to the regulatory "sandbox" governed by Ministerial Decree 100/2021, which came into force in July 2021 (the "**Sandbox Decree**"). The regulatory sandbox is a controlled space that allows financial intermediaries and operators in the fintech sector to experiment with high-technology innovation in the banking, financial and insurance sectors, benefiting from a temporarily simplified legislative framework.

Application for admission to the sandbox can be filed only during the suitable filing periods as established from time to time by the Authorities. The first such period opens on 15 November 2021 and ends 15 January 2022. On or before the end date, it will be possible to file application for admission to the experiment, in accordance with the procedure set out in the Sandbox Decree.

How does the fintech sandbox work?

Admission criteria and eligible activities

The following are eligible for admission to experimentation in accordance with the Sandbox Decree:

- Intermediaries subject to supervision by Banca d'Italia, Consob, or IVASS, which have a registered office or branch in Italy, or have a registered office in the EU but operate in Italy carrying out their fintech activities under the freedom to provide services regime;
- Persons who intend to carry out fintech activities, conditionally upon being granted an authorisation or registration in a list, register or professional roll kept by at least one of the above listed regulators;
- "Operators in the Fintech sectors", i.e., persons who perform or intend to perform fintech activities (whether prevalently or not), independently from whether they are regulated persons, in relation to:

Key issues

- From 15 November 2021 the filing period will be opened for applications for admission to the regulatory sandbox: a controlled environment where regulated intermediaries and Fintech operators **can test technologically innovative products and services, for a limited period**
- The sandbox allows the option of temporarily **derogating from regulatory norms**, and thus facilitates experimentation
- **Applications for admission to the experimentation can be filed until 15 January 2022**, as described in the procedure set out in the legislation creating the sandbox.
- Applications are accepted following an evidence-gathering phase, to last up to 60 days, which aims to verify that the prerequisites for admission to the experimentation are met.
- The experimentation can last up to 18 months. The authority that issues admissions also monitors those admitted over the entire duration of the experimentation.

- activities that, although in the abstract are subject to authorisation or registration in a list, register or professional roll kept by at least one financial regulator, fall within one of the exclusions under the law¹;
- Services or activities that affect regulated matters in the banking, financial or insurance sector, which are provided to a person subject to supervision or regulated by at least one financial regulator, where that person has a registered office or branch in Italy, or in the EU and it operates in Italy under the freedom to provide services regime.

The activities for which admission to experimentation is sought must always include a **high-technology, innovative component and affect the banking, financial or insurance sector**.

Fintech sector operators which carry out or intend to carry out activities that affect the banking, financial or insurance sector, but do not fall within the above-described scope, can nevertheless seek access to an interview with the regulators, in accordance with the modalities set out in the Sandbox Decree.

The above described activities must meet all of the following requirements to be admitted to the experimentation:

- be highly innovative or use new technologies to offer services, products, or new and different processes in the banking, financial or insurance sector;
- require, because of how they are carried out, a derogation from positions, interpretations, measures, norms or regulations issued by regulatory authorities, or include novel elements that require experimentation and joint supervision by more than one regulator;
- add value in terms of one or more of the following: (i) benefits for end-users (quality of service, competition, terms of access, availability, protection or costs); (ii) efficiency of the banking, financial, or insurance system or efficiency of the operators in those sectors; (iii) less burdens or greater efficacy in the application of the regulations; (iv) improvement of operators' respective internal risk management systems or processes;
- be in a sufficiently advanced stage for experimentation;
- be economically and financially sustainable.

The application for admission

Applications for admission can be filed exclusively during each of the two-month approved filing periods, as announced by the regulators to the FinTech Committee. The filing periods must either be open to all or reserved for projects relating to specific aspects of innovation. As stated, the first such filing period starts on 15 September 2021 and ends on 15 January 2022. No limitations

¹ In this case, the Sandbox Decree requires that the operator seeking admission to the experimentation undertake to request the required registration to perform the activities, if the experimentation is successful.

apply for this first filing period in terms of the nature, or maximum number, of projects that can be approved.

Applications for admission must be filed with the appropriate supervisory authority, depending on the project (to receive more information, operators can contact the authorities informally) and must include the following, without limitation:

- a description of the project, the related objectives, the duration, the expected value added, the reasons why an experimentation phase is being requested and a description of the novel elements;
- a preliminary feasibility study, including an evaluation of the prospective economic sustainability;
- the supervisory authorities' positions, interpretations, measures, norms or regulations from which derogation is sought during the experimentation period and the reasons why derogation is requested;
- description and assessment of the potential risks and description of the measures implemented to manage those risks;
- the instruments implemented to safeguard users, which must include as a minimum: (i) a notice informing that the project has an experimental nature and the related risks; (ii) the mechanisms to collect the user's informed consent to commence a relationship with the person admitted to the experimentation; (iii) acknowledgement of the right of withdrawal at will and at no cost, with fifteen days' notice;
- the types of notices and communications to be given to the public regarding admission to the experimentation, the activities at issue in the experimentation and the possibility that the activities may not continue after the experimentation period.

Admission to the experimentation, terms and notices to the public

After filing the application, and assuming the evidence-gathering phase is successful, within sixty days (or any longer term allowed under the law for admission procedures), each supervisory authority, to the extent of its responsibilities and depending on the activities object of the application, will release the necessary authorisations, registrations, and/or admission to experimentation for the applicant.

In such measures, the authority also sets out:

- the modalities for and the duration of the experimentation;
- the supervisory measures, norms and interpretations that can be disregarded;
- the measures to be adopted to manage risks and to protect end-users;
- the information to be provided to potential end-users;
- the information to be reported to the supervisory authority during the experimentation;
- any limitations applicable to the activities; and

- the indicators to be used to evaluate the results of the experimentation.

For the purposes of the experimentation, the supervisory authority has the power to grant derogations (in accordance with its supervisory responsibilities and in compliance with EU legislation), which may include any of the following, as applicable:

- consent to derogate from provisions set out in a supervisory interpretation, general measures or regulations issued by it;
- consent to adopt a legal status/corporate form different from that envisaged under the applicable regulations.

Those admitted to experimentation are registered in a specific register kept, maintained and updated by the Fintech Committee's Technical Secretary Office, and is published on the related web site.

The experimentation lasts up to 18 months, and can be further extended for up to 12 additional months. Those admitted are monitored over the entire duration of the experimentation by the authority that issued the admission order, and upon expiry of the duration they send to that authority an economic and operating report on the experimentation.

CONTACTS



Riccardo Coassin
Counsel

T +39 02 8063 4263
E riccardo.coassin@cliffordchance.com



Lucio BonavitaCola
Partner

T +39 02 8063 4238
E lucio.bonavitaCola@cliffordchance.com



Laura Scaglioni
Counsel

T +39 02 8063 4254
E laura.scaglioni@cliffordchance.com



Alberto Claretta Assandri
Senior Associate

T +39 02 8063 4246
E alberto.claretta-assandri@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Via Broletto, 16, 20121 Milan, Italy

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