

CONSULTATION PAPER NO.122



MISCELLANEOUS CHANGES

13 DECEMBER 2018

PREFACE

Why are we issuing this Consultation Paper (CP)?

This Consultation Paper seeks public comment on the DFSA's proposals to make a variety of amendments to the DFSA's policy framework, as expressed through its Rules. The DFSA has collected a small number of miscellaneous amendments to the modules of the DFSA Rulebook; each item in this paper is a discrete amendment.

Who should read this CP?

The proposals in this Paper should generally be of interest to Authorised Firms, to applicants and to their advisers. Items 1 to 3 will be of particular interest to Crowdfunding Operators.

Terminology

In this CP, defined terms are identified by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

Please email any comments to consultation@dfsa.ae using the table in Appendix 5 and refer to the CP number in the subject line. You may identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. The deadline for providing comments is **13 January 2019**. Once we receive comments, we shall consider whether any changes to these proposals are required and then seek approval from the DFSA Board for the finalised proposals. Once the proposals are approved, we shall issue a notice on our website to this effect.

Structure of this CP

This Consultation Paper contains:

- (a) Item 1: Restrictions on the use of credit cards for Crowdfunding Platforms;
- (b) Item 2: Business Cessation Plans for Crowdfunding Platforms;
- (c) Item 3: Disclosure requirements for Crowdfunding Platforms;
- (d) Item 4: EPRS reporting;
- (e) Item 5: Continuing Professional Development;
- (f) Item 6: Alternative Investments Funds under AIFMD;
- (g) Appendix 1: draft amendments to the COB Module;
- (h) Appendix 2: draft amendments to the PIB Module;
- (i) Appendix 3: draft amendments to the GEN Module;
- (j) Appendix 4: draft amendments to the Recognised Jurisdiction Notice; and
- (k) Appendix 5: template for providing comments on this Consultation Paper.

SPECIFIC ISSUES

1. Restrictions on the use of credit cards for Crowdfunding Platforms

Please see proposed change to COB 11.3.20 in Appendix 1.

1. The DFSA is concerned about Retail Clients being able to use forms of credit/debt financing to fund their crowdfunding accounts and the potential exposure for these types of clients.
2. For example, if a borrower fails to repay, or if the start-up business fails to produce any intended return, this can result in a Retail Client having a double exposure. They may lose their loan or Investment while still being subject to a debt obligation (both the principal and interest) for the financing acquired to fund that loan or Investment.
3. We propose to prohibit all Crowdfunding Operators from letting Retail Clients fund their account using a credit card. Debit cards will be permissible, provided platform operators have in place systems and controls to distinguish debit cards from credit cards.¹

Question 1

Do you have any comments on, or concerns related to, the proposed restriction on the use of credit cards on Crowdfunding Platforms? If so, what are they and how should they be addressed?

2. Business Cessation Plans for Crowdfunding Platforms

Please see proposed change to COB 11.3.19 in Appendix 1.

4. Part of the framework for loan and investment crowdfunding is a requirement for a Crowdfunding Operator to develop a Business Cessation Plan (the Plan). In this Plan, the operator must set out certain arrangements that would need to be activated if the platform ceased to carry out its regulated activity and went into wind down.²
5. In practice, however, we have observed that more detail and information are needed in these Plans if they are to be adequate to deal with a wind down situation. We believe that the harm to the lenders, or Investors, in the event a Crowdfunding Platform ceases to operate could be considerable if an effective Plan is not in place.
6. For example, there is a risk that a lender will not receive some or all of the repayment of the loans they made through the platform and that they might have to obtain payments directly from the borrower themselves. As individual loan agreements typically only represent small amounts of the total amount borrowed, it may not be economically viable for a lender to enforce this right.

¹ This proposal is in line with the supervisory position we have taken in respect of Retail OTC derivatives, which can be found on the [DFSA's website](#). It is also consistent with the proposal in the DFSA Consultation Paper on Property Crowdfunding, which can also be found on the [DFSA's website](#).

² See COB 11.3.18.

7. To address this, we propose to add further Guidance to COB 11.3.19 to set out what we expect a Plan to cover. This includes the Plan setting out:
 - a. an overview of the business activities, including a Crowdfunding Platform's day to day operations, and how it administers the loan agreements or Investments;
 - b. the critical functions of the Crowdfunding Platform, such as critical premises, critical staff and critical IT functions;
 - c. what events may trigger a platform to go into wind down, such as a cyber-attack or a data breach – we want Crowdfunding Platforms to be specific on these trigger events;
 - d. what critical functions are needed to continue to operate so that an orderly wind down of the Crowdfunding Platform can be achieved; and
 - e. how the Crowdfunding Platform will communicate with its clients, business partners or creditors, for example, to explain what will happen during the wind down period.
8. We have also proposed that this Plan should be reviewed at least annually, and updated as and when any changes are made to business model or the risks to which the Platform is exposed.
9. Lastly, we have suggested (in Guidance) that Crowdfunding Platforms consider obtaining professional advice on the adequacy of the arrangements in the Plan. Such advice could come at a high cost, but we believe the cost to lenders and investors (and the DFSA's and DIFC's reputation) would be higher if the platform fails and there are no appropriate arrangements in place to administer the loans or Investments.

Question 2

Do you have any comments on, or concerns related to, the proposed changes relating to Business Cessation Plans? If so, what are they and how should they be addressed?

3. Disclosure requirements for Crowdfunding Platforms

Please see proposed changes to COB 11.3.7(d) and (e) and 11.3.7A in Appendix 1.

Valuations

10. Currently, Crowdfunding Operators are required to obtain (COB 11.3.6(g)) and disclose the valuation of the borrower's or Issuer's business (COB 11.3.7(e)).

11. We have had feedback that such a requirement is inappropriate for loan Crowdfunding Platforms and is not information a lender would need, given the limited duration of the loan during which the principal and interest is repaid. This is in comparison to equity crowdfunding, where the disclosure of the valuation of a business is essential because they are raising money in exchange for equity in that business.
12. On this basis, we are proposing to remove this requirement for loan Crowdfunding Platforms.

Financial Statements

13. The crowdfunding regime requires Crowdfunding Operators to obtain (COB 11.3.6(d)) and disclose the most recent financial statements (if any) of the borrower or Issuer alongside a warning that the operator gives no assurances about their accuracy (COB 11.3.7(d)).
14. We have received feedback that this requirement is not in line with current market practices in the UAE, where businesses are not required to publish their financial statements – with the exception of publicly listed companies. Crowdfunding Operators have also argued that a requirement to disclose the financial statements of a borrower on loan Crowdfunding Platforms would expose those businesses to certain risks, such as having their books open to their competitors or other individuals registering on the platform for the sole purpose of obtaining that information.
15. To address this, we are proposing that a Crowdfunding Operator may, as an alternative to disclosing financial statements, disclose (as a minimum) the following financial ratios:
 - a. *Current ratio* – measures the ability of a business to cover its short-term liabilities with its current assets;
 - b. *Quick asset* – measures the level of the most liquid assets in a business available to cover current liabilities;
 - c. *Debt* – measures the ability of a business to repay their long-term debt;
 - d. *Debt to equity* – this compares a business's total liabilities to its total shareholders' equity;
 - e. *Return on assets* - shows the percentage of profit a business earns in relation to its overall resources;
 - f. *Profit margin* – a profitability ratio that measures the amount of net income generated by comparing the net income and net

- sales of a company, and
- g. *Operating cash flow* – measures the business’s ability to generate cash, which is essential for debt servicing.
16. We are also proposing that Crowdfunding Operators must:
- a. disclose the ratios in a clear and easily understandable way – allowing for comparisons;
 - b. explain what the financial ratios mean and how they have been calculated;
 - c. state if the information on which the ratios is based has been audited, and
 - d. ensure they cover at least two fiscal years or, if the business has been operating only for a shorter period, that period.
17. The DFSA will closely monitor the use of ratios, and will seek feedback from lenders on how useful they are in facilitating well-informed lending decisions.

Question 3

Do you have any comments on:

- a) the financial ratios proposed and their usefulness? Are there additional ratios that have not been listed that could assist lenders in making informed lending decisions?
- b) whether there should be any independent third party verification relating to the accuracy of the ratios (for example, an auditor)? Alternatively, should the Platform Operator, or the Borrower, take responsibility for the accuracy of the ratios provided?

4. Update to EPRS forms

Please see proposed changes to PIB A2.4.1 in Appendix 2.

18. The DFSA is proposing to make changes to Table 1 set out in the Prudential - Investment, Insurance Intermediation and Banking Business Module (PIB) A2.4.1 and to the forms listed there. Table 1 forms part of the PIB Rules in line with PIB 2.3.7(1).
19. The proposed changes include the introduction of new forms, amendments to the existing ones, and withdrawal of some forms, which are unused, obsolete or now redundant, as their content has been integrated in other forms. Where relevant, the forms have been renumbered.

20. The proposed changes are made for a number of reasons. Some of them reflect the recent amendments made to the PIB Rulebook (see CP114), for example, in the areas of the enhanced liquidity monitoring tools (i.e. *Forms B210 - Liquidity and B250 – Funding Concentration*), the NSFR (*Form B230 – new form*) and the MMR (*Form B210 – amended form*). Others cover changes to regulatory capital stemming from the introduction of the new framework and buffers for systemically important institutions (SIBs) under CP113 (e.g. *Forms B110 – Capital Ratios and B120 – Capital Resources*), in line with the standards of the Basel Committee on Banking Supervision.
21. A number of amendments result from the changes to the IFRS standards, in particular IFRS 9, which DFSA Authorised Firms are obliged to adopt (e.g. *Forms B10A, B10B, B10C, B20A, B20B, B20C – Balance Sheet, B40A, B40B, B50A, B50B – Income Statement, B320 – Arrears and Provisions, B330 – Forborne Exposures, and B380 - Investment Fair Value*).
22. Some changes are also introduced to improve the DFSA's monitoring of firms' compliance with the prohibition set out in Article 4 of the UAE Federal Law no. 8 of 2004 (e.g. *Form B350 – Trade Finance Activity*).
23. Lastly, some of the proposed changes are made to simplify and clarify the reporting requirements (e.g. *Forms B340 – Credit Activity, and B370 – Investment Activity*) and to eliminate obsolete and redundant data requests.
24. The revised DFSA Sourcebook 'Prudential Returns Module', which contains all the revised forms can be accessed under [this link](#).
25. Authorised Firms would be expected to use the updated forms for the Q1 2019 reporting period.

Question 4

Do you have any comments on, or concerns related to, the proposed changes for EPRS forms? If so, what are they and how should they be addressed?

5. Demonstrating competence and expertise

Please see proposed changes to

26. A number of requirements in the DFSA's regime set out the need for an Authorised Firm to have staff that are competent to carry out their roles³. However, in these various provisions, we have not set out

³ For example in GEN 4.2.3, 5.3.18 and 5.3.19.

**GEN 5.3.19A in
Appendix 3.**

what we mean by, for example, for an employee to be “competent and capable of performing the functions”⁴. While these high-level provisions provide a greater degree of flexibility for regulated firms, they do not necessarily provide a high level of certainty as to what levels of competence are needed by their employees to carry out their functions effectively and in accordance with the applicable requirements.

27. It is clear that better regulatory outcomes, and consumer outcomes, are more likely to be achieved if Authorised Firms have expert, well-qualified, competent staff, who act with professionalism and with integrity.
28. A number of other jurisdictions (e.g., USA and Hong Kong) have explicit qualification requirements in place for employees who undertake certain roles. These are usually roles that are either client-facing or part of the control infrastructure of the firm. Some go further (e.g. UK) and have an overall framework for training and competence for certain employees, which also includes ongoing professional development requirements. For example, the Financial Conduct Authority (FCA) requires retail investment advisers to carry out at least 35 hours of Continuing Professional Development (CPD) activity each year, of which at least 21 hours must be structured activity.
29. Several regulators in the region, including the Securities and Commodities Authority in the UAE, require qualifications for certain roles and have CPD requirements in place.
30. In the past, when the DFSA has considered setting explicit qualification requirements, we have decided not to do so, due to the:
 - a. potential cost to Authorised Firms of such a change; and
 - b. the fact that businesses come to the DIFC from many different jurisdictions, which may have their own qualification requirements, and we should be willing to accept or recognise what people have done in other jurisdictions.
31. However, there have been a number of instances in recent times where the competence of certain employees in Authorised Firms has been called into question. These include:
 - a. mis-selling following inappropriate classification of clients as Professional Clients;
 - b. a lack of qualified candidates to fill the role of Compliance

⁴ GEN 5.3.19(1)(b).

Officer (CO) and/or Money Laundering Reporting Officer (MLRO) in Authorised Firms; and

- c. staff misrepresenting what an Authorised Firm is allowed to do from its DIFC premises.
32. We believe that, taking into account the above issues, it is time to look into this issue again. We recognise that further work needs to be undertaken before we could consider introducing any explicit qualification requirements. Some of this will be done as part of the planned project to look at the role of the CO, and whether our current approach is the best way to assign compliance responsibility within a firm.
 33. However, as an intermediate measure, the DFSA thinks it is appropriate to take some steps in the area of setting competence requirements. If we recognise that staff of Authorised Firms may already have qualifications from other jurisdictions, we would focus on how those staff maintain their competence and ensure their professional understanding of relevant matters is up-to-date.
 34. Many established professions, such as accountants, doctors and lawyers, have to undertake a specified amount of CPD activity each year. The relevant professional body usually specifies the amount of CPD activity. A distinction is usually made between structured CPD⁵ and unstructured CPD.⁶
 35. On this basis, we propose to introduce a CPD requirement for:
 - a. SEOs;
 - b. COs;
 - c. MLROs; and
 - d. all client-facing staff.
 36. We are proposing, initially, a CPD requirement of 15 hours structured activity per year. This equates to 2 days of structured learning activity per person per year, which is not excessive. Many Authorised Firms will already have in place arrangements for their staff to carry out CPD, although they may not use the same label. Equally, many staff will – as noted above – have qualifications from

⁵ UK FCA Handbook TC 2.1.20G states “Examples of structured continuing professional development activities include participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning which require a contribution of thirty minutes or more.”

⁶ UK FCA Handbook TC 2.1.21G states “Examples of unstructured continuing professional development activities include: (1) conducting research relevant to the individual’s role; (2) reading industry or other relevant material; (3) participating in professional development coaching or mentoring sessions.”

other jurisdictions that require them to carry out CPD. Overall, we do not think this is a particularly burdensome requirement for firms.

37. We also propose that the 'CPD year' should be different to the calendar year, as we have previously had feedback from firms that basing too many requirements around the calendar year causes difficulties. We would welcome feedback on this issue.

Question 5

Do you have any comments on, or concerns related to, the proposed competence requirements? If so, what are they and how should they be addressed?

6. Alternative Investment Fund Managers under AIFMD

Please see proposed changes to the Recognised Jurisdiction Notice in Appendix 4.

38. The DFSA has received and granted a number of waiver and modification applications to recognise certain Alternative Investment Funds (AIFs). These are AIFs established in a European Union Member State, which has implemented the Alternative Investment Fund Manager Directive (AIFMD). The AIF is managed by an authorised Alternative Investment Fund Manager (AIFM) in compliance with the requirements in the AIFMD, which are substantially similar to the DFSA requirements that apply to Fund Managers.
39. In order to make this process more streamlined, we are proposing to amend the Recognised Jurisdictions Notice to include any AIF established in a European Union Member State, which has implemented the AIFMD, where the AIF is managed by an authorised AIFM in compliance with the requirements in AIFMD.

Question 6

Do you have any comments on, or concerns related to, the proposed amendments to the Recognised Jurisdiction Notice? If so, what are they and how should they be addressed?

Appendix 5: Table of Comments

Name of commentator:		
Name of entity (if applicable)		
Is your response confidential?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If your response to the previous question is Yes, please state your reasons for such a request:		

Notes:

- The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case. You must also provide an explanation of why you wish your comments be kept confidential.
- Your answers may require explanations. Please include those in the second column.
- If you do not wish to comment on any issue, please select the “no comments” box.

Ref.	Response	Comments on proposal
Q1:	Do you have any comments on, or concerns related to, the proposed restriction on the use of credit cards on Crowdfunding Platforms? If so, what are they and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text. <input type="checkbox"/> No comments
	<input type="checkbox"/> No	
Q2:	Do you have any comments on, or concerns related to, the proposed changes relating to Business Cessation Plans? If so, what are they and how should they be addressed?	
	<input type="checkbox"/> Yes	Click here to enter text. <input type="checkbox"/> No comments
	<input type="checkbox"/> No	
Q3:	Do you have any comments on:	
	a) the financial ratios proposed and their usefulness? Are there additional ratios that have not been listed that could assist lenders in making informed lending decisions?	

Ref.	Response	Comments on proposal	
	b) whether there should be any independent third party verification relating to the accuracy of the ratios (for example, an auditor)? Alternatively, should the Platform Operator, or the Borrower, take responsibility for the accuracy of the ratios provided?		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
Q4:	Do you have any comments on, or concerns related to, the proposed changes for EPRS forms? If so, what are they and how should they be addressed?		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
Q5:	Do you have any comments on, or concerns related to, the proposed competence requirements? If so, what are they and how should they be addressed?		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
Q6:	Do you have any comments on, or concerns related to, the proposed amendments to the Recognised Jurisdiction Notice? If so, what are they and how should they be addressed?		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		