FINTECH IN TAIWAN: REGULATORY EFFORTS AND THE NEED FOR SPEED

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To encourage financial services industry and the related industry to apply innovative technology for enhancing financial accessibility, practicability, and quality, on May 4, 2017, Taiwan's Executive Yuan proposed the bill called "Financial Technology Innovation Experimentation Act" (the "**Bill**") to create its version of "regulatory sandbox." It would enable experimenting innovative financial technology within a well-defined space and duration under relaxed legal requirements.

Unlike the regulatory sandbox in the United Kingdom and Singapore, which are guidelines published by the regulators, the Legislative Yuan (the legislative branch of the central government) needs to pass the Bill before its implementation. Several regulations that should be published by the Financial Supervisory Commission (the "**FSC**") under the authorization of this Bill once it is passed have not been available to the public.

OBJECTIVES AND FLEXIBILITY OF REGULATORY REQUIREMENTS

The objective of the Bill is to create a so-called "regulatory sandbox," a safe environment for FinTech innovation experimentation that does not affect the financial order and consumer right, but enables innovation of FinTech:

1. that may have run afoul of the current laws and regulations,
2. that may require an exemption from specific laws and regulations for testing purposes, or
3. which scope of business cannot be determined for sure as lawful.

The Bill defines "innovation experimentation" to mean experiments of technology innovation on certain financial services that require the permit, approval or license from the competent authorities.

Under the Bill, the FSC may determine on a case-by-case basis what specific regulatory requirements may be relaxed or suspended.

Depending on the scope of the innovation experimentation as approved by the FSC, the criminal or administrative liabilities arising from engaging in the following regulated activities may be suspended:

- Accepting deposits, manage trust funds or public property under mandate, or handling domestic or foreign remittance;
- Electronic payment services, including accepting stored value amount, transfer between electronic payment accounts;
- Electronic stored-value card business;

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- Trust business;
- Certifying, underwriting, brokering or trading short-term bill;
- Securities business;
- Futures business;
- Securities investment trust business, securities investment consultation business, or full fiduciary discretionary investment business;
- Public offer, sale, or investment consultancy of offshore funds by itself or as an agent; or
- Insurance business.

Please note that the suspension of the criminal or administrative liabilities for engaging in the above activities is strictly subject to the scope of the approved, well-defined innovation experimentation. The experimentation must be carried out in the well-defined scope, or the criminal or administrative liabilities are still applicable.

APPLICATION FOR ENTERING INTO A REGULATORY SANDBOX

A natural person, sole proprietorship, partnership or juristic person may apply for innovation experimentation with the Financial Supervisory Commission. The applicant (or its representative in the case of sole proprietorship, partnership, and juristic person), its agent, and the principal administrator for executing the experimentation (the "**Principal**") must not have committed crimes involving moral turpitude. In particular, the applicant, its agent and the Principal must not have committed offense of certain financial regulations and (i) have not served his or her sentence as adjudicated by a final judgment, or less than five years has elapsed after serving his or her sentence, or (ii) less than five years have elapsed since the applicant was ordered to be replaced or discharged from his or her duty. In such situation:

- the FSC should reject the application.
- if the approval has already been granted:
  - the FSC should revoke the approval if the applicant (or its representative) has committed crimes involving moral turpitude, or
  - the FSC should prescribe a period for the applicant to replace its agent or Principal if it is the agent or Principal that has committed crimes involving moral turpitude. If replacement was not made within the prescribed period, then the FSC may abolish the approval.

The application would include the applicant's information for the evaluation described above, the plan of innovation experimentation (the "**Plan**"), and such other information the FSC may require from time to time. The key document in the application is the Plan. The Bill requires that the Plan must include the following contents (Item 3, Section 4 of the Bill):

4. Source of funds;
5. The financial services on which the innovation experimentation is to be carried out, and relevant financial regulations involved therein. It is clear that the FSC requires that the applicants demonstrate their

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understanding of the legal and regulatory requirements for deploying the proposed financial services before filing the application;

6. Description of innovativeness;
7. The scope, duration, number of participants to the innovation experimentation (the "Participants") and the amount of money involved in the innovation experimentation. The amount of money involved would include the funds provided by the Participants, the funds transacted between the Participants and between the applicant and the Participants, and the aggregate amount of money exposed to the risks of the experimentation;
8. Information of the principal manager (the "**Principal**") of the innovation experimentation. The FSC regards the Principal as the key person in the innovation experimentation;
9. The material terms and conditions of the agreement between the applicant and the Participant, such as the contents and scope of their participation, disclosure of transaction information, exit mechanism, dispute resolutions and other rights and obligations;
10. The protective measures for the Participants, such as posting bond, obtaining insurance or creating a trust according to the scale of the experimentation;
11. The potential risks during the duration of innovation experimentation, and the measures of risk management;
12. Risk assessment of money laundering and terrorism financing, and the mitigation measures adopted on a risk-based principle;
13. The information systems, safety control instructions and risk response measures for innovation experimentation;
14. The anticipated benefit and the benchmarks for evaluation of the innovation experimentation;
15. The exit mechanisms if the applicant terminates the innovation experimentation, or if the FSC revokes or abolishes the approval of the innovation experimentation, or if the duration of innovation experimentation expires;
16. The relevant information if involving patents for FinTech; and
17. If the applicant cooperates with other natural persons, sole proprietorships, partnerships or juristic persons to carry out the innovation experimentation, the cooperation agreement and the description of their rights and obligations. This could open doors for "sandbox umbrella."

Evaluation Criteria

When assessing the application, the FSC should hold a review meeting, members of which would include representatives of the relevant institutions, experts, and scholars, and apply the following evaluation criteria (Section 7 of the Bill):

18. The financial service areas that require permits, approvals or licenses by the FSC;

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19. Innovativeness, this includes applying a different technology and applying the same technology differently;
20. The ability to enhance the efficiency of financial services, to lower the operational or utilization costs, or improve the benefits of financial consumers and enterprises;
21. The potential risks have been evaluated, and relevant response measures have been adopted;
22. Protective measures for the Participants have been established, and appropriate compensation has been prepared in advance;
23. The number of the Participants and the amount of money involved in the experimentation; and
24. Other factors that require being evaluated.

The FSC must inform the applicant in writing of its decision within 60 days on whether the applicant may enter the regulatory sandbox after the FSC receives a complete set of the information it required or requested for the assessment. If the application involves other regulators, the FSC must also consult with such other regulators (Section 8 of the Bill).

For transparency, relevant information of the approved application, such as the name of the applicant, the experimentation and its duration, scope and the laws and regulations from which the applicant is exempted and other relevant information, will be published on the FSC's website (Section 10 of the Bill).

Experimentation Stage: Sandbox Entity's Journey

1. Commencement and Duration of the Sandbox Period

Once the FSC informs the applicant in writing of its approval of entering into the regulatory sandbox, the applicant, now the sandbox entity, must commence the experimentation within three months after the receipt of the FSC's written notice. If the sandbox entity fails to commence the experimentation by the deadline, the approval will expire. The FSC will then publicly disclose the expiry date and the reasons on its website. The sandbox entity should notify the FSC the commencement date of the experimentation within five business days after the commencement (Section 12 of the Bill).

The sandbox period granted by the FSC shall not exceed six months. However, the sandbox entity may apply to the FSC at least one month before the sandbox period expires and provide the reasons and descriptions of specific results for extending the sandbox period. The FSC may grant one extension for no more than six months (Section 9 of the Bill).

2. FSC's Supervision and Support

During the sandbox period, the FSC may request an explanation from the sandbox entity on the experimentation. The FSC may also conduct on-site visit, and the sandbox entity shall not reject to it. If the sandbox entity does not comply with the above requests, the FSC may order the sandbox entity to cure the non-compliance within a specified period, or it may abolish the approval (Section 14 of the Bill). The FSC may also abolish the approval if it determines that the experimentation is materially adverse to the financial market or the Participants' rights (Section 15 of the Bill).

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3. Change of Experimentation

In principle, the Plan may not be changed once it is approved. However, if such change does not involve the key matters of the financial services under the experimentation, and does not materially affect the Participants' rights, then the sandbox entity may apply for a change of the Plan with the FSC (Section 10 of the Bill).

4. Evaluation

Within one month after the expiry of the sandbox period, the sandbox entity should provide the FSC in writing with the results of the innovation experimentation. The sandbox entity should also explain and confirm the appropriateness of the protection of Participants' rights, compliance, and information security control operation. The FSC will invite the relevant institutions, experts, and scholars to evaluate the results, and complete the evaluation within 60 days after receiving the complete information and notify the sandbox entity and the relevant authorities. The FSC will also publish the results on its website within three months of the end of each calendar year.

It should be noted that the members of the evaluation meeting should keep confidence the relevant documents of the experimentation to protect trade secret and intellectual properties (Section 16 of the Bill).

5. Options and Qualification Adjustment

If the innovation experimentation is found to be innovative, effectively enhancing the efficiency of financial services, lowering the operational and utilization costs, or improving the rights of the financial consumers and enterprises, the FSC may consider the following:

- Review and propose changes to the relevant financial regulations;
- Provide assistance to entrepreneurship or collaboration; and
- Refer to relevant institutions, groups or funds promoting entrepreneurship.

If the sandbox entity wishes to apply for the financial services on which the innovation experimentation has been carried out, it may, within 2 months after the expiry of the sandbox period, apply for an extension for up to 6 months to make adjustments to its qualification to comply with the relevant financial regulations (Section 17 of the Bill). The FSC explained that the Bill is only to provide a regulatory sandbox where the sandbox entity may carry out experimentation without certain regulatory burdens to prove the feasibility of its financial services. After the sandbox period, the proposed businesses still need to comply with the relevant financial regulations for the same type of financial services.

Participants' Protection

The Bill also addresses the protection offered to the Participants. In principle, the protection is the same as those offered under the Financial Consumer Protection Act. For example:

- The sandbox entity may not restrict or waive its liability to the Participants (Section 21 of the Bill).
- The agreement between the sandbox entity and the Participants must be fair, reasonable, equal, reciprocal and in good faith. If any provision is obviously unfair, such provision should be invalid (Section 22 of the Bill).

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- If there is a disagreement over the interpretation of any provision, the provision shall be interpreted in favor of the Participant (Section 22 of the Bill).
- The sandbox entity owes a duty of care to the Participants (Section 22 of the Bill).
- The sandbox entity's advertisements, solicitation or promotional activities should not engage in falsehood, fraud, omission, or other conduct sufficient to mislead another party, and shall verify the truthfulness of the content of its advertisements. The obligations of the sandbox entity shall not be less than what it indicated in the above advertisements, solicitation or promotional activities (Section 23 of the Bill).
- The Participants may bring any dispute with the sandbox entity to the Financial Ombudsman Institution (Section 25 of the Bill).

Also, the sandbox entity should provide suitable protection and exit mechanism for the Participants and clearly identify the scope, rights, and obligations of the innovation experimentation (Section 24 of the Bill).
Lastly, the collection, processing and use of the personal data of the Participants should comply with the Personal Data Protection Act (Section 24 of the Bill).

Trend in Taiwan

The FSC has indicated that new businesses such as Internet insurance and peer-to-peer lending are likely to become active in light of the Bill. New technologies, such as blockchain and identification technology, could play a key part in the experimentation. However, by choosing to propose the Bill, which needs to be passed by the Legislators, as opposed to implementing regulatory guidance, the development of FinTech in Taiwan needs Herculean efforts to catch up when other countries have already gotten a head start.

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