



'Ensuring Investor Protection'

SECURITIES AND EXCHANGE COMMISSION

**SECURITIES INDUSTRY (REGULATORY SANDBOX LICENSING) GUIDELINES 2020
SEC/GUI/006/10/2020**

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SECURITIES INDUSTRY (REGULATORY SANDBOX) LICENSING GUIDELINES 2020

PREAMBLE

In the exercise of the powers conferred on the Commission by Section 209 of the Securities Industry Act 2016, (Act 929), these Guidelines are made this 8th day of October 2020.

1. INTRODUCTION

The Commission, pursuant to its mandate to promote the growth and development of an efficient, fair and transparent market, seeks to encourage more creativity so that promising innovations, products and services can be tested in the market with prospects for wider adoption in Ghana and abroad.

2. OBJECTIVE OF THE GUIDELINES

- 1) These guidelines shall provide a framework for the issuance of Regulatory Sandbox Licences for the conduct of a capital market activity or related services for which there is the absence, or no adequate provisions under any laws regulating the business or capital market activity.

3. ELIGIBILITY

- (1) A person shall not be eligible for the grant of a Regulatory Sandbox Licence by the Commission unless the Applicant has fully complied with applicable laws of incorporation.
- (2) An Applicant shall comply with the Fit and Proper criteria of the Commission.

4. APPLICATION PROCESSES

- (1) An Applicant seeking a Regulatory Sandbox Licence shall submit an application in the common form (ANNEX A) with the required attachments to the Director-General of the Commission for consideration.
- (2) licencees of the Commission, or other firms that wish to provide capital market services or Financial Technology 'FinTech' firms operating within the capital market space and professional services firms partnering with or providing support to such businesses (the "applicants") can apply using ANNEX A to enter a regulatory sandbox (the "sandbox") to test innovative capital market products and services in the production environment but within a well-defined space and duration. The sandbox shall include appropriate safeguards to contain the consequences of failure and maintain the overall safety and soundness of the Capital Market.
- (3) Depending on the capital market service or the provision of support to the capital market service provider to be tested, the applicant involved and the application made, the Commission shall determine the specific legal and regulatory requirements which it is prepared to relax for each case. Please refer to ANNEX B for examples of the legal and regulatory requirements that the Commission may consider relaxing for the duration of the sandbox, as well as those which the Commission intends to maintain.
- (4) Promoters of Sandbox must not have criminal records

5. DOCUMENTS REQUIRED

An application for a Regulatory Sandbox Licence shall not be considered unless the following documents are received by the Commission:

- (1) Business registration/incorporation documents applicable to the applicant

- (2) A three to five year business plan including a feasibility study, and which provides inter alia project description, financial forecast, initial investment, funding sources, audited financial statements for the past three (3) years for an existing company (or for the number of years in existence, if less than three years) or audited statement of affairs as applicable and regulatory constraints on the proposed capital market activity or related services to be conducted by the applicant.
- (3) Particulars of promoters, beneficial ownership, and directors of the applicant where applicable.
- (4) Any other information or documents that the Commission may require of the applicant especially those contained in Annex A.
- (5) Existing relevant regulatory framework (if any)

6. APPROVAL PROCESSES

- (1) Where the Commission receives an application for a sandbox license, it shall:
 - a. Conduct an initial screening of the application within 20 working days
 - b. Upon the Commission satisfying itself that the required information or documents have been provided, the application shall be submitted to a technical Committee for evaluation.
- (2) The Commission may decide whether or not to issue a Sandbox license based on the recommendations of the Technical Committee.
- (3) Approval process for licensing shall not exceed 90 days from the date of submission of duly completed application. Where the period of approval extends beyond 90 days, the Commission shall inform the applicant with list of conditions or documents required to be submitted by the applying entity.
- (4) All approvals shall be communicated in writing with a certificate as evidence of certification for operations.
- (5) Upon approval, the applicant shall become the entity responsible for deploying and operating the sandbox (the “sandbox entity”), with the Commission providing the appropriate regulatory support by relaxing specific legal and regulatory requirements prescribed by the Commission which the sandbox entity shall otherwise be subject to, for the duration of the sandbox.
- (6) Upon successful testing and on exiting the sandbox, the sandbox entity shall fully comply with the relevant legal and regulatory requirements.

7. SELECTION CRITERIA

An applicant seeking a Regulatory Sandbox Licence shall demonstrate that:

- 1) The Applicant’s product or service is genuinely innovative or applied in an innovative way and not similar to those already available for which market operators are licensed by the Commission.
- 2) The product or service has clear potential to benefit the market and investors in identified ways;
- 3) The Applicant has assessed, and demonstrated, the usefulness and functionality of the product and understands the associated risks;
- 4) The applicant has the necessary resources to participate, as well to assess, mitigate and control potential risks and losses;
- 5) The initiative shall subject itself to be closely monitored during the trial period by the Commission.
- 6) The applicant intends to deploy the product on a commercial scale in Ghana upon exit;

- 7) The product cannot be offered to the market at present due to prohibitions under existing laws or regulations or is wholly or partly incompatible with applicable regulatory requirements;
- 8) The existing legal framework must have had in contemplation, the business or market activity for which the Regulatory Sandbox Licence is applied and
- 9) Any other conditions that the Commission may require of an applicant.

8. REJECTION OF AN APPLICATION

The Commission may reject an application for a Regulatory Sandbox licence on such conditions including but not limited to;

- (1) Where the Commission is of the opinion that the market activity, product or service proposed is against public policy or interest.
- (2) Where the market activity or the proposed product or service is very risky or may pose significant risk to the entire capital market, or
- (3) Where the Commission is of the opinion that it has not got the human resource capacity or expertise to control, monitor and evaluate, or regulate the market activity, product or service proposed by the applicant.
- (4) Any other reason that the Commission considers justifiable.
- (5) Where the Commission rejects an application for the issuance of a Regulatory Sandbox licence, the Commission may give written reasons for the refusal of the application.

9. SAFEGUARDS, TERMS AND CONDITIONS

The Commission may issue a Regulatory Sandbox licence subject to such safeguards, terms and conditions which may include the following:

- (1) Consumer protection terms
- (2) Availability of consumer redress mechanism such as the possibility of financial compensation under clearly defined specified circumstances.
- (3) Availability of adequate resources to undertake the testing, development of the capital market activity, product or service to mitigate risk, and to contain the consequences of failure.
- (4) The mechanism of maintaining appropriate risk management systems and processes including adequate confidentiality and security controls as well as contingency arrangement to address fraud and operational disruptions.
- (5) Restrictions against application of the Regulatory Sandbox licence that will result in unfair competition with other existing licensees of the Commission.
- (6) There must be a need for a sandbox (no alternative means of releasing the innovation to the market)
- (7) Full disclosure of all risks and mitigation measures associated with the capital market activity, product/solution.
- (8) Any other terms and conditions that the Commission considers justifiable

10. EXTENDING OR EXITING THE SANDBOX

- (1) At the end of the sandbox period, the legal and regulatory requirements relaxed by the Commission shall expire, and the sandbox entity shall exit from the sandbox.
- (2) In the event that the sandbox entity requires an extension of the sandbox period, the sandbox entity shall apply to the Commission at least 1 month before the expiration of the sandbox

period providing reasons to support the application for extension. The Commission shall review the application and approval may be granted on a case-by-case basis. The Commission's decision on the application for extension shall be at its sole discretion and shall remain final.

- (3) Upon exiting, the sandbox entity may proceed to deploy the product or service under testing on a broader scale, provided that:
 - a. both the Commission and the sandbox entity are satisfied that the sandbox has achieved its intended test outcomes; and
 - b. the sandbox entity can fully comply with the relevant legal and regulatory requirements.
- (4) The sandbox shall be discontinued where:
 - a. The Licensee fails to commence business for which the sandbox licence was issued within three months of issuing same.
 - c. The licensee breaches any of the terms and conditions under which the licence was issued
 - d. The Commission is of the opinion that the licensee has failed or is failing to ensure risk control
 - e. The Commission is of the opinion that the licensee cannot comply with established conditions and safeguards intrinsic to the licence.
 - f. The Commission is not satisfied that the sandbox has achieved its intended purpose, based on the latest test scenarios, expected outcomes and schedule mutually agreed with the sandbox entity;
 - g. The sandbox entity is unable to fully comply with the relevant legal and regulatory requirements at the end of the sandbox period. If such a situation is anticipated, the sandbox entity is encouraged to engage the Commission as soon as it becomes aware;
 - h. A flaw has been discovered in the capital market activity, product or service under testing where the risks posed to customers or the capital market outweigh the benefits of the activity product or service under said testing, and the sandbox entity acknowledges that the flaw cannot be resolved within the duration of the sandbox;
 - i. The sandbox entity breaches any condition imposed for the duration of the sandbox licence;
 - j. The sandbox entity has informed the Commission of its decision to exit the sandbox at its own discretion.
- (5) The sandbox entity shall ensure that any existing obligation to its customers in relation to the product or service under testing shall be fully fulfilled or addressed before exiting the sandbox or discontinuing the sandbox.
- (6) The Commission may also impose or issue such additional directives as are necessary for safeguarding and protecting the interest of investors after the exit.

11. REPORTING BY THE REGULATORY SANDBOX LICENCE HOLDER

- (1) Each Regulatory Sandbox licence holder shall furnish the Commission with a report containing information and other disclosures determined by the Commission on its activities during the period of its licence on weekly, monthly, quarterly or annual basis or a combination of the periods as prescribed by the conditions of its licence.
- (2) Each Regulatory Sandbox Licence holder shall notify the Commission within 14 days of any changes in any information of the licence holder which was provided to the Commission during its application for the sandbox licence.

12. APPLICATION FORM

(ANNEX A)

APPLICATION FOR THE GRANT/EXTENSION OF A REGULATORY SANDBOX LICENCE TO CARRY ON BUSINESS ON THE CAPITAL MARKET

1. General Information

- (a) Registered name of applicant
- (b) Address
- (c) Location of Principal Place of Business
- (d) Location/Address of Branches (if applicable)
- (e) Telephone number
- (f) Fax
- (g) E-mail
- (h) Name and Address of Principal Bankers and Bank Account Numbers (specify trust accounts)
- (i) Name and Address of Secretary (if applicant is a company)
- (j) Name and Address of the External Auditors of the applicant

2. Type of application

- (1) Please indicate if this is an initial application for a licence or whether it is an extension of an existing Sandbox licence –
 - (a) initial application
 - or
 - (b) extension
- (2) If it is for the extension of an existing Sandbox licence please furnish the following information
 - (a) date of issue of existing licence; and
 - (b) licence number.

3. Legal Status

- (1) If applicant is incorporated in Ghana please specify whether applicant is -
 - (a) incorporated under the Companies Act 2019, (Act 992); or
 - (b) incorporated under the Incorporated Private Partnerships Act, 1962.
- (2) If applicant is incorporated outside Ghana please specify the jurisdiction and the Act under which the applicant is incorporated.
- (3) Please confirm whether the Companies Act Regulations/ partnership agreement of the applicant permits it to engage in the business for which the Sandbox licence is sought.

4. Capital structure and shareholding

- (1) Please specify -
 - (i) authorised shares;
 - (ii) issued shares; and

- (iii) paid up capital.
- (2) Please specify the names and addresses of all shareholders with 5% or more shareholding in the applicant.

5. Other businesses

Please give details of other businesses (if any) the applicant is engaged in other than the business for which a Sandbox licence is being applied.

6. Particulars of directors/partners and management

- (1) Please specify name, address and profession/occupation of every director/partner of the applicant along with any other directorships held by them.
- (2) Please also specify if they will be executive or non-executive.
- (3) Please specify the name, address and qualifications of the chief executive officer of the applicant along with any other directorships held by him/her.

7. Organisation chart

Please annex a chart setting out by way of a diagram the organisational structure of the applicant with particular reference to supervision and lines of reporting.

8. Group and associated person information

Please specify names of the holding company, subsidiary companies and associates of the applicant indicating companies or partnerships in which the applicant has an interest.

9. Staff

- (1) Please name the directors/partners, owners and employees of the applicant who will be involved in the operations of the business for which the licence is sought.
- (2) Please specify qualifications and experience and whether these persons are holders of market operators' representative licences under the Act.
- (3) Please provide the names and addresses of documentation/computer/accounting/administration and clerical staff of the applicant.
- (4) Please specify location and custodian of the register of interests in securities required to be maintained under section 127(1) of the Act where applicable

We the undersigned certify that the above information is true and accurate. We undertake in the event of our application being accepted/our Sandbox licence being extended to abide by the Act, Regulations made under the Act, Rules, Statements of Principles, Procedures, Guidelines, Codes, Directives, Circulars, Manuals, etc., present and prospective issued from time to time by the Commission established by the Act. We also undertake to inform the Commission immediately of any change in any of the particulars stated in this application.

We confirm that –

- (a) the applicant is not in the course of being wound up/or in bankruptcy;
- (b) no receiver or manager has been appointed under any law with regard to the business and assets of the applicant;

- (c) the applicant has not entered into any compromise or scheme of arrangement with any of its creditors either in Ghana or outside which is still in operation;
- (d) neither the applicant nor any of the directors/partners and executive officers of the applicant have been -
 - (i) adjudged bankrupt anywhere;
 - (ii) convicted either within Ghana or elsewhere within the period of 10 years immediately preceding the date on which this application is made of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more;
 - (iii) denied a licence as a market operator or representative or had a licence issued under this Act to them suspended or revoked; or
 - (iv) directors or partners of an entity which has been denied a licence under the Act or had any licence issued under this Act suspended or revoked.

We enclose -

1. A certified true copy of the certificate of incorporation/registration of the company/Partnership Agreement.
2. A certified true copy of the Companies Act Regulations of the applicant.
3. A certified true copy of the Audited Financial statements of the applicant for the past three financial years or Statement of Affairs (where the applicant is yet to commence operations or is yet to issue audited financial statements).
4. Receipt in proof of payment of the licence fee prescribed.
5. Business plan (as defined in this guideline).
6. Tax clearance certificate with regard to the last period of assessment.
7. A certified copy of the register of interests required to be maintained under section 127 (1) in Form No. 5 (Schedule 7)

ANNEX B

EXAMPLES OF FLEXIBILITY AROUND REGULATORY REQUIREMENTS AND EXPECTATIONS FOR THE SANDBOX

The following table provides examples of the legal and regulatory requirements that the Commission is prepared to consider relaxing for the duration of the sandbox, as well as those which the Commission intends to maintain. It must be emphasised that the examples outlined in the table are not exhaustive. Depending on the proposed capital market activity, product or service, the applicant involved and the application made, the Commission shall solely determine the specific legal and regulatory requirements which it is prepared to relax for each case.

Examples of “To Maintain” requirements
Confidentiality of customer information
Fit and proper criteria particularly on honesty and integrity
Handling of customer’s moneys and assets by intermediaries
Prevention of money laundering and countering the financing of terrorism
Corporate Governance Requirements
Environmental/ climate change concerns

Examples of “Possible to Relax” requirements
Asset maintenance requirement
Board composition
Cash balances
Credit rating
Financial soundness
Capital adequacy
Licence fees
Management experience

Commissions Guidelines that may be applicable in each case and on case by case basis
Minimum liquid assets
Minimum paid-up capital
Relative size
Reputation
Track record

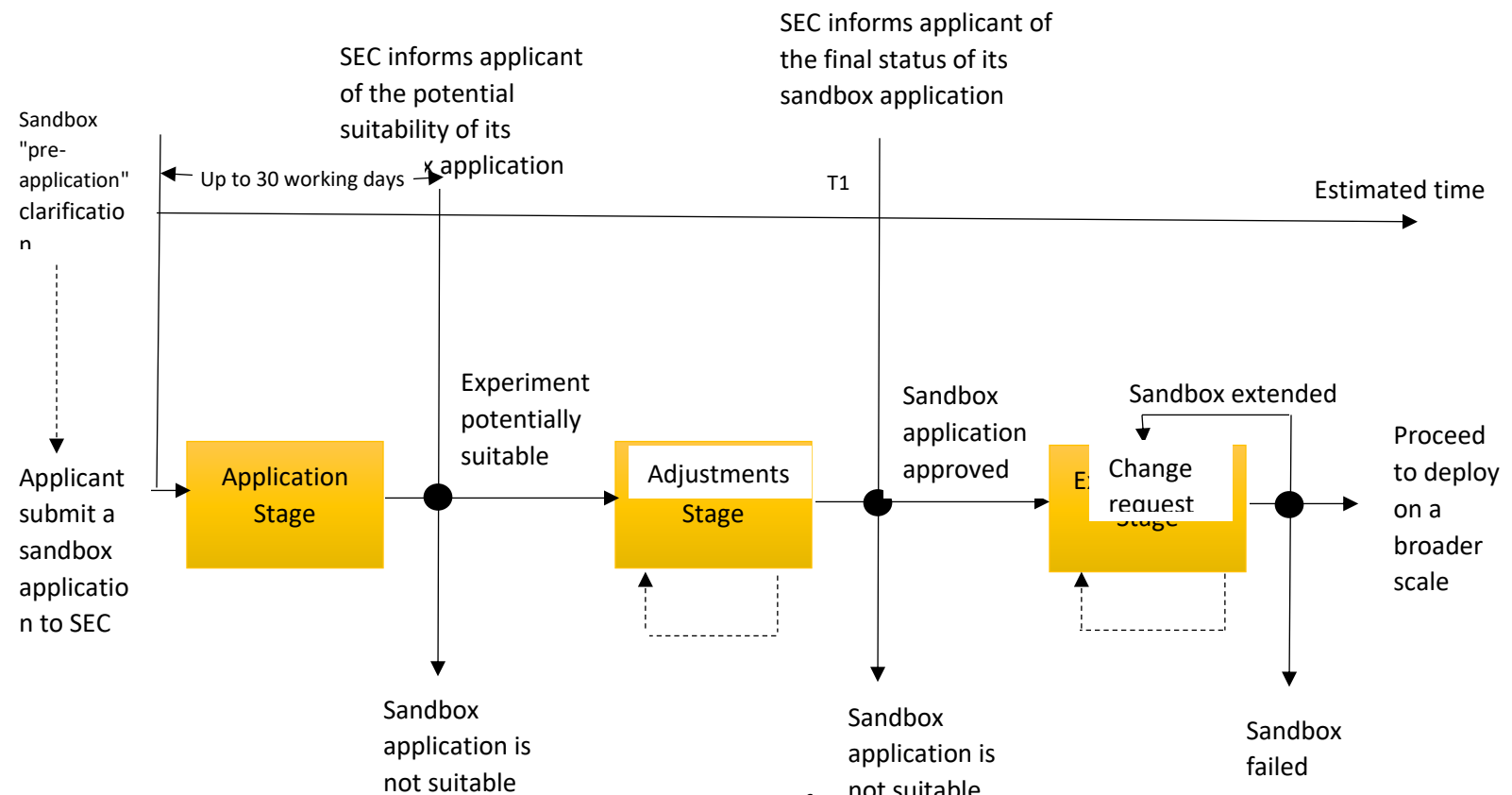
13. APPLICATION AND APPROVAL PROCESS

ANNEX C

To illustrate the application and approval process, ANNEX C provides a case study on how an application that meets the Commission’s expectations is processed.

1.1 The following diagram depicts the application and approval process. The Commission shall communicate with the applicant/sandbox entity in the course of evaluating the sandbox application, and continue to do so during experimentation:

TO



- a. Prior to submitting an application, the applicant shall clarify any question regarding the sandbox by contacting the Commission at info@sec.gov.gh
- b. The “Application Stage”, The Commission shall review the application and endeavour to inform the applicant of its potential suitability for a sandbox licence within 20 working days after the Commission receives a complete set of information necessary for the assessment (T0). The preliminary indication serves to help the applicant with its business and resource planning.
- c. At the “Evaluation Stage”, the time required to fully assess the application (T1) is dependent on its completeness and complexity, and the specific legal and regulatory requirements involved. Due to the exploratory nature of the sandbox approach, the applicant is allowed to make adjustments to the application for resubmission after discussing with the Commission. The applicant shall be informed in writing whether or not to proceed with the sandbox.
- d. The applicant shall be informed if the application is rejected. The reasons for rejection could include failure to meet the objective and principles of the sandbox or any of the evaluation criteria. The applicant may re-apply for the sandbox when it is ready to meet the objective, principles and evaluation criteria of the sandbox.
- e. Upon approval of the application, the sandbox is launched into the “Testing Stage”, and paragraph 8 of these guidelines shall apply. The sandbox entity shall notify its customers that the applicant is operating in a sandbox and disclose the key risks associated with the capital market activity, product or service. The sandbox entity is also required to obtain the customers’ acknowledgement that they have read and understood these risks.
- f. In the event that the sandbox entity intends to make material changes to the capital market activity, product or service under testing during the “Testing Stage”, the sandbox entity shall apply to the Commission at least 1 month in advance and provide details of the changes with reasons (the “change requests”). The sandbox entity can continue testing the existing product or service while the Commission reviews the change requests and inform the sandbox entity of its decision.
- g. For the purpose of transparency and provision of information to customers, relevant information on all approved sandbox applications such as the name of the applicant, and the start and expiry dates of the sandbox experimentation, may be published on the Commission’s website.

14. DEFINITION OF TERMS

In these guidelines –

“Act” means the Securities Industry Act, 2016 (Act 929);

“Commission” means the Securities and Exchange Commission established by section 1 of the Act;

“Applicant” means a legal entity who intends to apply or has applied for a regulatory sandbox licence to participate in the regulatory sandbox;

“FinTech” refers to any business that aims at providing financial services by making use of software and modern technology;

“Regulatory Sandbox” refers to a framework that enables qualified firms and businesses to test innovative capital market products and services in a tailored regulatory environment but within a well-defined space and duration;

“Sandbox entity or Regulatory Sandbox Licence Holder” refers to a capital market operator or a firm that wish to provide capital market services or a FinTech firm which has been given approval to participate in the regulatory sandbox.