



# Australian Private Equity & Venture Capital Association Limited

1 December 2017

Shellie Davis  
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Financial Systems Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

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Dear Ms Davis,

## **FinTech – enhanced regulatory sandbox**

Thank you for providing the Australian Private Equity and Venture Capital Association Limited (AVCAL) with an opportunity to comment on the *Corporations (Fintech Sandbox Australian Financial Services Licence Exemption Regulations 2017)* and the *National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017* (collectively, the **Regulations**) which will give effect to the proposed FinTech enhanced regulatory sandbox. We note that we have separately provided comments on the *Treasury Laws Amendment (2017 Measures No. #) Bill 2017 (Bill)* (see submission dated 3 November 2017), and request that this letter be read in conjunction with our earlier feedback on the Bill.

AVCAL represents the private equity (PE) and venture capital (VC) industry in Australia, which has a combined total of around \$30 billion in funds under management on behalf of domestic and overseas investors including Australian and offshore superannuation and pension funds, sovereign wealth funds, and family offices. VC and PE firms invest billions of dollars in early stage and established businesses spanning almost every sector of our national economy, including financial services.

Much of the capital invested by these PE and VC funds is in smaller, high growth Australian companies, with a particular focus on commercialisation of research & development, and innovating and expanding established businesses.

The success of the proposed enhanced regulatory sandbox will depend on the relevant conditions being legally and commercially viable for market participants. If the conditions are too onerous, the sandbox is unlikely to be used (as has been the case with respect to the model introduced in 2016), thereby denying innovative FinTech firms the valuable opportunity to market test their products and services in a systematic, controlled manner. It would therefore represent a wasted opportunity to position Australia as a world-leader in innovative regulation, and an attractive place for FinTech companies to do business. In this respect, we support the work that ASIC has carried out via its Innovation Hub to help guide FinTech companies through the regulatory processes, and would encourage even greater effort and support in this area.

### **1. Feedback on the draft Regulations**

Overall, while we strongly support the principle underpinning the proposed enhanced regulatory sandbox, we have concerns that the conditions that will be imposed on FinTechs are unnecessarily restrictive, meaning that there will be limited take-up by industry. Our key comments in this respect are outlined below. We understand that more detailed feedback has been provided by FinTech Australia separately.

#### **(a) Transaction limits**

There are a number of areas in the Regulations where transaction limits are imposed that are well below those likely to be commercially viable.

Firstly, transaction limits of generally \$10,000 per client are very low, particularly given there is often an appetite for investors to invest greater sums. A sum in the order of \$25,000 would be preferable. Furthermore, when combined with the 100 investor cap, the effective aggregate investment cap of \$5m would be unable to be reached – instead a \$1m cap would apply (i.e. 100 x \$10,000). Such an amount is too low for many FinTechs to ascertain whether their business is commercially viable, and has high growth potential.

Secondly, the \$5m aggregate limit (notwithstanding the above) is also low, particularly for wholesale or sophisticated investors who are not afforded differential treatment under the proposed regime (compared with general retail investors) and who would often be looking to invest sums far beyond the individual caps. At a minimum, an aggregate limit in the order of \$10m would be more commercially viable.

Thirdly, by restricting the number of retail clients that can purchase goods or services to 100, a significant segment of activity will be excluded. For example, lower margin, higher volume products would be unable to be effectively tested in the sandbox. Indeed, even those businesses which offer higher cost products might still be unable to accurately ascertain the level of market demand given the 100 client limit. A more workable cap might be 500 clients.

When considering our suggestion to increase the above limits it is important to emphasise that firms wishing to take advantage of the licensing exemptions will be subject to numerous requirements including: disclosure obligations; dispute resolution arrangements; and the applicable *Corporations Act* and *Credit Act* obligations such as the best interest (financial advice) and responsible lending obligations (credit) tests. Accordingly, there will be in place significant regulatory protections for clients.

#### (b) Scope of products

The Regulations indicate that a number of products will be excluded from the potential application of the sandbox, despite them being regularly used by retail clients. For example, managed investment products, investor directed portfolio services (IDPS), and short term credit contracts.

No rationale has been offered in the explanatory statement for why some products have been included while others have not. In our view, except for the most high risk financial products (e.g. complex foreign exchange derivatives), the Government's approach should be to encourage innovation and disruption across the broadest spectrum of financial services. To carve-out certain activities from the sandbox would merely restrict competition, thereby limiting the opportunity for new market entrants to create innovative and novel products and services.

#### (c) Duration of the exemption

AVCAL would support a more flexible approach being taken as to the duration of licensing exemptions granted under the proposed sandbox arrangements given it may take a company a number of years to fully test and refine a product (let alone generate a profit). In particular, by making the 24 month period a fixed one, it restricts the ability for firms to modify their product or service in response to customer feedback or market conditions.

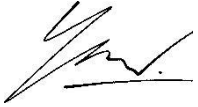
Instead, at a minimum, there should be an opportunity to pause the exemption (at least once) during the duration of the exemption. Ideally, there should also be scope to extend the licensing exemption beyond 24 months, where the applicant has complied with all relevant conditions.

## 2. Next steps

AVCAL would like to thank the Government for consulting with stakeholders on the proposed enhanced regulatory sandbox. In order to ensure that its policy objectives are achieved, it is vital that the framework is developed in close consultation with industry. AVCAL stands ready to work with the Government on this important initiative.

If you would like to discuss any aspect of this submission further, please do not hesitate to contact either me or Christian Gergis, AVCAL Head of Policy and Research, on (02) 8243 7000.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Yasser El-Ansary', written in a cursive style.

Yasser El-Ansary  
Chief Executive