

**Appendix 1**

In this Appendix underlining indicates new text and striking through indicates deleted text.



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# The DFSA Rulebook

General Module

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## 2.29 Operating a Crowdfunding Platform

- 2.29.1** (1) In Rule 2.2.2, a Person carries on the activity of Operating a Crowdfunding Platform if the Person operates:
- (a) a Loan Crowdfunding Platform;
  - (b) an Investment Crowdfunding Platform; or
  - (c) a Property Investment Crowdfunding Platform.
- (2) A Person operates a Loan Crowdfunding Platform under (1)(a) if it does both of the following:
- (a) operates an electronic platform that facilitates the bringing together of potential lenders and borrowers who wish to obtain funding for a business or project; and
  - (b) administers a loan agreement that results from operating the electronic platform.
- (3) If the Person referred to in (2) also provides a facility that assists a lender to transfer his rights and obligations under a loan agreement referred to in that paragraph, that activity is also included within operating a Loan Crowdfunding Platform.
- (4) A Person operates an Investment Crowdfunding Platform under (1)(b) if it does both of the following:
- (a) operates an electronic platform that facilitates the bringing together of potential investors and Persons who wish to obtain funding for a business or project (other than the sale of a property), resulting in an investor making an Investment with the Person seeking funding; and
  - (b) administers an Investment that results from operating the electronic platform.

- (5) A Person operates a Property Investment Crowdfunding Platform under (1)(c) if it does both of the following:
- (a) operates an electronic platform that facilitates the bringing together of potential investors and Persons who wish to sell a property, resulting in an investor making an investment in an individual property; and
  - (b) administers an Investment or a beneficial interest in a trust that results from operating the electronic platform.
- (6) If the Person referred to in (4) or (5) also provides a facility that assists an investor to sell an investment referred to in those paragraphs, that activity is also included within operating a Crowdfunding Platform under the relevant paragraph.
- (7) In this Rule:
- (a) “administer a loan agreement” in (2) means:
    - (i) provide information or perform other duties under the loan agreement on behalf of the borrower or lender;
    - (ii) take steps to obtain the repayment of the loan; or
    - (iii) exercise rights or perform obligations under the loan agreement on behalf of the borrower or lender;
  - (b) “administer an Investment” in (4) means:
    - (i) provide information or perform other duties relating to the Investment on behalf of the Issuer or investor;
    - (ii) take steps to obtain the payment of any amount payable by the Issuer to an investor; or
    - (iii) exercise rights or perform obligations relating to the Investment on behalf of the Issuer or investor;
  - (c) “administer an Investment or a beneficial interest in a trust” in (5) means:

- (i) provide information or perform other duties relating to the Investment or trust on behalf of the investor;
  - (ii) take steps to obtain the payment of any amount payable to an investor;
  - (iii) exercise rights or perform obligations relating to the Investment or trust on behalf of an investor;
  - (iv) arrange for any service to be provided relating to the property;
  - (v) provide any service related to a Special Purpose Vehicle that holds title to the property; or
  - (vi) arrange for the sale of the property at the end of the investment period;
- (d) “electronic platform” means a website or other form of electronic media;
- (e) “property” means land or buildings and includes a part of a building, such as an apartment.
- (8) A Person (A) administers a loan agreement or an Investment or a beneficial interest in a trust for the purposes of this Rule if A performs a function itself or through another Person who has been appointed by A, acts under an arrangement with A or acts at A’s direction.
- (9) A Person invests in a property for the purposes of this Rule if the Person has an interest in the property whether legal or beneficial, direct or indirect, including if the Person has an Investment issued by a Special Purpose Vehicle that has an interest in the property.

**Guidance**

1. Operating a Crowdfunding Platform under Rule 2.29.1 requires a Person not only to operate an electronic platform that brings together lenders and borrowers, investors and issuers or investors and sellers (collectively referred to as ‘users’), but also to administer a resulting loan agreement or Investment. The administration may be carried out by the platform

operator itself or by another person acting under an arrangement with, or at the direction of, the platform operator.

2. The activity in Rule 2.29.1(2)(a), (4)(a), and (5)(a) only covers electronic systems such as online portals and does not include, for example, meetings to facilitate a loan.
3. A Crowdfunding Operator may in some cases also provide a facility that assists lenders or investors using the platform to transfer their rights and obligations under a loan agreement to another lender or to sell their Investment to another investor. If a Crowdfunding Operator provides such a facility, that activity will also fall within the definition of Operating a Crowdfunding Platform (see Rule 2.29.1(3) and (6)).
4. Operating a Loan Crowdfunding Platform will apply to a number of types of crowdfunding services such as ‘peer to peer’ lending, ‘peer to business’ lending and ‘business to business’ lending. However, it should be noted that COB Rule 11.3.5 requires a borrower to be a Body Corporate.
5. Investment Crowdfunding differs from Loan Crowdfunding in that, instead of the platform facilitating a loan, it facilitates the issue of an investment to an investor. Under Rule 2.2.10F, the type of Investment that can be facilitated is restricted to Investments such as Shares, Certificates, Debentures or Sukuk; facilitating other more complex Investments such as Derivatives or Structured Products is not permitted.
6. Property Investment Crowdfunding involves multiple investors investing in an individual apartment, house or building that has a single title, using a Crowdfunding Platform. Typically, a Special Purpose Vehicle (SPV) will hold title to the property and the investors will have an interest in that SPV, for example, a Share or Certificate issued by the SPV.
7. Other types of crowdfunding such as ‘reward crowdfunding’ (i.e. where a financial contribution is made in anticipation of a benefit in existing or future goods or services) and ‘donation crowdfunding’ (i.e. where contributions are made in support of a social cause) will not usually constitute an activity referred to in Rule 2.29.1 unless a loan or Investment is involved.
8. A Crowdfunding Operator will need an endorsement on its Licence to deal with Retail Clients if it carries on its activities with a user that is a Retail Client (see Rule 2.2.8). It will also need an endorsement on its Licence if it holds or controls Client Assets (see Rule 2.2.10A).
9. A Crowdfunding Operator must be a Body Corporate incorporated under the DIFC Companies Law (see Rule 2.2.10D).

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## 7.4 Licensed Functions and Authorised individuals

- 7.4.1** (1) Pursuant to Article 43 of the Regulatory Law 2004, the functions specified in Rules 7.4.2 to 7.4.9 are Licensed Functions.
- (2) A Licensed Function shall not include a function performed by a registered insolvency practitioner (subject to the restrictions defined within Article ~~88~~ 123 of the Insolvency Law ~~2009~~2019) if the practitioner is:
- (a) acting as a nominee in relation to a company voluntary arrangement within the meaning of Article ~~87~~ of the Insolvency Law ~~2009~~2019;
  - (b) appointed as a receiver or administrative receiver within the meaning of Article ~~444~~2 of the Insolvency Law ~~2009~~2019;
  - (c) appointed as a liquidator in relation to a members' voluntary winding up within the meaning of Article ~~326~~1 of the Insolvency Law ~~2009~~2019;
  - (d) appointed as a liquidator in relation to a creditors' voluntary winding up within the meaning of Article ~~326~~8 of the Insolvency Law ~~2009~~2019; or
  - (e) appointed as a liquidator or provisional liquidator in relation to a compulsory winding up within the meanings of Article ~~589~~0 and ~~599~~1 of the Insolvency Law ~~2009~~2019.
- (3) A Licensed Function shall not include a function performed by an individual appointed to act as manager of the business of an Authorised Firm or Authorised Market Institution as directed by the DFSA under Article 88 of the Regulatory Law 2004.

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### Regulatory impact

- 11.10.7** An Authorised Person must advise the DFSA immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:
- (a) the Authorised Person's failure to satisfy the fit and proper requirements;
  - (b) any matter which could have a significant adverse effect on the Authorised Person's reputation;
  - (c) any matter in relation to the Authorised Person which could result in serious adverse financial consequences to the financial system or to other firms;
  - (d) a significant breach of a Rule by the Authorised Person or any of its Employees;
  - (e) a breach by the Authorised Person or any of its Employees of any requirement imposed by any applicable law by in respect of the Authorised Person or any of its Employees;
  - (f) subject to Rule 11.10.8, any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the Authorised Person's risk profile or resources;
  - (g) any significant failure in the Authorised Person's systems or controls, including a failure reported to the Authorised Person by the firm's auditor;
  - (h) any action that would result in a material change in the capital adequacy or solvency of the Authorised Firm; or
  - (i) non-compliance with Rules due to an emergency outside the Authorised Person's control and the steps being taken by the Authorised Person.