

Comments to the Reserve Bank of India (RBI) on the Draft Enabling Framework for Regulatory Sandbox dated 18 April 2019 (the Draft Framework)

Dvara Research¹ is an Indian not-for-profit policy research and advocacy institution guided by our mission of ensuring that every individual and every enterprise has complete access to financial services. Our work addresses emerging issues in policy and regulation for consumer protection, given the sweeping changes that are reshaping retail financial services in India. The effects of disintermediation in finance, including through the growth of fintech, is a core area of our recent research.

In this Response, we present our comments on the RBI's Draft Framework for the setting up of a Regulatory Sandbox (RS) in response to the call for comments from stakeholders (RBI, 2019a). Our comments are organised into five broad sections, which will seek to convey and substantiate the following feedback to the Draft Framework.

1. Clearer regulatory objectives must support the vision and design of the RS.
2. Restrictive eligibility criteria and entry conditions can risk defeating the objectives of the RS.
3. The design of the RS must consider the extent of the RBI's jurisdiction and cross-sectoral effects.
4. The design and processes of the RS must embed mechanisms to enhance transparency in decision-making.
5. The consumer protection elements of the RS must be stronger to ensure that the costs of innovation are not externalised on Indian consumers.

This Response seeks to provide constructive comments on the Draft Framework. We hope they will be considered and addressed in future iterations of the Draft Framework, related guidelines or notifications regarding the proposed RS.

¹ Dvara Research (formerly the IFMR Finance Foundation) has made several contributions to the Indian financial system and participated in engagements with key regulators and the Government of India. We were the technical secretariat to the RBI's Committee on Comprehensive Financial Services for Small Businesses and Low Income Households chaired by Dr. Nachiket Mor. We acted as peer reviewers for the customer protection recommendations made by the Financial Sector Legislative Reforms Committee. Our recent research has given us the opportunity to consult on and extend discrete research inputs to various Committees set up by the RBI and the Government of India, including the Committee of Experts (on data protection) under the Chairmanship of Justice B.N. Srikrishna, RBI's Expert Committee on Micro, Small & Medium Enterprises and the RBI's Committee on Deepening of Digital Payments.

1 Clearer regulatory objectives must support the vision and design of the RS

The Draft Framework in section 2.2 (*Objectives*) envisions that the RS will be “*a formal regulatory programme for market participants to test new products, services or business models with customers in a live environment, subject to certain safeguards and oversight*” (RBI, 2019b). The RS will seek to support the innovative use of technology to address existing problems and benefit consumers (page 3, RBI, 2019b).

This is laudable as a broad vision for the RS. However, the current Draft Framework stops short of setting out a clear, specific objectives that will guide the RS and hold it accountable. We submit that in order to achieve this vision, the RS must be supported by clearly articulated regulatory objectives and sub-objectives which should then be incorporated into its design and functions. There is growing consensus that a lack of clarity on regulatory objectives adversely affects the performance of a regulator (Roy, Shah, Srikrishna, & Sundaresan, 2019). Most international models of RS identify a similar broad vision for the RS, but substantiate this with clearer objectives and sub-objectives.

The Report of the RBI Committee of Household Finance (RBI, 2017) for instance when recommending an RS framework, identified the broad objective “*enabling fintech innovation leading to the accelerated development of financial products and services customised to the unique needs of Indian households*”. The Committee then emphasised the two elements which it expected the RS to champion i.e. (i) enabling fintech innovation and (ii) development of customised financial products.

Similarly, the US Consumer Financial Protection Bureau’s (CFPB) Project Catalyst, the earliest version of a regulatory sandbox operating today, adopts a similar approach (Wechsler, Perlman, & Gurung, The State of regulatory Sandboxes in Developing Countries, 2018). All of the CFPB’s operations including the regulatory sandbox are informed by the objective in its governing statute (Dodd Frank Wall Street Reform and Consumer Protection Act 2010), i.e. “*to ensure that the markets for consumer financial products and services operate efficiently and transparently to facilitate access and innovation.*” In the case of the sandbox, the CFPB used this statutory directive to arrive at the narrower objective of *encouraging consumer*

friendly innovation which it further qualifies through a six-point (non-exhaustive) list (Consumer Financial Protection Bureau (CFPB), 2016):

- i. *Expand access of financial products* to the underserved population;
- ii. *improve consumer's control over their economic decisions* and help consumers adopt savings and spending habits in line with their long-term aspirations;
- iii. *reduce prices* for consumers through increased competition or adoption of technology that reduces operating costs;
- iv. *increase features and functionality* so that consumers can benefit from products that (a) work better (b) easier (c) quicker (d) or are more widely available;
- v. *enhance safety and security* of products including by incorporating better defences against data breaches, mechanisms to avoid or reduce errors and efficient correction of errors that may occur, and
- vi. *promoting transparency* and consumer understanding of the products.

Achieving a similar clarity on the objectives for the proposed RS will create a better benchmark to which the design, functions and decisions of the RS can be aligned. These objectives should transcend the objective of merely enabling private businesses to test the viability of their offerings. A narrow objective like that is perhaps best left to the markets or for private incubators. The RS framework should concern itself with the impact that an offering can have on the financial ecosystem, especially quality of consumer outcomes, consumer protection and expanding users' access to safe financial products.

The text of the Draft Framework already indicates certain underlying regulatory objectives that could be made explicit in future guidelines. These are highlighted below.

- i. ***To identify and mitigate new risks:*** Section 3.1 (*Benefits*) of the Draft Framework identifies the potential of the RS regime to identify new and attendant risks of emerging technology to arrive at the appropriate regulatory stance. This should be a foundational regulatory objective of the RS regime, as it is the key reasons for the development of this regulatory technique. By clearly delineating the risks associated with the deployment of new technology, the RS has the potential to educate the regulator on the attendant risks and provide the empirical information needed to design a proportionate regulatory regime.

- ii. ***To expand access and delivery of relevant, low-cost financial products***: Section 2.1 (*Regulatory Sandbox*) of the Draft Framework emphasises on the ability of the RS to develop “*innovation-enabling or innovation-responsive regulations that facilitate delivery of relevant, low-cost financial products*”. This objective is integral to objectives of the RS given the need for widening and deepening access to suitable finance in India.
- iii. ***Support consumer choice and welfare***: The RS should articulate a clear objective to indicate the types of solutions that it will support. A readily available objective in this respect is found in section 6.5.2 (*Fit and Proper Criteria for Selection of Participants in RS*) which states that:

“the proposed FinTech solution should highlight an existing gap in the financial ecosystem and the proposal should demonstrate how it would address the problem, or bring benefits to consumers or the industry or perform the same work more efficiently”.

Elevating this to a regulatory objective will provide a timeless principle will guide the types of technology that should be tested in the RS. In the absence of such a clear principles, the RS might take an ad-hoc approach that could create uncertainty and arbitrariness.

The Draft Framework should commit to such clearer regulatory objectives, which should work along with time-tested principles to guide the processes and procedures of the RS, such as **proportionality of regulation, institutional neutrality and enabling competition** as set out in section 4.1 of this Response below.

More importantly, the design and processes of the RS must be built to achieve these regulatory objectives. A crucial test of whether the RS objectives are meaningful will be the manner in which they inform the eligibility criteria of the RS.

2 Very restrictive eligibility criteria and entry conditions could risk defeating the objectives of an RS

The focus of the RS as described in section 5 (*Regulatory Sandbox: Eligibility Criteria for Participating in the Sandbox*) of the Draft Framework is to encourage innovations where (i) regulations are absent, (ii) need to be “*temporarily eased*” to enable innovation or (iii) where the proposed innovation can significantly ease/effect the delivery of financial services. Despite this wide focus and the broad vision, the provisions of section 6 (*Design Aspects of the*

Regulatory Sandbox) create a situation where access to the RS is highly restricted. This risks defeating the very objective of establishing a sandbox.

The objective of a sandbox is to understand the different innovations that emerging technology facilitates. The ability to identify risks and increase the benefits from new uses of technology is a significant opportunity that sandboxes offers policy makers. Globally, the anchor for entry of entities into sandboxes is the use of new technology or the use of existing technology effectively to better financial services—consequently, no specific technology use is prohibited (Wechsler, Perlman, & Gurung, 2018). Broad entry criteria are imperative to fulfilling this policy objective since restricting entry into the sandbox would limit the ability of the policy maker to understand new uses of technology in financial services which may be offered by entities not allowed into the sandbox. Sandboxes around the world tend to allow a wide variety of entities to access their programme, and it is unclear why India should take a different approach (UNSGA Fintech Working Group and CCAF, 2019).

2.1 The eligibility criteria must be aligned to the regulatory objectives of the RS

The eligibility criteria for the RS limit its target audience of applicants to a small sub-set of fintech entities without a clearly discernible rationale. Below we highlight specific concerns that arise as a result, which could hamper the effectiveness of the RS.

- i. **Only technology start-ups can be RS applicants:** The Draft Framework requires that prospective RS applicants must be start-ups as defined by existing Indian notifications² (i.e. operating for less than 7 years with an annual turnover of less than 25 crore). The rationale for this restriction is unclear. Several innovative financial technologies that would benefit from the live-testing approach may be offered by other types of entities, including existing banks and financial institutions. If the objective of the RS is to support innovative uses of technology in financial services, then this criteria could defeat this objective by restricting the RBI from engaging with other non-startup entities in the financial sector that are developing and deploying these technologies.

² The first criteria for entities to fulfill for admission to the RS is that they should be start-ups as per the DIPP Notification No. G.S.R. 364(E) dated April 11, 2018 requiring that an entity shall be considered as a Start-up: (i) Upto a period of seven years from the date of its incorporation/registration (ii) Turnover of the entity for any of the financial years since incorporation/registration has not exceeded Rs.25 crore; (iii) Entity is working towards innovation, development or improvement of products or processes or services. (See section 6.5, page 6 of the Draft Framework).

- ii. **RS applicants are required to have a minimum net-worth of INR 50 Lakhs:** The Draft Framework contains a blanket minimum net-worth of INR 50 lakhs for prospective applicants. While the rationale for this requirement might be to act as a risk buffer, this is not explicitly stated. Blanket, rigid criteria are generally not desirable in such situations. The principle of proportionality suggests that the intensity of any regulatory obligation be consistent with the risk that it potentially poses (Government of India, 2013). Moreover, a blanket threshold when pegged too high can have unintentionally excluding smaller, newer technology providers working on innovative services relevant to the RS’ objectives from the RS. The Draft Framework must set out the rationale for this net-worth requirement, and create proportionate formulation (that matches the risk posed and size of an RS applicant) to create a level playing field for all entities.
- iii. **No principled basis for the inclusion and exclusion of technologies from the RS:** Section 6.1 (*Sandbox Cohorts and Product/Services/Technology*) presents two indicative lists of products/services and of technologies that will be allowed to be tested through the RS. Separately, section 6.3 (*Exclusion from Sandbox Testing*) provides an “*indicative negative list*” of products/services/technologies that will be excluded from the RS.

No clear principle appears to guide the inclusion or exclusion of technologies or services from these lists. Such an approach is unusual in RS regimes and could be counterproductive for the RBI. Most jurisdictions evolve criteria for determining when an innovation can enter the RS, based on whether the proposed innovation uses a new technology or uses existing technology effectively to deliver a financial service (Wechsler, Perlman, & Gurung, 2018). A list of approved or restricted innovations is not generally prescribed, and could potentially limit the regulator’s policy objective of identifying and mitigating risks from different technologies.

A list-based approach could also enable ad-hoc amendment and regulatory uncertainty, in the absence of a rationale and guiding principles. For instance, two items excluded from the sandbox through the indicative negative list—*credit registry* and *credit information*—are areas in which financial technology is creating significant innovations to overcome traditional barriers to better, and more suitable access to finance for Indian consumers and firms.

The eligibility criteria and entry conditions for the RS merit re-consideration. Focussing solely on technology start-ups could create some inconsistencies, since even those technology start-ups who could potentially qualify within the criteria of the Draft Framework need not be directly regulated by the RBI (but may offer their services under private contract to RBI-regulated financial institutions).

3 The design of the RS must take account of the RBI’s jurisdiction and cross-sectoral effects

The Draft Framework proceeds on the basis that the RBI will establish the RS, and notes that the RBI can provide the regulatory support “*by relaxing specific regulatory requirements (which the sandbox entity will otherwise be subject to)...*” (page 10 of the Draft Framework). However some dissonances arise, especially on the issue of the RBI’s regulatory authority with respect to tech-based entities.

3.1 The RBI’s authority with respect to non-financial sector entities is uncertain

The design and eligibility criteria in the Draft Framework make it clear that the main participants of the proposed RS are intended to be technology start-ups.³ Many technology start-ups offering the innovative products, services or creating the technology included in the indicative lists (in section 6.1 of the Draft Framework) will not be directly regulated by the RBI or directly offer financial services. They may instead offer their technology services to RBI-regulated financial institutions under contract. Such technology service providers are currently outside the realm of RBI oversight, regulation and enforcement.⁴ Their incentive to enter the RS is unclear, as the RBI will not have any ability to offer relaxations or clarity on regulation since these entities often operate outside financial sector regulations.

The Draft Framework must to clarify whether the RS will only be open to technology start-ups which will offer financial services themselves OR will partner with a financial sector institution regulated by the RBI (to whom the RBI could provide relaxations, and over whom it has

³ See section 6.5, page 6 of the Draft Framework; see further section 2.1 of this Response.

⁴ Although it is noted that the regulatory framework governing the outsourcing of routine activities does mandate that banks or non-banking financial companies (NBFCs) to embed certain requirements in their underlying contracts to mitigate risk and protect customers when doing so (RBI, 2006; RBI, 2017).

jurisdiction). Alternatively, the Draft Framework should clarify the framework and levers that will be used by the RBI to engage with non-financial sector entities.

The Draft Framework does appear to assume that proposals in the RS will pertain to financial services delivery. For instance, section 6.7 (*Boundary Conditions*) of the Draft Framework which indicates that the RS testing will operate in “*a well-defined space and duration for the proposed financial service to be launched*”. More practically, participants in the RS will need to have licensed or authorised financial sector partners in order to test products or services with consumers in a live environment in the RS.

3.2 The RS must consider boundaries and overlaps across financial sector regulation

Many services and technologies that would be allowed for testing under the RS will have an impact across the financial sector. For instance, wealth management services are one of the innovative services that could be tested in the RS per the Draft Framework. Offering this service will necessarily require the creation of bouquets of financial products—including credit products, insurance and pensions—that lie in the purview of other regulators like Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority of India (IRDA) or the Pension Fund Regulatory and Development Authority (PFRDA). This creates two sets of concerns regarding consistency across the financial sector due to:

- i. an overlap of regulatory mandates between financial sector regulators, and
- ii. the potential for varying or even contradictory requirements in the different proposed regulatory sandboxes in the Indian financial sector.

The RBI’s Draft Framework will need to consider a structured mechanism to seamlessly deal with these overlaps, especially given that other financial sector regulators intend to set up their own sandboxes. The available proposals appear to take different approaches in relation to the jurisdiction of the regulator and the entities allowed to participate in their sandbox.

The PFRDA’s Exposure Draft Report on the potential regulatory sandbox to catalyse the growth of the National Pension System recognises the inter-regulatory issues involved given the nature of technology (PFRDA, 2019). It notes that many FinTech applications span across the domains of multiple regulators, and specifically states that the PFRDA sandbox will only be open to those entities already falling within the remit of PFRDA and also that the PFRDA would not be involved in facilitating approvals from other regulators (see page 41; PFRDA,

2019). Other detailed recommendations on the function and design of the sandbox are also included.

The report of the IRDA's Committee on Regulatory Sandbox in insurance sector in India takes a slightly different approach (IRDAI, 2019). It recommends that registered insurers and insurance intermediaries be eligible for the sandbox, and Fintechs seeking to enter the sandbox show a minimum net worth of Rs 25 lakhs in the previous year or partner with an existing insurer or insurance intermediary to make a joint business proposal (see page 29, IRDAI 2019). It also notes that while it will accept entities that may be under other regulators' purview into the sandbox, it will play no role in facilitating approvals. The report further includes detailed recommendations on the function and design of the IRDA's proposed sandbox.

Reports also indicate that SEBI is mulling the potential for its own regulatory sandbox (Economic Times, 2019).

The RBI's Draft Framework appears to be taking a different stance with regard to its ambit and jurisdiction compared to the PFRDA and IRDA. This create inconsistencies since the relevant technologies are likely to be deployed across the financial sector. More widely, given the detailed recommendations that are evolving from other financial sector regulators, there is potential for duplication, overlaps or contradictions across different regulatory sandboxes. This could give rise to similar Fintechs facing different requirements, depending on the sandbox. It is submitted that the Draft Framework should be evolved to accommodate an inter-regulatory framework within which information will be shared and decisions will be made collectively across financial sector regulators.

3.3 The RS should be mindful of the cross-sectoral effects on non-financial sector regulation in its operation

The Draft Framework appears to allow non-financial sector entities which may not be subject to existing RBI regulation, to participate in the RS (as discussed in section 3.1 above). This would allow tech-based entities to live test technological innovations (such as API services) which can be deployed in other sectors, even outside finance. These entities may also be covered by regulation in allied areas (such as telecommunications or data protection) or other fields in which they deploy their technology (such as health or education). If they are live-

testing their innovations for the first time in the RS, this activity could create adverse effects or other impacts outside the financial sector.

In this situation, there could be an opportunity to build in mechanisms to the RS to flag cross-sectoral effects before sandbox entities begin live-testing. Both the PFRDA and the IRDA's sandbox proposals reflect the acknowledgment that fintech applications can span across multiple regulators including in allied fields such as Telecom (page 41, PFRDA, 2019; page 25, IRDA, 2019). However, they specifically highlight that they will not facilitate approvals from other regulators, if these are required (PFRDA, 2019; IRDA, 2019). While this approach does limit the liability of the regulator, it could also result in uneven development of regulation and further complications at a later date. For instance, situations where an entity is authorised by the RS, but runs into regulatory uncertainty in an allied area (such as telecommunications or data protection) or in other sectors (such as advertising or e-commerce) which prevent it from offering financial services. The RBI could learn from similar lessons in other countries.

- i. The RS could be administered or take input from a cross functional group to help spot and manage some of these regulatory inconsistencies. For example, Malaysian Central Bank, Bank Negara Malaysia (BNM) set up a Financial Technology Enabler Group (FTEG) as a cross-functional group across the BNM to develop policy that support innovations, and create and manage the Malaysian Sandbox (Wechsler, Perlman, & Gurung, The State of regulatory Sandboxes in Developing Countries, 2018).
- ii. It is not uncommon to see cross-sectoral regulatory sandboxes, though their success is often contingent on effective communication and coordination between respective and relevant financial sector regulators, such as in Belgium (European Parliament, 2018). In Mauritius, entities can apply for “Regulatory Sandbox Licenses” available for innovations generally (rather than only in the financial sector) and aimed at targeting gaps where the law is inadequate or non-existent. The entity operating the sandbox (the Economic Development Board in Mauritius) makes decisions on applicants with the input of the relevant regulators who will be part of the Technical Committee for applicants (Wechsler, Perlman, & Gurung, The State of regulatory Sandboxes in Developing Countries, 2018).

The Draft Framework is silent regarding the potential for any cross-sectoral coordination, but including some institutional mechanism to support the consistent development of regulation could help the RBI learn from the lessons emerging in other jurisdictions with sandboxes.

4 The design and processes of the RS must embed mechanisms to enhance transparency in decision-making

The legitimacy and effectiveness of an innovative new regulatory project like the RS will depend on its transparency. The RS evaluation process is inherently discretionary, and could risk becoming arbitrary or ad-hoc in the absence of transparent, principles-based framework accompanied by detailed operational processes to guide decision-making. The Draft Framework acknowledges this risk. Section 4.2 (*Regulatory Sandbox: Risks & Limitations*) of the Draft Framework recognises that “*case-by-case bespoke authorizations and regulatory relaxations*” can require discretionary judgements and recommends that this risk can be addressed by “*handling applications in a transparent manner and following well-defined principles in decision-making*” (page 4 of the Draft Framework).

Although the Draft Framework commits to transparency, the document limits itself to a single high-level provision on the matter. In section 6.8 (*Transparency*), it calls for the RBI to communicate the “*entire RS process including its launch, theme of the cohort, and entry and exit criteria through its official website*”. We submit that this is a welcome but very limited view of incorporating transparency in a regulatory framework with such wide discretionary powers. It must be supported by a detailed transparent, principles-based framework for decision-making by the RS.

4.1 **The RS must base its decision-making on pre-determined, publicly communicated and well-understood principles of financial regulation**

The RS provides an opportunity for the RBI to obtain additional evidence and data before taking a view on regulatory changes or new regulations (as noted in section 3.1 of the Draft Framework). This “*learning by doing*” must **supplement rather than supplant** existing regulatory wisdom on the process that must precede and accompany regulatory change. The governance regime for the RS and future guidelines should incorporate well-established principles of regulatory design as the basis for its regulatory activity. Many of these principles have been articulated in the recommendations of the Financial Sector Legislative Reforms Commission (FSLRC) (Government of India, 2013), including:

- i. **Proportionality:** Any regulatory obligation placed on an entity should be proportionate to the nature, scale and complexity of the risks in the regulated activity being carried out.
- ii. **Institutional neutrality:** The regulator should work to minimise the inconsistencies in the regulatory approach towards regulated activities that are similar in nature or pose similar risks to the fulfilment of regulatory objectives.
- iii. **Enabling competition:** The RS should actively endeavour to not create avoidable barriers for applicants to avail of its services. It should strategically engage with a wide applicant base and ensure it actively promotes competition where it can and that its actions do not adversely affect the competitiveness of the financial ecosystem.

By committing to these principles upfront, the RS will gain the confidence of the applicants, increase their willingness to experiment and build confidence in the wider market.

4.2 **RS is not a substitute for public consultation and other tools necessary for sound regulatory practice**

It is a grave concern that the Draft Framework states that using an RS will reduce the need for stakeholder consultations (see section 3.4 (*Benefits*), page 3 of the Draft Framework). This **should not be** the case, as there is no substitute for coherent consultation to create appropriate and realistic regulation. The RS regime should be used as a tool to foster open and structured communication with stakeholders and complement broader consultation processes rather than supplant them, as the regulator stands much to learn from these dialogues. In fact, global experience shows that a structured route for dialogue is both a precondition and a regulatory objective of successful RS regimes. Formal, transparent, and open dialogue between a regulator

and innovators, where each side learns from the other, is perhaps a key element of regulatory sandboxes and a means for advancing to a regulatory mindset that responds to and reflects the FinTech revolution underway (Jenik & Lauer, 2017). As the RBI contemplates the RS, it must ensure that it consciously assesses the benefit of this innovative method in conjunction with other regulatory tools (rather than to their exclusion).

4.3 The institutional design, structure and resourcing of the Fintech Unit will determine the effectiveness of the RS

The success and credibility of the RS will also be determined in large parts by its institutional design. Global experience on sandboxes show that while they offer benefits, they are complex to set up and costly to run and most regulatory questions raised in connection with sandbox tests can be effectively resolved and potentially more affordably achieved through innovation offices and other tools (UNSGA Fintech Working Group and CCAF, 2019).

It is crucial that the proposed FinTech Unit has the requisite human resource capability required to process the applications, engage in iterative test-designs and constantly evaluate the performance of the applicant as laid out in Section 7 of the Draft Framework. This will require well-staffed, dedicated teams to ensure that the RS has the capacity to meet its objectives in a consultative and accountable manner. It must also be designed in a way that it exposes its decisions to internal supervision and scrutiny, complemented by regular internal and external reporting. Literature on institutional design suggests that the organisational structure is a crucial determinant of regulator's performance (Chugh *et al*, 2018). Some pathways to strengthen regulatory accountability include incorporating supervisory mechanisms which comply with the rule of law and incorporating strong reporting mechanisms (Government of India, 2013).

It must be reiterated that sandboxes are one of many approaches to enable the development of an optimal regulatory stance in a country like India that the RBI should carefully choose between, given the capacity constraints in which we operate.

5 The consumer protection elements of the RS must be stronger to ensure that the costs of innovation are not externalised on Indian consumers.

The Draft Framework emphasises that RS entities must ensure that any obligations towards customers under experimentation are fulfilled or addressed before exiting or discontinuing the

RS. Section 6.9 (*Consumer Protection*) emphasises the need to notify test customers of potential risks, available compensation and to obtain their explicit consent regarding the testing. The Draft Framework repeatedly emphasises that upfront liability for consumer will lie with the RS participant, and that its entry into RS does not in any way limit an entity's liability towards its customers. Unfortunately, despite these high level statement, it is unclear how this liability framework will be embedded in the RS and enforced, in the event of consumer losses due to RS live-testing.

- i. **Limitations of notice and consent:** Globally, regulators have relied on notification and obtain express consent of the consumers regarding their involvement with RS testing. However, the poor effectiveness of consent when it comes to actually improving consumers understanding or protecting them has been well-acknowledged globally (Solove, 2012). Disclosures and notices are therefore poor tools for true consumer protection, and cannot be heavily relied upon as the primary safeguard for Indian consumers who are part of live testing under the RS.
- ii. **The need for redress for consumers being live tested:** Currently, the Draft Framework is silent on the redress mechanisms which are available to the consumer. It is not clear if the Banking Ombudsman services and other institutional mechanisms for raising grievances and seeking redress will be accessible to consumers who engage with products being tested in the RS. Some jurisdictions restrict the access of consumers taking part in RS live testing to mainstream grievance redress mechanisms. For instance, in Singapore, consumers of sandbox services are not allowed to reach out to the financial dispute resolution body (Monetary Authority of Singapore, 2016). Given the higher stakes, where consumers who are part of live-testing may not realise the risks *ex-ante* of engaging in experimental products, it is submitted that the Draft Framework must include have sufficient mechanisms for easy grievance redress with the RS entity and opportunity to raise complaints to the proposed Fintech Unit of the RBI.
- iii. **The importance of the exit plan:** In a sandbox, an exit strategy is a strong complement to the liability framework with respect to protecting consumers who are exposed to a previously untested technology. The Draft Framework acknowledges this, and mentions that all existing obligations to the customers of the RS entity under experimentation must be fulfilled and addressed before such an entity exits the RS (page 8 of the Draft Framework). Especially given the experimental nature of some of these technologies, and the risks and harms they can expose consumers to, every RS applicant should be mandated

to disclose the process and the monetary compensation that it will deploy for consumer redress at the time of application. The entry, evaluation and selection of an RS application should be subject to the quality of monetary provision and other protections for consumers in the applicant's exit strategy, the smoothness of transition for customers and the ability of the applicant to follow through with the plan. Other jurisdictions such as the Monetary Authority of Singapore also use the quality of the proposed exit plan to judge and evaluate applications made to the sandbox (Monetary Authority of Singapore, 2016).

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