Executive Summary

Different forms of regulatory experimentation are increasingly of interest to federal regulators as they seek to identify novel regulatory approaches to enhance Canada's business competitiveness and capacity to support innovation. "Regulatory sandboxes" are one form of regulatory experimentation that, to date, have been used almost exclusively in the FinTech sector, although examples in other sectors are emerging. Drawing from these experiences, the federal government will identify sectors and circumstances in which the creation of a regulatory sandbox could be effective in facilitating innovation and business competitiveness, while maintaining basic regulatory oversight to ensure protection of the public and the environment.

A regulatory sandbox can be created where an existing regulatory regime of general application is in place and the regulator has the authority to grant full or partial exemptions from existing regulatory requirements, provided that the participants meet terms and conditions designed individually to address the innovation or application at issue. By extracting principles from existing regulatory sandboxes worldwide, enabling provisions in federal legislation can be designed to enable flexibility to promote innovation, while ensuring that the regulator maintains its core mandate and that regulators act transparently and consistently with principles of good regulatory practice.

Recommendation

The regulatory road maps will identify areas eligible for novel regulatory approaches in each of the targeted sectors. Depending on the proposals, the existing authorities in various enabling statutes may be insufficient for implementation. In some cases, legislative amendments may be needed.

It is recommended that a model provision authorizing regulatory sandboxes be developed, reflecting the policy objectives and best practices in design. This authority could be included in select enabling Acts where the regulator has the capacity and the policy desire to implement a sandbox program. In some cases, the new authority could replace existing provisions that are inadequate or have some of the deficiencies discussed in this paper. In the short term, legislative amendments could be made as part of an omnibus regulatory modernization legislative initiative.

Canada has the opportunity to lead in the development of a consistent approach to regulatory sandboxes that is transferrable to sectors outside of FinTech, but this will require a thoughtful approach that embodies good regulatory practices.

Facilitating Innovation and Competitiveness: Platform for Regulatory Sandboxes

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Introduction

As part of the regulatory reviews of three targeted sectors announced in Budget 2018, Treasury Board of Canada Secretariat (TBS) is requiring each targeted sector to identify areas in which novel approaches to regulation could be implemented in the short term as part of the "regulatory road map". In response, there has been much interest in identifying areas in which "regulatory sandboxes" could be used, but there is no common understanding of what is meant by a "regulatory sandbox" or by other terms that refer to "regulatory experimentation".

The following establishes what the term "regulatory sandbox" will mean in this discussion paper in order to bring a common understanding to the types of approaches that are being proposed. To do so, other forms of "regulatory experimentation" that – although non-traditional – may not qualify as a "regulatory sandbox" are distinguished. It then sets out best principles that should be reflected in the design of any legislation intended to allow departments to begin using regulatory sandboxes where appropriate.

What is a Regulatory Sandbox?

Definition

To date, regulatory sandboxes have been used almost exclusively used in the financial technology sector,[1] but the definition used in that sphere is nevertheless illustrative of key features helpful to framing this discussion for all sectors:

> A regulatory sandbox is a 'safe space' in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question.[2]

In other words, a regulatory sandbox is a framework set up by a regulator that allows an activity to be conducted in a controlled environment under a regulator's supervision. Some of the existing regulatory framework is waived or exemptions granted, but there remains a baseline application of rules to ensure protection for the public or customers that interact with the activity

[1] In France, "France Expérimentation" is using regulatory sandboxes to support innovation in the area of clean technology.
[2] Financial Conduct Authority, *Regulatory Sandbox* (November 2015), https://www.fca.org.uk/publication/research/regulatory-sandbox.pdf

in the real world environment. [3] At the risk of overgeneralization, a regulatory sandbox can be described as individualized permissions or circumstances where regulators waive or exempt innovations from some of the existing, generally applicable rules. Some conduct is then permitted so that the innovation can be tested or scaled-up, with oversight and protections for the public, coupled with a predictable and transparent scheme for participation. "Regulatory greenhouses", "greenlighting processes", or "structured experimentalism" may also be terms that are used to capture this type of activity. [4] Some "test-bed facilities" that require exceptions from legislation to operate may also be correctly characterized as "regulatory sandboxes", although others that operate privately and without interaction with the public, may not fit this definition. Most regulatory sandboxes, in the financial sector, and others have been associated with digital innovations.[5]

Forms of Regulatory Experimentation that are not Sandboxes

What is not a "Regulatory Sandbox"?

Implicit in the definition above is that before a regulatory sandbox can be built, there is an existing regulatory regime that applies. In some cases, a product or process may be so novel that it is not captured in any regulatory scheme. In those circumstances a regulator may choose not to intervene or may rely on other instruments, such as voluntary industry compliance with consensus-based standards, or may begin to undertake other instrument choice explorations. In this circumstance, since no existing regulatory scheme applies, then there is no need, and indeed possibly no authority, for the regulator to exempt from all or part of any existing legislative scheme.

No Immediate Intervention - Opportunity for Co-Development of Regulations

If the decision is to allow the unregulated innovation to evolve or to be assessed before a decision to regulate or any other instrument choice decision is made, this situation may be a circumstance in which departments and agencies must work with industry and stakeholders to have an instrument choice discussion before a decision is made to regulate, which required by

[3] Financial Conduct Authority, United Kingdom; Government of Australia, backing Australian Fin Tech; Monetary Authority of Singapore.
[4] "Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation", Vol.23, No.1 *Fordham Journal of Corporate & Financial Law* Article 2. This paper draws heavily on the analysis in this paper, including selecting best practices from the survey of existing structures contained in that paper to address the Canadian regulatory context.
[5] *Policy Experimentation: The role of sandboxes in promoting flexibility and innovation in the digital age*, OECD, Going Digital Steering Group Meeting, 19 October 2018.

the *Cabinet Directive on Regulation*.[6] If regulation is eventually chosen, legislative amendments to bring the matter into the scope of the relevant department(s) or agencies' mandate would have to be advanced. This provides an opportunity for early enhanced collaboration and consultation on instrument choice and then, should the decision be made to regulate, an opportunity for co-development of regulations and other related legislative amendments, such as amendments to enabling Acts when necessary. In this context, co-development means more than consultation on proposed regulations published in *Canada Gazette* Part I and may require exceptions from treatment of draft regulations as Cabinet confidences at many stages in the development process. In some circumstances, regulators could work with stakeholders to develop simulated regulations with a view to determining viability of the innovations in a regulated environment and the effectiveness of those regulations in maintaining the health and safety of the public and the environment.

Pilot Project Regulations

Although the terms "pilot project" and "regulatory sandbox" are often used interchangeably, in this paper, a "regulatory sandbox" is intended to refer only to regulatory schemes where participation is based on individual applications, rather than a program that is set up by regulation and is of general application, even if it is limited in scope. For example, both the *Canada Small Business Financing Act*[7] and the *Employment Insurance Act*[8] expressly authorize the creation of "pilot projects". The regulations may have a limited scope of application and constitute a form of "regulatory experimentation" but are not included in the definition of "regulatory sandbox" because they are generally designed to operate as a trial for different government action, and importantly, do not operate on a case-by-case basis. These activities or regulations are not captured in the definition of "regulatory sandbox" but these types of activities can be described as "regulatory experimentation".

Ambiguous Application of Existing Legislative Schemes

In some circumstances, it is unclear whether the new product, process or innovation is captured in one or more existing regulatory regimes and how the existing regulations can apply. The existing legislative regime may not clearly capture the new product or process and while there are some authority in support of the rules applying, there may also be significant uncertainty. The existing regulations may or may not be barriers to the further development of the product and process. For the business advancing the innovation, the lack of certainty about what regulatory regimes apply, if any, may serve to undermine the certainty needed for investment or

[6] *Cabinet Directive on Regulation*, 2018, Treasury Board of Canada Secretariat
[7] *Canada Small Business Financing Act*, s.13.
[8] *Employment Insurance Act*

financing. Other factors may also be uncertain, including the scope of the action that the regulator may eventually take, the timing of it and generally the transparency around their decisions, and whether the policy to regulate or not and how, has already been pre-determined. There may be gaps in the regulations highlighted by the innovation. If there is sufficient uncertainty, the legal position of the regulator may not be strong enough to use any existing authorities to exempt as the exercise of the power in that case may be uncertain and at risk of exceeding the authority.

In cases where there is insufficient ambiguity, resort to a legislative amendment may be needed to establish jurisdiction to set up a regulatory sandbox or confer powers or tools like non-enforcement agreements or forbearance agreements could be explored.

Examples of Canadian Regulatory Sandboxes

As mentioned, the term "regulatory sandboxes" has largely been used to refer to regulatory experimentation in the FinTech sector. In Canada, the Canadian Securities Administrators has implemented the CSA Regulatory Sandbox[9], working in conjunction with provincial regulators (the principal regulator) such as the OSC Launchpad (Ontario Securities Commission).[10] The CSA Sandbox is a process of making an application for exemptions from generally applicable securities laws requirements that may be an impediment to innovative business models, provided that investor protection is not compromised. The power to grant an exemption is coupled with the power to impose terms and conditions [and is implemented at the provincial level].

While the phrase "regulatory sandbox" may evoke expectations of a novel approach to regulating, in fact, there are various regulatory schemes and powers already existing in the federal statute book that could be characterized as a step towards this type of regulatory approach. Finding opportunities to design platforms for regulatory experimentation may be less about significant amendments to enabling legislation and more about rethinking how existing powers can be used to facilitate novel approaches to regulation and improving the structure for their exercise. For example, the *Motor Vehicle Safety Act* was recently amended to permit the Minister to grant exemptions from prescribed standards in certain circumstances[11] or to suspend, modify or adapt a regulation if the Minister is of the opinion that it is in the public interest to do so, including to promote innovation or for reasons of safety.[12] The *Aeronautics Act* also permits exemptions that are in the public interest and not likely to adversely affect aviation safety or security.[13] There is an example(s) of authority to conduct granted in regulations, such as the

[9] https://securities-administrators.ca/industry_resources.aspx?id=1588
[10] https://www.osc.gov.on.ca/en/navigating-regulation.htm
[11] *Motor Vehicle Safety Act*, s. 9.1
[12] *Motor Vehicle Safety Act*, s. 13.1
[13] *Aeronautics Act*, s. 5.9(2).

Commercial Vehicle Drivers Hours of Services Regulations.[14] While these powers are interesting to re-examine from the perspective of regulatory sandboxes, most are deficient and do not meet the objectives and best practices below.

As in any case of a regulatory proposal, or exemption request, in order to determine whether existing powers are sufficient, each enabling statute would have to be examined in the context of the nature of the regulatory experimentation proposed. Relevant considerations would be the scope of authority to grant exemptions and impose terms and conditions, the purpose of the Act and the tension with existing schemes already found in the legislation. In some cases, regulators may find tension between the promotion of innovation or competitiveness with their traditional mandates, such as protection of the health and safety of the public and the environment, and some legislative amendments may be needed. For example, the Minister may be mandated to consider certain factors in making decisions to issue permits, or revoke registrations of products, and in some cases, considerations of an economic nature or objectives of promoting innovation may not relevant considerations. In circumstances where legislative amendments may be needed to add appropriate authorities, the design of such authorities can be based on principles set out below.

Why Create a Regulatory Sandbox?

Objectives

The objectives for using regulatory sandboxes are generally expressed as: 1) enabling innovation; ii) encouraging innovation; iii) improving the regulatory framework; iv) improving licensing procedures; iv) informing policymaking, presumably with a view to future adjustments to the regulatory scheme in place; vi) being a channel for engagement with regulated parties; and vii) contributing to economic growth.[15]

Balancing these objectives with traditional regulatory objectives and core mandates of regulators, being protection of the public and the environment,[16] creates some tension and also uncertainty around how regulators achieve the objectives of their core mandates while promoting other objectives. Integration of a mandate to facilitate innovation and competitiveness that further promotes fundamental objectives of protection of the public and the environment may require

[14] *Commercial Vehicle Drivers Hours of Service Regulations* (SOR/2005-313), s.61 (special permits for purpose of research or pilot projects). Although described as a "pilot project" in the text of the regulation, since the permit is individualized, it will be considered to be a "regulatory sandbox" for the purposes of this paper.
[15] Objectives taken from *Regulatory Sandboxes*, November 2017, Toronto Centre Global Leadership in Financial Supervision: http://res.torontocentre.org/guidedocs/Regulatory%20Sandboxes.pdf
[16] "Regulating a Revolution", p.68: "Regulators implementing sandboxes generally define their objectives in the context of support for innovation, market development and enhanced competition, and/or economic growth, with exact objectives varying with the particular regulator's statutory mandate."

adjustment, legislative and otherwise, but these objectives need not be seen as mutually exclusive or that one must be advanced to the detriment of the other.

When are Regulatory Sandboxes Appropriate - Clear Application of Regulatory Regime that Creates and Actual Barrier.

In this circumstance, a new product, process or innovation is captured by the existing legislative regime but the innovation was not contemplated at the time that the legislation was designed. The existing legislation and regulations may serve to create barriers to improvements or innovations as a result. For example, a regulation that prescribes the manner of complying with the obligation may inadvertently exclude an innovative improvement in a process.

This circumstance is ideal for a regulatory sandbox. The regulator could be enabled to exempt or adapt existing regulations that are creating a barrier, on a case-by-case basis working with the developer of the innovation, and be required to impose terms and conditions to ensure protection of the public. These exemption/adaptation orders or non-enforcement actions would be individualized (case-by-case) and are most clearly qualify eligible for “regulatory sandboxes”.

What are the Barriers to Creation of Regulatory Sandboxes?

Not all innovations and not all sectors are appropriate for regulatory sandboxes since, although there remains some oversight, the basic regulatory rules may be removed, meaning that there are increased risks to the public that participate as customers or the public in the sandbox. There are significant resource implications to implementing and administering a transparent and accountable sandbox program that may mean that it is more suitable to well-resourced regulators. There are market advantages and disadvantages to those included and those excluded from the sandbox at any given time. Expertise to understand that innovation and then to be able to address individualized terms and conditions requires resources in the appropriate regulator. Ultimately, a failed experiment in the regulatory sandbox may result in public criticism of the regulator and other consequences. There are also other tools that can offer some innovation in regulation as well, although they may suffer from other concerns, such as a lack of transparency, accountability and may also be resource intensive and be criticized as failing to create a level playing field. And it is trite to say that the impact of new and emerging technologies are hard to predict.

Good Practices and Principles in Design of Regulatory Sandbox Authorities

An examination of sandbox structures reveal certain common characteristics that would promote policy objectives of flexibility and agility in the system, together with transparency and fairness.[17] By identifying the foundational principles that the federal government wants to ensure remain key elements of any regulatory sandbox, the legislation that authorizes the activity can be designed to create the scope of activity and to clearly set out how questions are intended to be resolved. The elements below should be present in all authorities to conduct regulatory sandboxes.

1. Scope of Authority to Exempt

In some cases, certain foundational rules in the Act and the regulations should continue to apply and should not be within the scope of the authority to exempt for the purposes of sandboxing and it may be that certain regulations may be specified as not being able to be waived in a sandbox.[18] In other circumstances, it may be desirable to provide maximum flexibility and allow the Minister to exempt from any provisions of the Act or the regulations.

> ***Legislative Design***: Scope of authority to exempt must be clearly expressed and addressed on a case-by-case basis (either all provisions of an Act or regulations, or some can be excluded).

2. Individualized Sandbox Permissions

Inherently the nature of the disruptive or unpredictable nature of innovations means that in order to assess its impact on the protection of public health and safety and the environment, each application to participate in a regulatory sandbox would need to be assessed and individual terms and conditions designed.[19] Since individualized exemptions are generally thought to not be legislative in nature, the exemption orders would not be "regulations". However, exemptions that applied to a class of products (for example, all drones) would be legislative in nature and "regulations" within the meaning of the *Statutory Instruments Act* (*SIA*). While individualized authorities to use regulatory sandboxes can facilitate innovation, once a decision is made to change a regulatory scheme in a way that that is of general application, the *Cabinet Directive on Regulation* and the *SIA* should apply.

> ***Legislative Design***: Confer authority, either in the Act, or by conferring authority on the Governor in Council to delegate authority in the regulations, to the Minister to grant

[17] This analysis draws heavily from the paper "Regulating a Revolution".
[18] *Policy Experimentation*, supra, note 5 at p.6.
[19] Organization of sandboxes on a case-by-case basis is typical. See *Policy Experimentation*, supra, note 5 at p.3.

exemptions or permissions from any/some provisions of the Act and regulations on an individualized, or case-by-case basis, and to impose terms and conditions.[20] The power should be broad enough to include authority to limit the exemptions to geographic locations or sectors. This power should be subject to regulations that must be made before the exemption power could be exercised.

3. Objective Criteria

Regulators must establish objective criteria against which applications for participation in a "regulatory sandbox" will be assessed. This will ensure that the terms under which innovators can participate in the program are accessible, stable and binding. In order to ensure that the criteria are in place before the exemptions can be made, the authority would have to be clear in its design that the regulations are "mandatory", or in other words the exemptions cannot be granted until such time as the regulatory scheme has been put in place. The OECD notes that many stakeholders have endorsed the idea of standardized criteria.[21]

It will be important to develop consistent criteria that operate at a general level to ensure that the basic principles of federal regulatory objectives are respected. Since each sector may have different considerations or factors, more granular criteria or sector-specific qualifications may be justified.

There are a number of criteria that seem to apply to all sectors. For example, some criteria for consideration are:

- the Minister is of the opinion that the testing of the innovation will not undermine the statutory objectives or the regulator's primary mandate, and that the potential benefits will outweigh the risks;
- the Minister is of the opinion that the innovation is intended to better achieve the objectives of the regulations, acknowledging the fact that not all innovation is good;
- the Minister is of the opinion that any risk can be managed effectively with the imposition of terms and conditions ("safeguard mechanisms" such as restrictions on forms of products that can be tested, additional reporting obligations or monitoring)[22];
- requiring the applicant to demonstrate that the innovation is projected to provide support to the statutory mandate or goals, be "genuinely innovative", meaning offering a solution

[20] Note, some existing exemption authorities mentioned in this paper also allow for class-based exemptions, which are in law "regulations". Legislative instruments of a general application should be subject to the regulatory process except in exceptional circumstances. This is consistent with both the *Cabinet Directive on Regulation* and the approach of the Legislative Services Branch to exemptions from the *Statutory Instruments Act*. As a result, not all existing precedents in the federal legislative corpus should be replicated. If the enabling legislation results in it being an offence for failing to comply with the terms and conditions of the permission (order, licence, authorization) then an exemption from the *SIA* will be needed in order to ensure that the regulatory process does not apply.

[21] *Policy Experimentation*, supra, note 5.
[22] Ibid.

to new or existing problems by a new and emerging technology, or by an innovative use of an existing technology, or a change in scale;[23]

- requiring the applicant to demonstrate that the innovation is anticipated to be a benefit to the public, whether direct or indirect, and when possible;[24]
- requiring that the applicant demonstrate that there is a need for the sandbox, in that there is in fact an existing barrier or an unnecessary regulatory burden;[25] and
- requiring the proponent to demonstrate that there are no other government programs that could be used to address the innovation.[26]

The criteria themselves would have to be articulated in a way that themselves permit agility and would not inadvertently exclude innovations and disruptions that are not yet identified.

Legislative Design: Confer authority on the regulation-making authority to make regulations respecting the granting of exemptions to facilitate innovation and regulatory experimentation and conditions that must be met in the granting of that exemption. Require that the regulations establishing these criteria are made (and continue in place) before the regulatory sandbox can begin.

4. Transparency

Not only must the criteria for participation into the "sandbox" be public and transparent, the decisions on the applications, and the terms and conditions should also be made public.

Legislative Design: Either the regulations or the Act should require that the decision of the Minister in the applications for regulatory sandboxes be published on the government of Canada website, including the terms and conditions that are imposed. This may include express mention of the requirement to publish any information provided by the applicant or proponent.

The results of the sandbox study should be reported publically within a period set by regulations or administratively. The regulations should require that the regulator publish a publically available report that identifies what aspects of the regulations were found to be barriers and how the regulator intends to adjust, or not.

[23] *Policy Experimentation*, supra, note 5 at p. 4.
[24] *Policy Experimentation*, page 4.
[25] "Regulating a Revolution", *supra* note 4 at pp. 69-71. See also *Policy Experimentation*, OECD, supra, note 5 at pp. 4-5.
[26] Regulations and Clean Technology, A Review of Best Practices in Select Jurisdictions, 2018 Horizon Advisors

5. Discrimination among Proponents

In certain sectors, significant market advantage may be gained by participation in a sandbox by sophisticated incumbent players who may already be regulated entities in contrast to new entrants in the market. Regulators may want to ensure that incumbent players are not provided with an unfair advantage and may want to establish criteria that gives priority to smaller companies. In other sectors, it may be desirable to establish a level playing field or to identify other criteria.

> ***Legislative Design***: Authority to discriminate in assessing the applications of incumbents or new-market entries should be conferred expressly to ensure that in assessing the applications in each sector, appropriate economic implications and competitiveness results can be considered in the determination of who can participate in a sandbox.

6. Limitations on Numbers of Activities in Sandboxes

The case-by-case application process and design of individualized terms and conditions is likely to be resource intensive, and depending on the sector, may or may not be realizable based on the number of applications. Consideration could be given to limiting the number of applications that can be accepted during a defined cycle.

> ***Legislative Design***: The regulation-making authority should include express mention of the authority to make a regulation or for the Minister to set limits on the numbers of applications that will be approved during any defined time period, but also not require the Minister to set limits.

7. Duration

The length of time during which an exemption can operate should be transparent to the public and other applicants since the capacity to operate in a sandbox can create market advantage. Other jurisdictions also use in the FinTech sector thresholds, such as customer thresholds or assets under management as thresholds for the termination of the sandbox and the requirement that the innovation move into the full regulatory regime.

> ***Legislative Design***: This can be achieved either by conferring authority to create a regulation with a general rule for duration, or clear authority to confer a discretion on the Minister to determine the duration of any given project on a case-by-case basis, coupled with a requirement for transparency or publication of the duration once determined.

As noted by the OECD Directorate for Science, Technology and Innovation committee on Digital Economy Policy:

"…[R]egulatory sandboxes are a form of limited testing, and are not intended to enable permanent regulatory waivers or exemptions for innovative firms. Consequently, regulatory sandboxes typically outline limits to the testing enabled under the regulatory waiver. These limits are usually temporal, but can also include sectoral or geographic limits."[27]

8. Revocation of Exemption and Termination of Participation

The regulator must have the ability to specify the grounds on which the authorization or exemption creating the regulatory sandbox can be terminated. These criteria should be fixed and transparent and should be contained in a regulation that confers a power on the Minister to cancel the regulatory sandbox. Examples could include a finding that the Minister is no longer of the opinion that the activity can be conducted without undue risk of harm to the public or the participant has failed to comply with any term and conditions.

> ***Legislative Design***: Confer an express power to terminate the exemption where the Minister is of the opinion that certain criteria, also found in regulations, are met. If the criteria are to be very discretionary (i.e. in the opinion of the Minister, the authority must be very clear in the enabling Act or itself be contained in the enabling legislation).

Options for Enacting Authorities for Regulatory Experimentation

Individualized Enabling Authorities

As noted above, many existing enabling Acts contain powers of exemption or adaptation, many of which may meet some of these purposes. For example, section 13.1 of the *Motor Vehicle Safety Act*, mentioned above, provides a broad power but does not contain any of the features that may be considered desirable from a transparency point of view. The ability to offer class based exemptions outside the regulatory process is not ideal for a regulatory sandbox that meets criteria of transparency and accessibility. Subsection 5.9(2) of the *Aeronautics Act* is also an example of a provision that may be too broad in its exemption from the *SIA* for these purposes.

Existing enabling legislation in the targeted sectors, or other sectors identified as likely to be faced with innovations and where the regulator is sufficiently mature and resourced to conduct the regulatory sandbox, should be reviewed to identify enabling authorities that are inadequate or where there is no authority at all with a view to amendment. Amendments to the statutes deemed appropriate to add a regulatory sandbox authority, or to repeal and replace inappropriately designed authorities, could be part of an omnibus legislative package. Departments and agencies can work together to develop guidance in respect of the use of these powers, share best practices

[27] *Policy Experimentation*, supra, note 5 at p.5.

and work together when innovative products or processes require inter-departmental cooperation. A standards development organization such as one accredited by the Standards Council of Canada could be engaged to develop a standard for regulatory sandboxes. Leadership from one centre of innovation may be ideal. The proposed External Advisory Committee on Regulatory Competitiveness would also be a potential source to recommend criteria for consideration that proponents must meet and also to identify sectors in which sandboxes could be used.

Act of General Application

Another option is to enact a separate power on the Governor in Council to make regulations setting up the criteria, structure and requirements for regulatory experimentation. A schedule to the regulations could be amended to designate projects or enabling statutes or Ministers eligible to use the power and in respect of what regulatory regimes. This has the advantage of allowing the Governor in Council to designate multiple Ministers to work collaboratively, which may be an aspect that is key in innovations that are cross-sectoral. For example, a drone that is used to deliver pesticides to a farm activity is likely something that would touch in at least three sectors. Many innovations should be anticipated to be cross-sectoral and require interdepartmental approaches.

Conclusion and Recommendation

The regulatory road maps that will be the result of the regulatory reviews announced in Budget 2018 will identify at least two areas eligible for novel regulatory approaches in each of the targeted sectors. Depending on the proposals, the existing authorities in various enabling statutes may or may not be sufficient for implementation. In some cases, legislative amendments may be needed and in any case may be desirable to improve the legislative framework in which regulatory sandboxes should be operated.

It is recommended that a model provision authorizing regulatory sandboxes be developed, reflecting the policy objectives and best practices in design. This authority could be included in select enabling Acts where the regulator has the capacity and the policy desire to implement a sandbox program. In some cases, the new authority could replace existing provisions that are inadequate or have some of the deficiencies discussed in this paper. In the short term, legislative amendments could be made as part of an omnibus regulatory modernization legislative initiative, but should not be made in a piece-meal fashion but rather reflect coordinated efforts around promoting innovations and the External Advisory Committee.