



**FINANCIAL SERVICES
COMMISSION**

EFFECTIVE LEGAL FRAMEWORKS FOR BUILDING THE DIGITAL ECONOMY
PANEL ON FINTECH & REGULATORY SANDBOXING
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Rise of the Digital Economy

- Evidence of exponential growth of the digital economy
- Pervasiveness of smart devices, global tech companies and the digitisation of all aspects of life (a key inflection point or industrial revolution)
- No longer considered distinct from the general economy but a necessary tool for growth and development
- McKinsey August report on fintech noted that the annual penetration rate of 3-5% has become standard among market leaders.
- Clear benefits of the new technologies but there are associated risks.
- Regulators and regulation must keep pace with the new digital economy

Regulation and Financial Innovation

- A critical factor to the continued growth of financial innovation, development and acceptance is an effective legal framework and the ability of financial regulators and regulation to evolve and adapt.
- Regulators must balance the facilitation of innovation with the creation of a robust but right size regulatory framework
- Key goals: Consumer protection and the mitigation of systemic risk.
- Regulation provides legitimacy and differentiates markets, countries and economies

FSC – Role as Regulator

- Committed to developing a framework which facilitates innovation and new technologies/modes of operation
- Alert to business sensitivities: Regulatory compliance can present challenges but recognises the benefits of financial “disruption”
- Symbiotic relationship: Collaboration with the regulator, and early communication in the process of innovation is crucial
- Also committed to taking advantage of technology to improve its processes (SupTech)
- **Need to balance innovation with the protection of consumers and maintain fairness and equity in the financial market**

Importance of an Effective Legal Framework

- FSC's commitment to ensuring that regulation is flexible and clear, thus reducing the level of uncertainty among market participants
- A stable, predictable and clear legal framework is necessary to allow for the design of a reliable and attractive regulatory environment which in turn attracts foreign investment
- Unambiguous legislation, regulation and supervision helps avoid some of the key and observed risks inherent in FinTech activities such as **weak governance, fraud, market misconduct** or the misuse of technological innovations for money laundering or terrorism financing
- Allows operators to compete fairly and facilitates compliance as it will be known exactly what to expect regarding what is considered unlawful conduct and the corresponding penalties

FinTech Legislative Framework

- Complexities around FinTech - no single overriding body of laws and regulations hence varied frameworks in different parts of the world
- Regulatory guidelines tend to be influenced and determined by the constitutional and political framework present in each country.
- Within the territory there is the absence of a single, comprehensive piece regulating FinTech.
- Several different laws which indirectly regulate different parts of the sector
- Generally, legislation did not contemplate the advent of FinTech and its rapid evolution

Snapshot - Regional FinTech Legislative Framework

Bahamas

- *Digital Assets and Registered Exchanges Act, 2020* – regulates digital asset businesses and initial token offerings (including cryptocurrency business) in or from the Bahamas
- *Securities Industry (Business Capital Rules) 2021* – establishes a regulatory framework for equity-based crowdfunding

Bermuda

- *Digital Asset Business Act, 2019* – regulates digital asset businesses including payment service providers, electronic exchanges, cryptocurrency exchange platforms, custodial wallet services and market makers or traders of digital assets

Snapshot - Regional FinTech Legislative Framework (cont'd)

British Virgin Islands

BVI Virtual Assets Service Providers Act, 2022 (the “VASP Act”) was enacted on 29 December 2022. (transition period of 6 months)

- It defines virtual assets, and this includes all types of crypto assets (including NFTs). Categories of registration include:
 - a) carrying on the business of providing a virtual assets service;
 - b) engaging in the business of providing a virtual assets custody service; and
 - c) operating a virtual assets exchange. It does not currently cover the issue of the issuance of virtual assets by a BVI company.
- The VASP Act provides a pathway for innovative FinTech to enter the BVI sandbox

Snapshot - Regional FinTech Legislative Framework (cont'd)

Eastern Caribbean

- *Virtual Assets Business Bill (2022)*– provides for the registration and supervision of virtual asset business and applies to any person including any business who, whether before or after commencement of the legislation, is involved in virtual asset business.
- Drafted in conjunction with the Eastern Caribbean Central Bank (ECCB)
- Passed by the Governments of Antigua & Barbuda, St. Kitts & Nevis and Dominica and St. Vincent.
- Goal is to have it enacted by all member states of the Eastern Caribbean Currency Union

Snapshot - Regional FinTech Legislative Framework (cont'd)

Cayman Islands (*NOT YET IN FORCE*)

- *Virtual Asset (Service Providers) Act, 2020*
 - Defines what virtual assets are and which constitute securities
 - enables funds to use virtual assets as representations of equity interests
 - recognises virtual asset trading exchanges and
 - introduces a regulatory sandbox licence
- Intent of the proposed framework - virtual assets themselves would not be regulated.
- The framework intends to regulate the persons engaged in relevant financial business
- Ensures that any requirements apply only to persons who exert a certain level of custody or control of the virtual asset, or the ability to actively facilitate the financial activity on behalf of a third party.

FTX - Bahamas

- The collapse of the cryptocurrency exchange FTX in November 2022
- Questions surrounding the regulatory and policy framework for digital assets in The Bahamas
- Standard and Poor's has forecast a "stable outlook" for Bahamas' economy, anticipating "no material adverse impact" from FTX's collapse
- The collapse of FTX raises questions about regulation and oversight.
- No global consensus on the optimal method of regulation

Legislative Framework – Barbados

- Barbados does not have a specific legislative FinTech framework.
- The FSC will treat new products which have the characteristics of an investment as if they are securities, irrespective of the form or mode of delivery.
- FSC will further develop the regulatory framework to cover those financial products and services which currently fall outside the regulatory scope as outlined by legislation
- We recognise that as technology advances, outdated or inconsistent legislation and regulation.
- Businesses may find themselves operating in a regulatory grey area and new risks may not be anticipated by old legislation.
- FSC recognises the absence of overarching legislation which covers FinTech innovation resulting in a lack of protection for consumers.

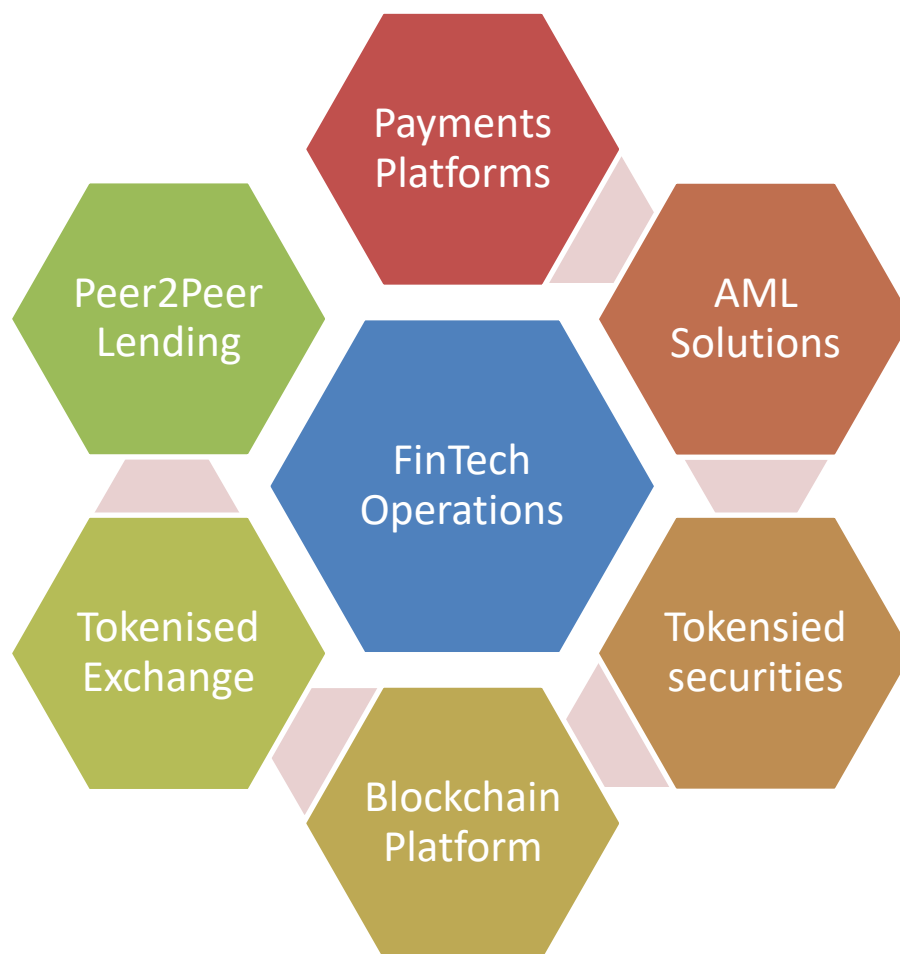
What is a Regulatory Sandbox?

- First regulatory sandbox implemented in the UK by the Financial Conduct Authority in 2016 – the benchmark.
- Provides regulatory Environment – testing ground for new business models that are not protected by current regulation or supervised by regulatory institutions
- Defined as a safe space for the live testing of innovative products, services, business models and delivery mechanisms whilst maintaining consumer protection standards and preserving financial stability
- Supports financial innovation in cases where an innovative product, service or solution may give rise to ambiguity on whether compliance with existing legislation or regulatory requirements are being met

BARBADOS - Why a Regulatory Sandbox?

- Many innovations are not captured under current financial sector legislation.
- Traditionally innovation and technology have outpaced legislation.
- FSC/CBB therefore launched the regulatory sandbox in 2018 to facilitate entities conducting live testing of their products and services while encouraging innovation
- A regulatory sandbox allows companies to:
 - Test business models directly in a live market
 - Do business without the full and immediate regulatory hurdles usually imposed on products or services related to financial services
- A regulatory sandbox allows regulators to:
 - Safeguard consumers interest via close observance and hands-on approach employed by the regulating authority
 - Better understand the product/service and determine if current legislation is sufficient, how these products should be regulated or if a new framework must be created to accommodate it

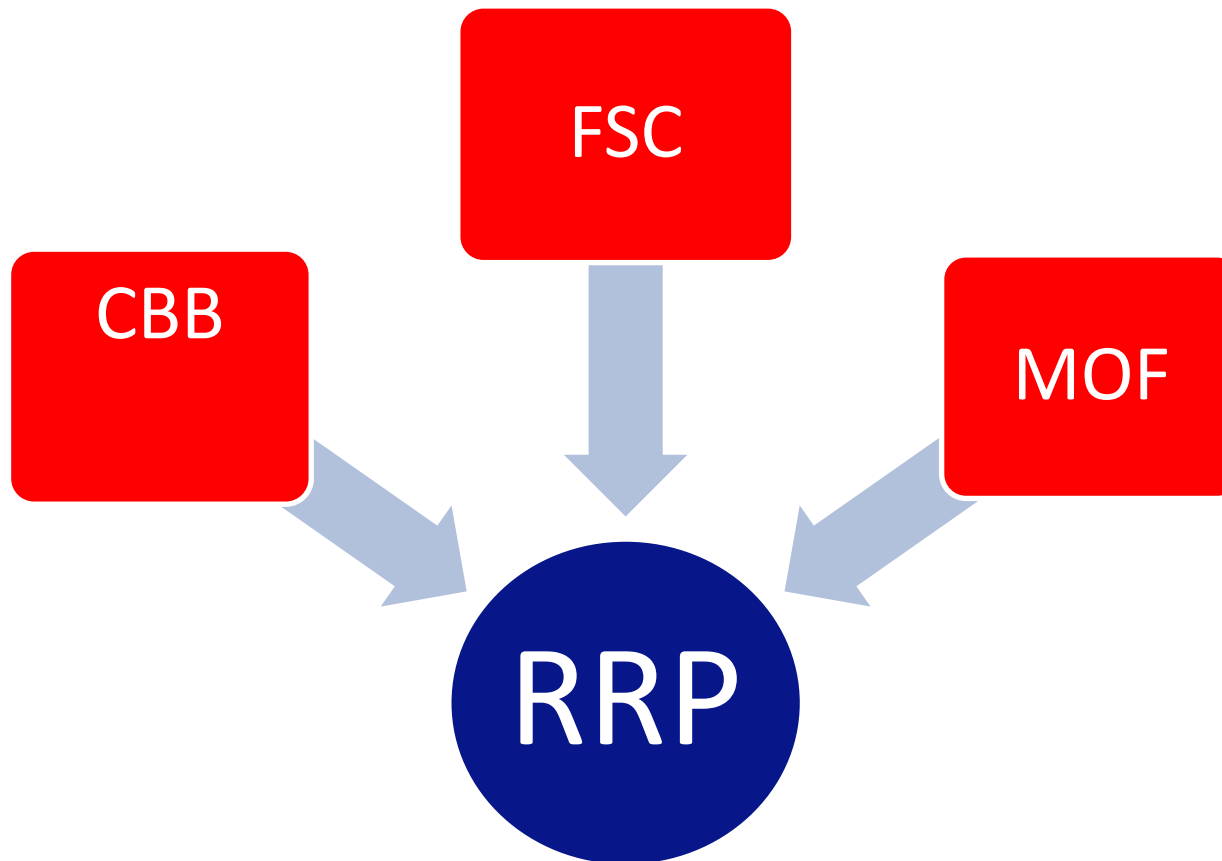
The Barbadian Fintech Landscape



What type of businesses are eligible for the sandbox?

- Any business can enter the sandbox once it has a product or service that:
 - Represents a genuine financial innovation
 - Uses technologies that are as yet unproven and whose failure may have implications for consumer and systemic risk
 - Creates ambiguity as to the appropriate regulatory regime

SANDBOX GOVERNANCE - BARBADOS



Role of FSC – Sharing of Duties

- Every application for entry into the sandbox is jointly reviewed by the CBB and the FSC.
- Results are shared and a consolidated report is submitted to the Regulatory Review Panel.

Snapshot – Regional Regulatory Sandboxes

- *Bermuda* – Bermuda Monetary Authority Insurance Regulatory Sandbox - launched in 2018
- *British Virgin Islands* – BVI FSC Regulatory Sandbox -launched in August 2020
- *Jamaica* – Bank of Jamaica Regulatory Sandbox - launched in March 2020
- *Cayman Islands* – Cayman Islands Monetary Authority Regulatory Sandbox – **UNDER DEVELOPMENT**
- *Trinidad and Tobago* – Joint regulatory sandbox between the Central Bank of T&T, the T&T Securities and Exchange Commission and the Financial Intelligence Unit of T&T - **UNDER DEVELOPMENT**

CHALLENGES – Barbados Regulatory Sandbox

- Most complicated aspect is the balance between fostering innovation and protecting the interests of all the stakeholders within the framework of a stable financial system
- Path to registration not guaranteed
- Currently, the FinTech innovation needs to fall within the parameters of the traditional financial services regulated by the FSC/CBB
- The need for greater regulatory capacity (technical and human) to make the sandbox effective

FSC – What We Are Doing

FinTech Advisory Committee (FAC) – 9 members

- Established in 2022, is tasked with determining how the requisite frameworks can be implemented to protect the interests of investors in cryptocurrencies, digital assets and tokens.
- Primary objectives are to:
 - Identify opportunities, issues and risks relating to FinTech sector and implications for Barbados
 - Advise FSC on key challenges unique to the industry
 - Provide recommendations to address challenges
 - Provide recommendations regarding any proposed legislative framework to be developed for the regulation/supervision of fintech products

Training

- Facilitating access to ongoing training and development by staff in the area of FinTech to help build knowledge of this emerging industry

FSC –What We Are Doing (cont'd).

Research

- Seek to partner with other regulators to research regulatory concerns and financial stability implications arising the provision of crypto-related services within the market.
- The goal is to identify the regulatory gaps and eventually develop specific regulatory regimes to govern this emerging area

Regulatory Guidance

- Developing a consultation paper to be issued to the non-bank financial sector.
- Paper will share the key principles which will guide FSC's approach to the regulation of new financial products and services
- Envisage developing a regulatory framework to address equity crowdfunding and peer-to-peer lending

General Areas of Concern

- Some fintech companies report difficulty accessing the traditional banking services

- Regulatory Uncertainty
- Emerging Risks – Cyber Security (and Privacy), AML and Custody
- FATF Standards
- Consumer Protection

Conclusion

- Transformation to a FinTech hub must be backed by an effective (sufficiently flexible) legal framework, having a clear understanding of the products and services being offered, how they work, the business model, and the regulatory approach best suited to meet local peculiarities
- Consider the attendant risks such as the collapse of an entity due to mismanagement, privacy issues and security concerns, the probability of fraudulent activities and reputational damage
- Consultation with all stakeholders is paramount whilst formatting regulations to avoid unintended consequences of new policies or regulation.
- From a competitiveness standpoint local governments and regulators must remain engaged, to keep up with the pace of change or risk getting leap-frogged by countries that understand and act on the opportunities presented by financial innovation