

FinTech regulation in Australia – lessons for New Zealand?

Australia is initiating a range of policy initiatives to encourage the development of the fast growing FinTech sector.

We look at those elements of the Australian approach that might work here and recommend ways our government and industry could work together to promote New Zealand as an efficient and well-regulated FinTech hub.

New Zealand's current course

New Zealand showed leadership in financial technology (*FinTech*) when it introduced a tailored regulatory regime for equity crowd funding and peer-to-peer (*P2P*) lending under the Financial Markets Conduct Act 2013. The FinTech industry is, however, much broader than crowd funding and P2P lending.

Australia has recognised the opportunity FinTech presents by developing a range of reforms aimed at making Australia a leading FinTech hub. To what extent should New Zealand follow suit?

Australia backing FinTech

The Australian Government set out its integrated policy agenda for Backing Australian FinTech¹ in March, identifying a comprehensive set of FinTech priorities to encourage growth in the sector.

All of Australia's major federal market regulators have been given direction by the Report. The Australian Securities and Investment Commission (*ASIC*), in particular, has consulted on several measures, among them:

- launching an **innovation hub** to help FinTech start-ups on compliance matters
- establishing a **regulatory sandbox** for new financial services participants, and
- **lowering licensing barriers** for digital financial services participants.

ASIC is also engaged with industry participants on several other FinTech initiatives. It recently published guidance for robo-advice providers and is keeping a close eye on emerging technologies, such as distributed ledgers (aka *Blockchain*) and digital identity initiatives.

ASIC Innovation Hub

ASIC established its Innovation Hub² in October last year to assist innovative Australian FinTech businesses to navigate financial regulation and to obtain licences. The hub:

- engages with other FinTech initiatives, including physical hubs and co-working spaces, by making ASIC staff available to present seminars and answer questions
- provides informal guidance to help new businesses consider regulatory issues
- establishes Innovation Hub webpages to provide targeted information, and
- creates a senior internal taskforce to ensure coordinated work on new business models and a Digital Finance Advisory Committee.

By June, the Innovation Hub had worked with 93 entities on robo-advice, marketplace lending, crowdfunding, payments or other credit business models, granting 21 AFS/credit licences as a result.

In March, ASIC and the Financial Conduct Authority (UK) also signed a co-operation agreement³ to refer innovative FinTech start-ups to each other's Innovation Hubs and to support businesses seeking to enter the other's markets. ASIC signed a similar agreement⁴ in June with the Monetary Authority of Singapore.

We see merit in FMA and ASIC entering into a similar co-operation agreement, as there are substantial untapped benefits to be gained from encouraging FinTech innovators to make greater use of the Mutual Recognition regime between Australia and New Zealand.

Regulatory sandbox

ASIC's proposed regulatory sandbox will provide limited relief for new start-ups to test certain financial services for six months without having to obtain an AFS licence, provided they comply with a limited range of requirements.

The exemption will likely:

- be limited to giving financial advice in relation to listed or quoted Australian securities, simple managed investment schemes, and deposit products (or arranging for others to deal in the same types of products)

- be limited to providing services to no more than 100 retail clients, with a maximum individual exposure limit of \$10,000 and a total exposure limit of \$5 million
- require the exempt entity to comply with minimum consumer protection requirements, such as membership of a dispute resolution scheme and simplified disclosure, and
- require that the exempt entity be sponsored by a 'sandbox sponsor' such as a not-for-profit industry organisation or other recognised and licensed entities.

ASIC's proposed restrictions may not be necessary or appropriate for New Zealand, particularly as our licensing regime is not as extensive as Australia's. We also have a record of agility when it comes to "fit for purpose" licensing regimes and constructive responses to regulatory issues affecting innovation, so the need for "sandbox" style relief may not be as compelling as in Australia.

There may nevertheless be some appeal in industry consultation to find the right balance between achieving conduct outcomes and removing barriers to entry for innovative FinTech businesses and to assess whether any of the Australian proposals have merit here.

Alternative measures such as streamlined exemption processes for Fintech start-ups, or improved pathways and guidance on licensing for smaller firms, could be worth further consideration.

Lowering licensing barriers

ASIC's third proposal, lowering licensing barriers, broadly involves:

- providing further guidance about how responsible managers (i.e. senior managers) of innovative businesses can meet the knowledge and skill requirements that are needed to obtain an AFS licence, and
- allowing heavily automated businesses to rely, in part, on third party sign-offs to meet their organisational competence requirements to obtain an AFS licence.

New Zealand could consider similar licensing reforms to ease entry for certain types of innovative financial services firms.

ASIC guidance for robo-advice providers

In August 2016, ASIC released guidance on Providing Digital Financial Advice to Retail Clients⁵ which outlines some of the key matters that robo-advice providers will need to consider when operating in Australia – from the licensing stage through to the actual provision of advice.

The guide describes some issues that are unique to robo-advice, such as how providers can meet specific Australian licensing requirements and the ways in which robo-advice licensees should monitor and test their algorithms.

New Zealand still has some way to go before the Financial Advisers Act (*FAA*) reforms permit New Zealand firms to offer robo-advice but we expect policymakers here will be watching Australian developments with interest. New Zealand's current legislation requires advice to be provided by a natural person. MBIE's proposed *FAA* reforms will remove this restriction to permit firms to provide robo-advice.

Other countries

Australia is not alone in seeking to promote itself as a FinTech hub.

- **Hong Kong** established a government Steering Group on Financial Technologies, which released its recommendations⁶ in February 2016, and has since implemented a range of measures, from dedicated FinTech regulatory hubs,⁷ to incubation and cybersecurity fortification⁸ programmes.
- **Singapore** established a FinTech Office⁹ in May 2016, and introduced a regulatory sandbox¹⁰ in June 2016.
- The **United Kingdom** released UK FinTech: On the cutting edge¹¹ in February 2016 and has set itself the goal of making the UK the "global capital of FinTech", and the Financial Conduct Authority (*FCA*) recently launched an Innovation Hub, Advice Unit and Regulatory Sandbox¹² for FinTech businesses.

Chapman Tripp comment

New Zealand needs a clear policy direction from government to keep pace with international developments and to capitalise on the momentum it created as a pioneer for the crowd funding and P2P industries. It should consider:

- **establishing a FinTech Advisory Group** of financial services technology leaders, officials, and other market professionals to provide policy advice on issues important to New Zealand's FinTech Industry
- **establishing an Innovation Hub** within the FMA to engage on a targeted basis with innovative FinTech start-ups and financial services firms
- **consulting on our own Regulatory Sandbox or other measures to remove barriers to entry**, and
- **engaging further with industry and overseas regulators** on offers of innovative products and services in consumer credit, payments and remittance, digital-advice, Blockchain and lending services, on how best to facilitate FinTech innovation in New Zealand, both for start-ups and larger existing financial service providers.

Conclusion

As we noted in our earlier publication¹³ on Digital Disruption in the banking sector, FinTech is a highly competitive area. Unless New Zealand moves rapidly, we may find ourselves vulnerable to innovation from offshore.

With the Ministry of Business, Innovation and Employment currently reviewing the FMA's funding model,¹⁴ it is the perfect time to discuss how to best direct and fund New Zealand's financial markets infrastructure to ensure it keeps pace with global FinTech developments.

Footnotes

1. <http://fintech.treasury.gov.au/files/2016/03/Fintech-March-2016-v3.pdf>
2. <http://asic.gov.au/for-business/your-business/innovation-hub>
3. <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-088mr-british-and-australian-financial-regulators-sign-agreement-to-support-innovative-businesses/>
4. <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-194mr-singaporean-and-australian-regulators-sign-agreement-to-support-innovative-businesses/>
5. <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-255-providing-digital-financial-product-advice-to-retail-clients/>
6. http://www.fstb.gov.hk/fsb/ppr/report/doc/Fintech_Report_for%20publication_e.pdf
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10. <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/MAS-Proposes-a-Regulatory-Sandbox-for-FinTech-Experiments.aspx>
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12. <https://www.fca.org.uk/firms/fintech-and-innovative-businesses>
13. <http://www.chapmantripp.com/publications/Pages/The-Reserve-Bank%27s-view-on-digital-disruption-in-the-banking-sector.aspx>
14. <http://www.mbie.govt.nz/info-services/business/business-law/review-of-fma-funding-levies-and-fees>

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