

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2016 - 2017

**Division/Agency:** Australian Securities and Investment Commission

**Question No:** 172

**Topic:** FinTech Sandbox

**Reference:** Written

**Senator:** Ketter, Chris

**Question:**

1. In a speech to the Group of 100 executive dinner on 14 December, Mr Medcraft said that “ASIC is pushing its existing regulatory tools in creating the sandbox as far as we can go. We understand that, in due course, the Government may consider whether even further action is warranted in this area.” What was meant by that?

2. Would you describe this as a light touch regulatory model? Given the current environment, why would ASIC support a light touch regulatory model?

3. Who has been involved in consultation over the sandbox? How many groups with an interest in consumer protection did ASIC proactively engage on this matter

4. Is it correct that to acquire a licensing waiver a firm sends an email to ASIC providing some cursory information about the company

5. Is this information verified? In particular, is the professional indemnity insurance verified to be valid? Are criminal record checks of directors verified?

6. In comparable jurisdictions, like the UK, Singapore and Hong Kong, firms that wish to operate in their ‘sandboxes’ have their specific proposals vetted and approved by the regulator. Is that the case with ASIC’s fintech sandbox licensing waiver?

7. In the UK firms are required to report weekly and the regulator conducts monitoring over the course of the products testing. How will ASIC monitor sandboxed firms?

8. At any point prior to commencing or during the 12 month waiver period will ASIC require firms to provide any information about their conduct? Including but not limited to:

a. The types products they are promoting?

b. The institutions offering those products?

c. The aggregate level of consumer exposure?

d. Any potential conflicts of interest by directors, etc?

9. Are firms required to provide any training, or to verify their employees’ fitness to provide financial advice?

10. Are there any restrictions on the remuneration model waiver holding firms can offer their employees? (prohibitions on incentive based pay?, etc)

a. Does the sandbox provide the ability for examples sake, a major bank, to establish a subsidiary that can promote its products in a way that as holder of an Australian financial services or credit licence they would not be able to typically do?

11. One of the conditions to obtain a license waiver is to have ‘Have adequate compensation arrangements (such as professional indemnity insurance)’. What is ‘adequate’ insurance in this instance? Does this indemnity insurance required to match the level of exposure of their clients?

12. Are firms operating in the sandbox require to comply with ASIC’s RG 234 ‘Advertising financial products and advice services including credit’?

**Answer:**

1. ASIC used its powers to modify the Corporations Act to create the sandbox, which is a form of relief from particular requirements in the Act for firms that meet the conditions that ASIC has set out in the relief legislative instrument. We undertook a short consultation and in light of our findings felt this was the limit of what we could offer at that time.
2. "The lighter touch approach" refers to the relief granted to firms providing intermediary services to operate without needing to hold a financial services licence for a limited period where they meet the conditions set out in the legislative instruments to make use of the sandbox. The conditions, which include appropriate compensation arrangements and internal and external dispute resolution mechanisms, are designed to provide retail investor appropriate protection. The sandbox is part of our commitment to facilitating innovation while balancing it with our commitment to ensuring that the regulation of new products and services is appropriate and effective, and promotes investor and financial consumer trust and confidence; and markets operate in a fair, orderly and transparent way.
3. In developing the sandbox ASIC consulted publicly on the proposal by releasing a consultation paper and draft regulatory guide. In response to the consultation ASIC received 29 responses, including from CHOICE, a consumer representative group.
4. In its notification to ASIC about its intention to commence using the sandbox, the firm is required to provide evidence of the required professional indemnity insurance and membership of an external dispute resolution body, such as the Financial Ombudsman Service, and background checks.
5. ASIC will consider each notification and the documents included with it. ASIC requires certain documents to be certified for this purpose.
6. ASIC does not vet or approve the business proposals of firms that intend to make use of the sandbox. Firms that meet the eligibility criteria and conditions for using the sandbox may commence using it after they notify ASIC about their intention to use the sandbox with the evidence mentioned in the response (4) above.
7. Firms will be required to report to ASIC their operation within the sandbox. In addition to the reporting to ASIC about their activities in the sandbox, ASIC will take a risk based approach to reactively review any firm's activities while using the sandbox. This approach is consistent with guidance set out in *ASIC Information Sheet 151: ASIC's approach to enforcement*.
8. Firms issuing financial products are not eligible to use the sandbox. The sandbox relief is limited to intermediary services and only in relation simple and liquid financial products, such as Australian listed or quoted securities or term deposits with an ADI. The notifications to ASIC before commencing use of the sandbox will include information about the proposed business. ASIC requires firms to report about their operation within the sandbox after they have exited the sandbox.
9. **Only limited advice services are permitted with low value exposure.** Our experience has been that founders of innovative businesses often have some experience in providing financial services or credit, but may not fully meet the competence standards by demonstrating the specific qualifications, training and experience required. Firms relying on the sandbox will need to meet all competency requirements if there were to apply for a licence.
10. Firms using the sandbox are required to disclose remuneration including commissions.

- a) No. To be eligible to use the Sandbox, the person seeking to provide the financial services must not:
- be banned from providing financial services;
  - already hold an AFS licence;
  - already be an authorised representative of an AFS licensee that is authorised to provide the services covered by the exemption; or
  - be a related body corporate of an AFS licensee (see s50 of the Corporations Act).

11. The minimum insurance required for the compensation arrangements during the sandbox period are:

- (a) *minimum requirement*: a Professional Indemnity (PI) insurance policy must have a limit of at least \$1 million for any one claim and for aggregated claims; and
- (b) *'run-off' cover*: firms are expected to take reasonable steps to obtain run-off cover for a period of 12 months.

It is also important for firms using the sandbox to ensure you they sufficient resources to pay the excess under the policy.

12. ASIC expect firms using the sandbox to comply with the ASIC Act and to have regard to ASIC regulatory guidance in RG234.