FinTech and Jurisdiction

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Overview

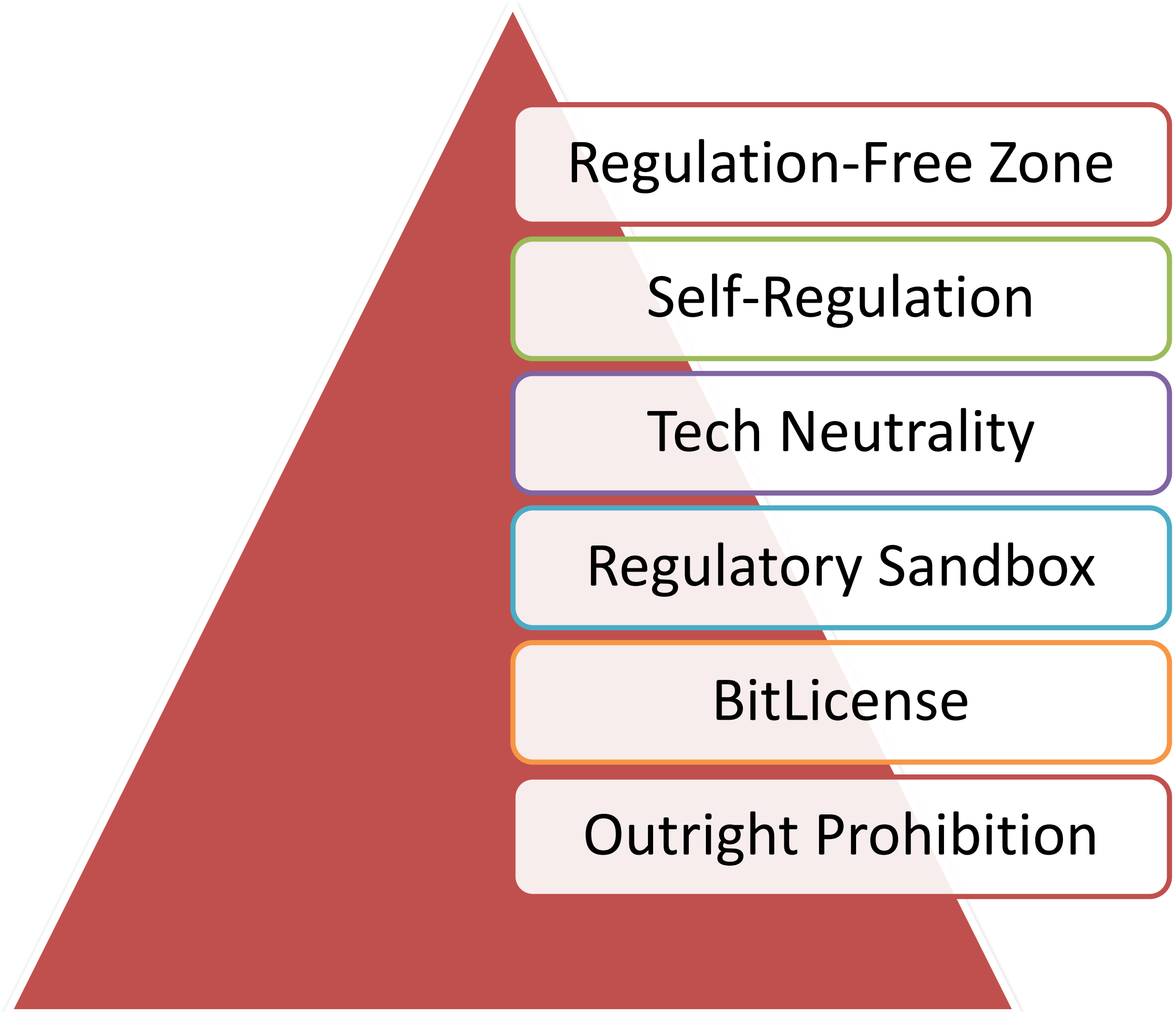
- Why Regulate FinTech at All?
- Strategies of Regulation
- The Jurisdictional Conundrum
- Global Minimum Standards
- Distribution of Supervision

Why Regulate FinTech at All?

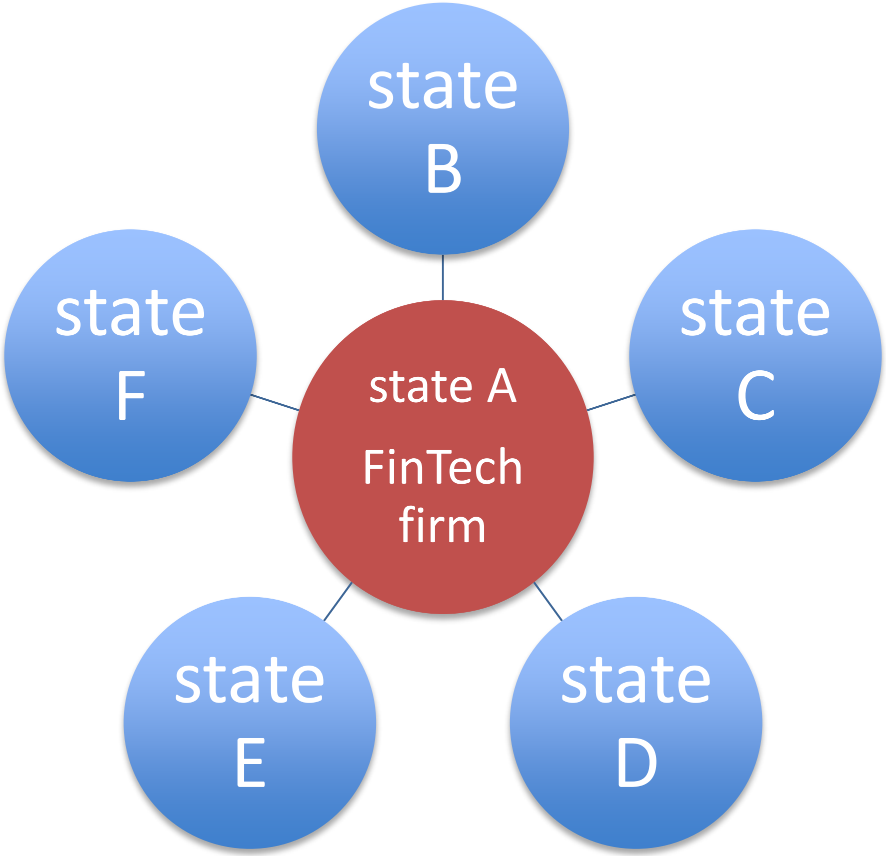
regulatory interests touched upon by FintTech:

- private interests:
  - information asymmetry
  - liquidity and insolvency risk
  - operational risk
  - conflicts of interests
- public interests:
  - systemic risk
  - fighting money laundering
  - preventing tax evasion
  - stopping terrorism financing

Strategies of Regulation



The Regulatory Conundrum



The Regulatory Conundrum

Who *can* regulate FinTech?

- variety of states are touched by the same service
- degree of affectedness is difficult to measure
- **every state has right to regulate under public int'l law**

Who *should* regulate FinTech?

- economies of scale will only be reached where service can be provided in a uniform way
- regulatory divergence may stifle innovation
- **a single set of rules should apply**

The Regulatory Conundrum

Who *will* regulate FinTech?

1. regulatory competition: states will vie against each other to become FinTech hubs
2. regulatory arbitrage and uncertainty: danger of a race to the bottom
3. recipient states: protective and protectionist counter-measures

➢ **danger of a fragmented legal landscape**

Global Minimum Standards

- uniform rules on issues such as
  - money laundering
  - terrorism financing
  - capital requirements
  - bail-in
- advantages:
  - lower regulatory compliance and transaction costs
  - preventing regulatory arbitrage
  - excluding externalities

Global Minimum Standards

competent forum:

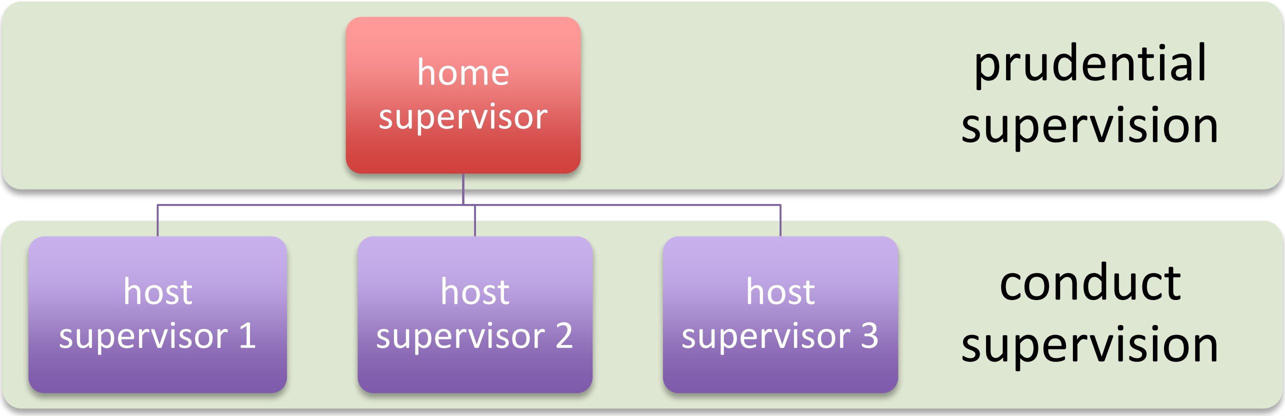
- International Organization for Standardization (ISO)?
- UNCITRAL, UNIDROIT?
- FSB → "**Financial Stability and Innovation Board**"
  - in cooperation w/ standard-setters (BCBS, IOSCO, FATF)
  - set precise global rules that apply directly to FinTech providers in certain areas like AML/CFT ("global rules for global phenomena")
  - leave room for national and local rules in other areas (e.g. on access to financial services and client protection)

Distribution of Supervision

- supervision is likely to remain in the hands of nation-states
- requires international division of labour
- different models can be envisaged

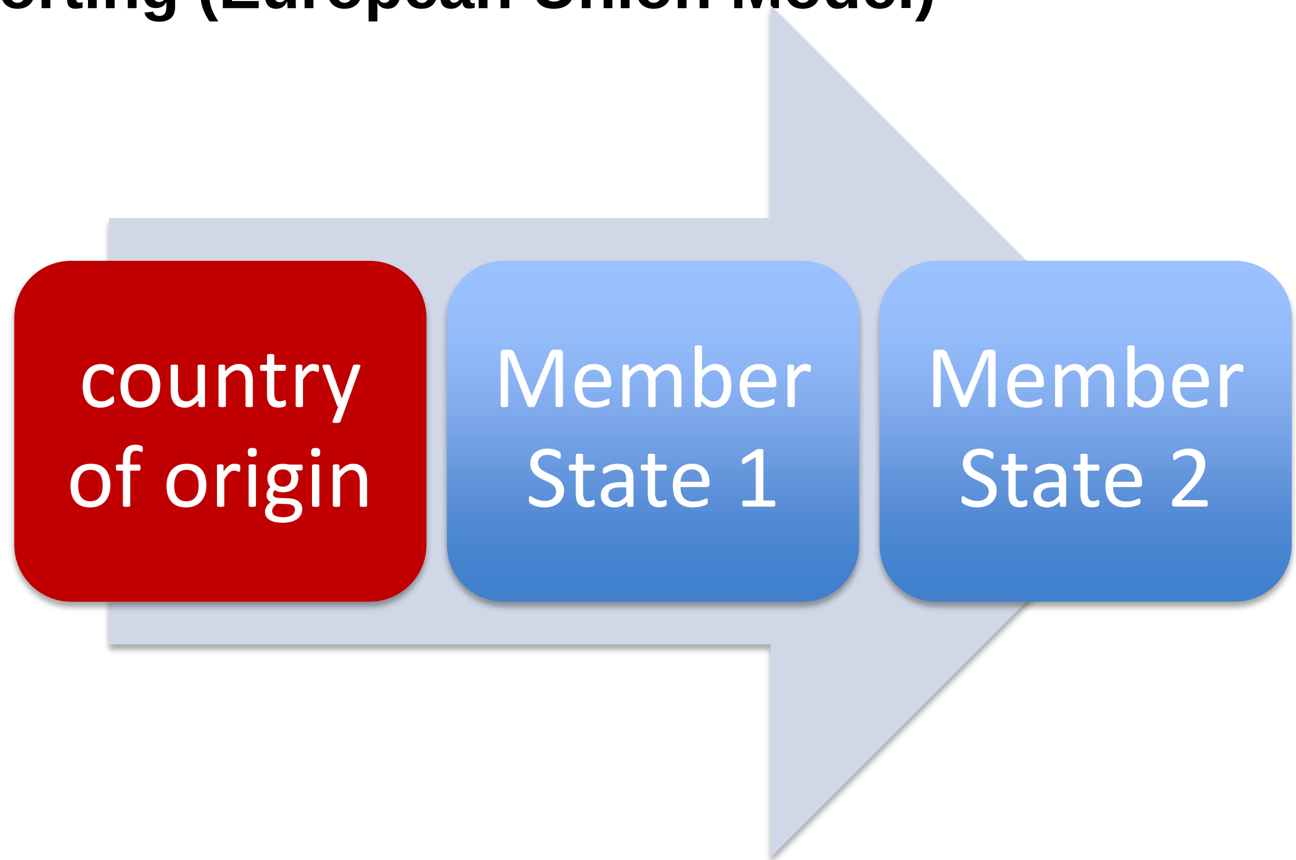
Distribution of Supervision

1. Home-Host Supervision (Basel Concordat Model)



- ➢ problem: no ‘conduct’ in other states

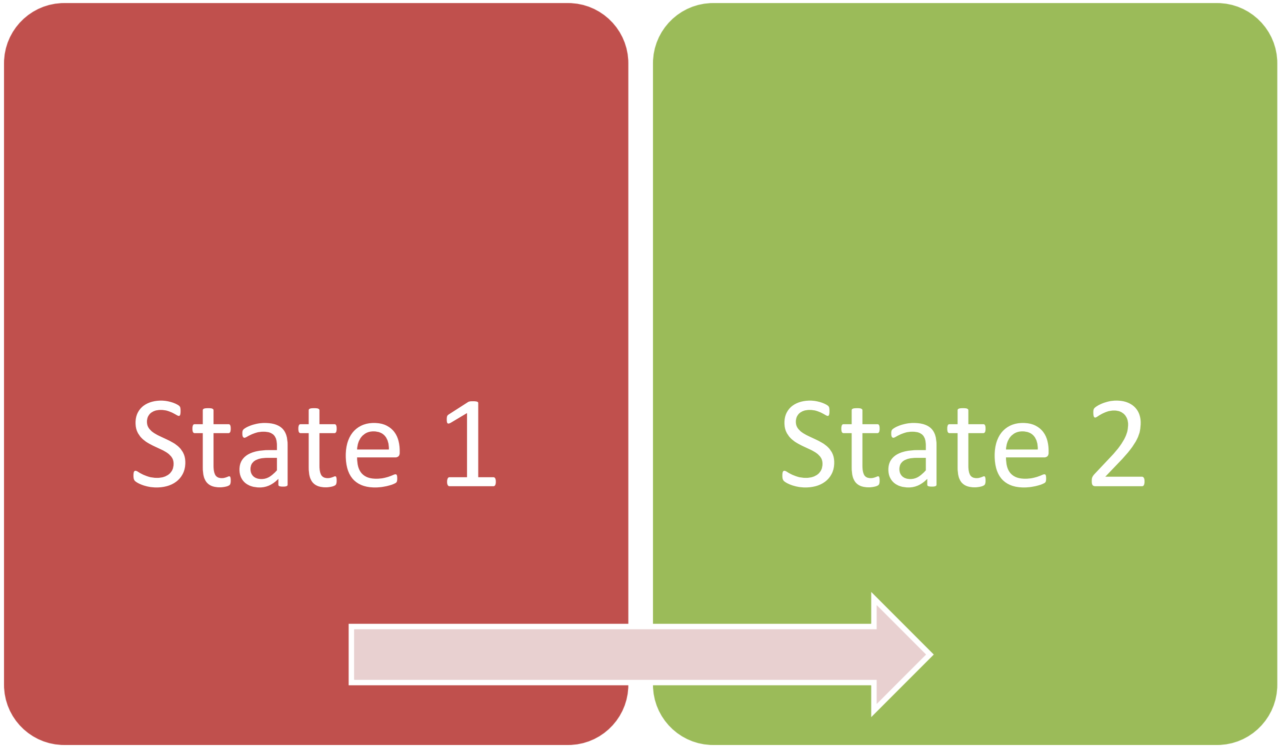
2. Passporting (European Union Model)



- ➢ problem: ‘supervisory race to the bottom’

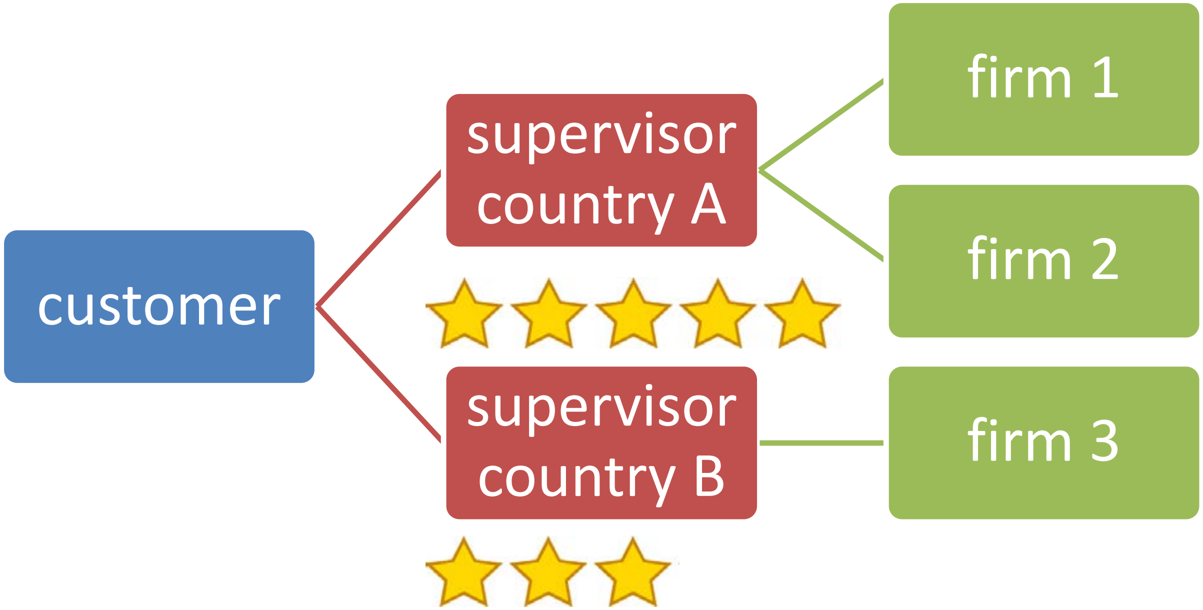
Distribution of Supervision

3. Equivalence or Substituted Compliance Model



- problems: lack of reciprocity, political influence, protectionism

A new model: Competition of supervisors



- supervisors receive a rating
- customer is informed
- choice of firm depends partly on quality of supervisor

Conclusions

1. FinTech firms need to be regulated and supervised
2. Global uniform rules should be drafted for areas such as AML/CFT or capital requirements
3. for all other areas of regulation and for supervision, market mechanisms should apply