

**Appendix 1**

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

Note: some text that is not being amended is included for reference only



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# The DFSA Rulebook

General Module

**(GEN)**

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## 2 FINANCIAL SERVICES

### 2.2 Financial Service activities

**2.2.1** An activity constitutes a Financial Service under the Regulatory Law and these Rules where:

- (a) it is an activity specified in Rule 2.2.2; and
- (b) such activity is carried on by way of business in the manner described in section 2.3.

**2.2.2** The following activities are specified for the purposes of Rule 2.2.1:

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- (z) Operating a Crowdfunding Platform.

#### Permitted Financial Services for Authorised Firms

**2.2.10E** A Crowdfunding Operator must not carry on the following activities:

- (a) Managing Assets;
- (b) Advising on Financial Products;
- (c) Managing a Collective Investment Fund; or
- (d) Advising on Credit.

*[The above text is not being amended but is included for reference]*

**2.2.10F** A Crowdfunding Operator must not Operate a Crowdfunding Platform that facilitates a Person investing in the following kinds of Investments through the platform:

- (a) Warrants, ~~Certificates~~, Units or Structured Products; or
- (b) Derivatives.

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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) ~~Operates~~ a Loan Crowdfunding Platform; or
- (b) ~~Operates~~ an Investment Crowdfunding Platform; or
- (c) a Property Investment Crowdfunding Platform.

(2) A Person ~~o~~Operates a Loan Crowdfunding Platform under (1)(a) if it does both of the following:

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- (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 oOperating a Loan Crowdfunding Platform.
- (4) A Person oOperates 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 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 ~~that~~ those paragraphs, that activity is also included within oOperating an ~~Investment~~ 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;
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- (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” in (5) means:
    - (i) provide information or perform other duties relating to the Investment 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 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;
  - (ed) “electronic platform” means a website or other form of electronic media;
  - (e) “off-plan property” means a property that is planned but has not been built or, if building has started, has not been completed;
  - (f) “property” means land or buildings and includes a part of a building, such as an apartment, and off-plan property.
- (87) A Person (A) administers a loan agreement or an Investment 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 holds title to 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, ~~or~~ 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 (56)).

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; ~~and~~ facilitating other more complex Investments such as Derivatives or Structured Products is not permitted.
7. 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.
86. 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.
97. A Crowdfunding Operator will need an endorsement on its Licence to deal with Retail Clients if it carries on its activities with a user ~~borrower or lender or an Issuer or investor~~ 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).
108. A Crowdfunding Operator must be a Body Corporate incorporated under the DIFC Companies Law (see Rule 2.2.10D).

## Exclusions

- 2.29.2** A Person does not carry on the activity referred to in Rule 2.29.1 if the Person who carries on those activities is itself the sole lender or the sole investor on the electronic platform.

## Guidance

The activity in Rule 2.29.1 does not cover an electronic platform where the operator itself is the sole lender providing the loans e.g. if it is a credit provider and provides an electronic facility for use by its clients. Similarly, it does not apply to a platform where the operator is the sole investor. However, if the operator itself lends or invests, it is likely to be carrying on the Financial Service of Providing Credit or Dealing in Investments as Principal, and will require a separate authorisation for that activity.