

**Appendix 2**

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



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# The DFSA Rulebook

Conduct of Business Module

**(COB)**

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## 11 CROWDFUNDING

### 11.1 Overview

#### Guidance

1. This chapter applies to an Authorised Firm that Operates a Crowdfunding Platform (an ‘operator’).
2. A Crowdfunding Platform may be:
  - (a) a Loan Crowdfunding Platform; ~~or~~
  - (b) an Investment Crowdfunding Platform; ~~or~~
  - (c) a Property Investment Crowdfunding Platform. The key distinction is whether the Person providing funding on the platform enters into a loan agreement with the Person to whom it is providing funding or purchases an Investment (such as a Share, Debenture or Sukuk) issued by that Person.
3. The terminology used in this chapter varies according to the type of Crowdfunding:
  - (a) ‘borrower’, ‘lender’ and ‘loan’ for Loan Crowdfunding; ~~and~~
  - (b) ‘Issuer’, ‘investor’ and ‘Investment’ for Investment Crowdfunding; ~~and~~
  - (c) ‘seller’, ‘investor’ and ‘Investment’ for Property Investment Crowdfunding.

In this chapter, lenders, investors, borrowers, Issuers and sellers are collectively referred to as ‘users’ of a Crowdfunding Platform.
4. In this chapter, sections 1, 2 and 3 apply to all Crowdfunding Platforms (unless specified otherwise); section 4 sets out additional requirements for Loan Crowdfunding; ~~and~~ section 5 sets out additional requirements for Investment Crowdfunding; ~~and~~ section 6 sets out additional requirements for Property Investment Crowdfunding.
5. In addition to the Rules in this section, an operator is required to comply with other parts of COB such as chapters 1, 2 and 3 and, if it holds or controls Client Assets, sections 6.11 to 6.14.
6. Both users of a Crowdfunding Platform who are providing funding and users who are seeking funding borrowers and lenders (in the case of Loan Crowdfunding) and Issuers and investors (in the case of Investment Crowdfunding) will be Clients of the operator. COB requirements will apply in relation to both types of Clients. Under section 3.3 and App 2, additional terms are required to be included in Client Agreements between a Crowdfunding Operator and its Clients (see Rules A2.1.5 and A2.1.6).
7. An operator will need to comply with relevant AML requirements, such as carrying out customer due diligence on Clients ~~who are borrowers or lenders or Issuers or investors.~~

8. In the case of Investment Crowdfunding and Property Investment Crowdfunding, the issue of Investments may result in the application of requirements under the Markets Law such as Market Abuse provisions or, if an offer is not an Exempt Offer, Prospectus requirements.

## **11.2 Application and interpretation**

### **Application**

- 11.2.1** This chapter applies to an Authorised Firm with respect to the Operation of a Crowdfunding Platform.

### **Interpretation**

- 11.2.2** In this chapter:

- (a) “borrower” means a Person that has borrowed or is seeking to borrow money using a Loan Crowdfunding Platform;
- (b) “commitment period” means the period specified by the operator during which lenders may commit to lending money to a particular borrower or investors may commit to investing with a particular Issuer or in a particular property;
- (c) “cooling-off period”, for Investment Crowdfunding or Property Investment Crowdfunding, means the period referred to in Rule 11.5.2 or 11.6.5 when an investor may withdraw his commitment to invest ~~with an Issuer~~;
- (d) “investor” means an investor or potential investor using an Investment Crowdfunding Platform or a Property Investment Crowdfunding Platform;
- (e) “lender” means a Person who:
  - (i) lends money under a loan agreement; or
  - (ii) by assignment has assumed the rights and obligations of a Person who has lent money under a loan agreement;
- (f) “loan agreement” means a loan agreement between a borrower and a lender referred to in Rule 11.4.1;
- (g) “operator” means a Crowdfunding Operator;
- (h) “property” means land or buildings and includes a part of a building, such as an apartment;
- ~~(i)(h)~~ “platform” means the website or other electronic media used to provide the service;
- (i) “seller” means a person selling a property using a Property Investment Crowdfunding Platform;
- ~~(k)(i)~~ “service” means Operating a Crowdfunding Platform; ~~and~~

- (l)(j) “transfer”, in relation to a loan agreement, means the assignment by the lender of his rights and obligations under the agreement to another Person; and
- (m) “user” means a borrower, Issuer, seller, lender or investor who uses a Crowdfunding Platform.

## 11.3 Requirements for Crowdfunding Platforms

### Crowdfunding risk disclosure

- 11.3.1 (1) An operator must disclose prominently on its website the main risks to lenders or investors of using a Crowdfunding Platform including that:
- (a) the lender or investor may lose all or part of their money or may experience delays in being paid;
  - (b) except in the case of Property Investment Crowdfunding, borrowers or Issuers on the platform may include new businesses and, as many new businesses fail, a loan to such a borrower or an investment with such an Issuer may involve high risks;
  - (c) the lender may not be able to transfer their loan, or the investor may not be able to sell their Investment, when they wish to, or at all; ~~and~~
  - (d) if for any reason the operator ceases to carry on its business, the lender or investor may lose their money, incur costs or experience delays in being paid; and
  - (e) the use of credit or borrowed monies to invest or lend on a platform creates greater risk. For example, even if the loan or Investment declines in value or is not repaid, the lender or investor will still need to meet their repayment obligations.
- (2) For Property Investment Crowdfunding, in addition to the risk warnings in (1), the operator must disclose the following risks prominently on its website:
- (a) an investment in property is speculative as the market value of property can fall and rental income is not guaranteed;
  - (b) the investor will not own the property, rather the investor will have an interest in a Special Purpose Vehicle that owns the property;
  - (c) as the investor’s interest in the Special Purpose Vehicle is not listed or traded, it is likely to be an ‘illiquid’ investment. That is, it may be difficult to sell the interest because of a lack of investors willing to buy such an interest;
  - (d) it may be difficult to sell the property at the end of the investment period, resulting in the investor experiencing a delay in receiving their capital or the property being sold at a loss; and

- (e) in some cases, there may be government restrictions on the sale of a property to foreign owners, which may restrict the range of potential buyers.

### **Information about default or failure rates**

- 11.3.2** (1) An operator must disclose prominently on its website:
- (a) for Loan Crowdfunding, the actual and expected default rates for loans entered into on the platform; and
  - (b) for Investment Crowdfunding, the actual and expected failure rate of Issuers who use the platform.
- (2) The information referred to in (1) must:
- (a) for actual default or failure rates, cover the period since the operator began providing the service;
  - (b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected rates; and
  - (c) be presented in a way that is fair, clear and not misleading.

### **Guidance**

1. Rule 11.3.2 requires a Loan Crowdfunding Operator to disclose historical information about the default rates of loans entered into on the platform. It also requires the operator to set out expected default rates in the future for loans entered into on the platform.
2. An Investment Crowdfunding Operator is required to disclose similar information about the failure rates of Issuers on its platform. In this context, failure of an Issuer should include where an Issuer defaults on payments, becomes insolvent, is wound up or ceases to carry on business.
3. Information about default and failure rates is intended to assist potential lenders or investors to assess the risks of lending or investing using the platform.
4. If an operator is a start-up entity, it may base the information on crowdfunding services provided by other members of the Group, provided it states clearly the basis for the information it provides.
5. Rule 11.3.2 does not apply to Property Investment Crowdfunding due to the different nature of the Investment i.e. the Investment is in a property rather than a business or project.

### **Information about the service**

- 11.3.3** (1) An operator must disclose prominently on its website key information about how its service operates, including:
- (a) details of how the platform functions;

- (b) details of how and by whom the operator is remunerated for the service it provides, including fees and charges it imposes;
- (c) any financial interest of the operator or a Related Person that may create a conflict of interest;
- (d) the eligibility criteria for borrowers, ~~or Issuers~~ or sellers that use the service;
- (e) the minimum and maximum value amounts, if any, of loans or Investments that may be sought by a borrower or an Issuer using the service, or of property that may be sold by a seller using the service;
- (f) what, if any, security is usually sought from borrowers or Issuers when it might be exercised and any limitations on its use;
- (g) the eligibility criteria for lenders or investors that use the service;
- (h) any limits on the amounts a lender may lend or an investor may invest using the service, including limits for individual loans or investments and limits that apply over any 12 month period;
- (i) when a lender or an investor may withdraw a commitment to provide funding, and the procedure for exercising such a right;
- (j) what will happen if loans sought by a borrower or funds sought by an Issuer or seller, either fail to meet, or exceed, the target level;
- (k) steps the operator will take and the rights of the relevant parties if there is a material change in:
  - (i) a borrower's or an Issuer's circumstances, in the case of Loan Crowdfunding or Investment Crowdfunding; and
  - (ii) a property or Investment, in the case of Property Investment Crowdfunding; and the rights of the lender and borrower or Issuer and investor in that situation;
- (l) how the operator will deal with overdue payments or a default by a borrower or an Issuer;
- (m) which jurisdiction's laws will govern the loan agreement ~~between the lender and borrower;~~
- (n) arrangements and safeguards for Client Assets held or controlled by the operator, including details of any legal arrangements (such as nominee companies) that may be used to hold Client Assets;
- (o) any facility it provides to facilitate the transfer of loans or the sale of Investments, the conditions for using the facility and any risks relating to the use of that facility;
- (p) measures it has in place to ensure the platform is not used for money-laundering or other unlawful activities;

- (q) measures it has in place for the security of information technology systems and data protection; and
  - (r) contingency arrangements it has in place to ensure the orderly administration of loans or Investments if it ceases to carry on business.
- (2) For Property Investment Crowdfunding, in addition to the information in (1), the operator must disclose prominently on its website:
- (a) the property selection criteria, for example, whether the platform is looking to balance income and capital returns or looking for high growth opportunities;
  - (b) details of the Special Purpose Vehicle that will be used to hold title to the property, including its legal nature, role and duties and how it will protect the interests of investors;
  - (c) the precise nature of the investor's legal interest in relation to the property;
  - (d) what income the investor is expected to receive from the property and when it will be paid;
  - (e) the rights or obligations, if any, an investor has in relation to the property after he has invested, for example, whether the investor will be expected to contribute any further capital to cover any costs related to the property or the Special Purpose Vehicle;
  - (f) details of any service provider that will be required to supply property services such as valuation, management, maintenance and insurance and how any potential conflicts of interest will be prevented or managed;
  - (g) expenses likely to be incurred in relation to the property, including valuation, management, maintenance, insurance and taxation costs and how they will be paid for; and
  - (h) the term of the investment, what happens at the end of the term, the circumstances, if any, in which the property may be sold before the end of the term and whether the term may be extended.

**Operator not to provide both regulated and unregulated crowdfunding services**

**11.3.4** An operator must ensure that it does not provide both regulated and unregulated crowdfunding services.

**Guidance**

Some crowdfunding services may not need to be authorised e.g. reward or donation crowdfunding that do not involve an Investment or loan or other services carried on with Persons in certain jurisdictions. An operator needs to ensure that it does not provide both regulated and unregulated crowdfunding services from the same legal entity. If it wishes to provide unregulated crowdfunding services, it should do so using a separate legal entity.

This removes any risk that Clients of the Authorised Firm will not understand that parts of the service are unregulated.

**Crowdfunding Due diligence on borrowers or Issuers**

**11.3.5** An operator must not permit a borrower or an Issuer to use its service unless the borrower or Issuer is a Body Corporate.

**Guidance**

This Rule does not apply to the seller of a property using a Property Investment Crowdfunding Platform who may be a natural person, body corporate, partnership or other entity.

**11.3.6** (1) An operator must conduct due diligence on each borrower, ~~or Issuer~~ or seller before allowing it to use its service.

(2) For Loan Crowdfunding or Investment Crowdfunding, the due diligence under (1) must include, as a minimum, taking reasonable steps to verify in relation to the borrower or Issuer:

- (a) its identity, including details of its incorporation and business registration;
- (b) the identity and place of domicile of each of its directors, officers and controllers;
- (c) its fitness and propriety and that of each of the Persons referred to in (b);
- (d) its financial strength, including checking financial statements;
- (e) its financial history and past performance and its credit history, including checking with external credit agencies;
- (f) any credentials or expertise it claims to have;
- (g) the valuation of its business, current borrowing or funding levels (if any) and the source of any existing borrowing or funding;
- (h) its business proposal;
- (i) its commitment and that of its directors, officers and controllers to the business, including how much capital they have provided and any potential flight risk; and
- (j) that its business is being carried on in accordance with applicable laws in the jurisdiction where it is based.

(3) For Property Investment Crowdfunding, the due diligence under (1) must include, as a minimum, taking reasonable steps to verify:

- (a) the identity of the seller, including, if it is a Body Corporate, details of its incorporation and business registration;
- (b) the condition of the property;



- (c) that the seller holds valid legal title to the property and is able to sell the property free of any encumbrance;
- (d) that construction of the property has been completed; and
- (e) whether the property is let or in a lettable condition and, if it requires renovation or other work before it can be let, whether planning permission for the renovation or other work can be readily obtained.

### **Guidance**

1. The type of background checks the DFSA expects an operator to conduct under Rule 11.3.6(2)(c) include, for example, whether the Person has been:
  - a. found guilty of a criminal offence;
  - b. the subject of any finding in a civil proceeding of fraud, misfeasance or other misconduct;
  - c. the subject of a judgment or agreed settlement in a civil proceeding exceeding \$10,000;
  - d. disqualified from acting as a director or taking part in the management of a company; or
  - e. bankrupt or the director, or a person concerned in the management, of a company which has gone into liquidation or administration.
2. The purpose of the due diligence under Rule 11.3.6(2)(j) is to check that the business itself is lawful in the place in which it is being carried on i.e. that the owner has the necessary permits and that the activity is lawful. The borrower or Issuer should certify these matters and provide relevant documents where appropriate.

### **Disclosure of information about the borrower, ~~or~~ Issuer or seller**

- 11.3.7** (1) An operator of an Investment Crowdfunding Platform or a Loan Crowdfunding Platform, must disclose prominently on its website relevant information about each borrower or Issuer, including as a minimum:
- (a) the name of the borrower or Issuer, the full name and position of each of its directors and officers and the full name of each controller;
  - (b) the place of incorporation of the borrower or Issuer and the place of domicile of each director, officer and controller;
  - (c) a description of the borrower's or Issuer's business;
  - (d) except as provided in Rule 11.3.7A, the most recent financial statements, if any, of the borrower or Issuer and a warning that the operator gives no assurances about their accuracy;
  - (e) the valuation of the Issuer's business and, for a borrower and an Issuer, their current borrowing or funding levels and the source of their borrowing and liquidity;

- (f) a detailed description of the proposal for which it is seeking funding including:
    - (i) the total funding sought;
    - (ii) how the funds will be used; and
    - (iii) the target level of funding sought and what will happen if that level is not met or is exceeded;
  - (g) the results of the due diligence carried out by the operator on the borrower or Issuer and any limits on the due diligence that could be carried out;
  - (h) any grading or rating by the operator of the borrower's or Issuer's creditworthiness, including:
    - (i) how the grading or rating has been assessed;
    - (ii) an explanation of what the different grading or rating levels mean; and
    - (iii) a clear statement that this should not be taken as advice about whether money should be lent to the borrower or invested with the Issuer;
  - (i) for a loan or Debenture, the duration of the loan or Debenture, details of interest payable and any other rights attaching to the loan or Debenture;
  - (j) for a Share issue, any rights attaching to the Share, such as dividend, voting or pre-emption rights;
  - (k) whether any security is being provided and, if so, the circumstances in which it might be exercised and any limitations on its use;
  - (l) if applicable, any other reward or benefit attaching to the loan or Investment and the terms on which it is available;
  - (m) for a Share issue, whether investors have any protection from their shareholding being diluted by the issue of further Shares; and
  - (n) that the borrower or Issuer, and information provided about the borrower or Issuer, are not checked or approved by the DFSA.
- (2) An operator of a Property Investment Crowdfunding Platform must disclose prominently on its website relevant information about each seller and property, including as a minimum:
- (a) full details about the property, including its location and condition, and whether it is currently rented;
  - (b) full details about the seller's legal title to the property such as whether it is freehold, leasehold or strata title, and whether the seller is able to sell the property free of any encumbrance;

- (c) whether the property is let or in a lettable condition including whether it requires renovation or other work before it can be let;
- (d) the independent valuation report on the property referred to in Rule 11.6.3;
- (e) the estimated annual charges and expenses relating to the property;
- (f) the estimated annual rental income on the property, after deducting charges and expenses;
- (g) the results of the due diligence carried out by the operator on the property and any limits on the due diligence that could be carried out; and
- (h) that the seller, the property and the information provided about the seller and the property are not checked or approved by the DFSA.

### **Guidance**

1. The information required under Rule 11.3.7 is specific to each loan or Investment and is in addition to information about the service the operator is required to disclose under Rule 11.3.3.
2. Under Rule 11.3.7(2)(e) and (f), the operator should disclose the potential for increased expenses and/or reduced rental income if the property is held for longer than expected.
3. In accordance with Rule 3.2.6, if an operator makes any representation about the future performance of the investment, this should be fair and balanced and should set out the key facts and assumptions that have been used.

- 11.3.7A** (1) An operator who, but for this Rule, would be obliged to disclose the financial statements of a borrower under Rule 11.3.7(d), may instead disclose on its website financial ratios relating to the borrower in accordance with this Rule.
- (2) The operator must disclose the following financial ratios relating to the borrower:
- (a) current assets ratio: consisting of the current assets of the borrower divided by the total current liabilities of the borrower;
  - (b) quick assets ratio: consisting of the cash and current receivables of the borrower (liquid assets) divided by the total current liabilities of the borrower;
  - (c) debt ratio: consisting of the total debt of the borrower divided by the total assets of the borrower;
  - (d) debt to equity ratio: consisting of the total liabilities of the borrower divided by the total equity of the borrower;
  - (e) return on assets ratio: consisting of the total net income of the borrower divided by the average total assets of the borrower;

- (f) profit margin: consisting of subtracting the total expenses of the borrower from the total revenue of the borrower; and
  - (g) operating cash flow: consisting of cash flows from operations of the borrower divided by current liabilities of the borrower.
- (3) An operator must ensure that the financial ratios:
- (a) cover at least the two most recently ended fiscal years or, if the business has operated only for a shorter period, that period;
  - (b) are disclosed in a clear and easily understandable way that:
    - (i) includes an explanation of what the ratios mean and how they are calculated; and
    - (ii) allows comparison between borrowers; and
  - (c) specify whether the information on which the ratios are based has been audited.

**Guidance**

An operator should, as a matter of good practice, obtain verification from an independent third party that the financial ratios are accurate before it discloses them on its website. It should also disclose on its website whether financial ratios have been verified by an independent third party.

**Proposals not to be advertised outside platform**

**11.3.8** An operator must:

- (a) not advertise a specific lending or Investment proposal that is available on its platform; and
- (b) take reasonable steps to ensure that borrowers, ~~and~~ Issuers and sellers that use its platform do not advertise the lending or Investment proposal,

unless the advertisement is made on the platform and is accessible only to existing Clients who use the platform.

**Guidance**

1. Rule 11.3.8 does not prevent users of a platform who are seeking funding ~~a Person such as a borrower or an Issuer~~ from referring other Persons to the operator or providing a link to the operator's website homepage. However, a link to a specific lending or investment proposal should not be displayed outside the platform if it is accessible to Persons who are not Clients of the operator.
2. If an Investment proposal is advertised to Persons who are not Clients of the operator, in addition to breaching Rule 11.3.8, this may constitute an Offer of Securities to the Public that requires a Prospectus, as the offer may no longer meet the conditions of the Exempt Offer exclusion for Crowdfunding Platforms in MKT Rule 2.3.1(m).

3. Rule 11.3.8 does not prevent an operator from generally promoting its crowdfunding service to potential Clients, provided it does not advertise a specific proposal.

**Material changes affecting a borrower, ~~or Issuer~~ or property**

- 11.3.9** (1) This Rule applies if a material change occurs relating to:
- (a) in the case of Loan Crowdfunding and Investment Crowdfunding, a borrower or Issuer, its business, its proposal or the carrying out of its proposal; or
  - (b) in the case of Property Investment Crowdfunding, a property or an Investment in a property.
- (2) In this Rule, a “material change” means any change or new matter that may significantly affect:
- (a) the borrower’s ability to meet its payment obligations under the loan agreement in the case of Loan Crowdfunding; or that may significantly affect
  - (b) an Issuer’s business or its ability to carry out its proposal in the case of Investment Crowdfunding; or
  - (c) the value of, or return on, an Investment in the case of Property Investment Crowdfunding.
- (3) If the material change occurs during the commitment period, the operator must:
- (a) disclose prominently on its website details of the material change;
  - (b) notify committed lenders or investors of the material change and require them to reconfirm their commitment within 5 business days; and
  - (c) if reconfirmation is not provided within the period specified in (b), cancel the commitment.
- (4) If the material change occurs after the commitment period, the operator must disclose prominently on its website:
- (a) details of the material change;
  - (b) any change in the rights of ~~the lenders and the borrower, or the investors and the Issuer~~ users arising from the material change; and
  - (c) what steps, if any, the operator is proposing to take as a result of the change.
- (5) A disclosure or notification under (3) or (4) must be made as soon as practicable after the operator becomes aware of the material change.

### Guidance

1. Rule 11.3.9 sets out the requirements that an operator must comply with if there is a material change affecting a borrower or Issuer, either during the commitment period or at a later time. A material change might include, for example:
  - a. for Investment and Loan Crowdfunding, a change in the management, control or structure of the business, an event affecting its profitability, a change relating to its assets or a default in meeting another obligation; and
  - b. for Property Investment Crowdfunding, a significant expense that arises in relation to the property.
2. A borrower or an Issuer is required, under its Client Agreement, to give reasonable advance notice to the operator of any material change in its circumstances (see Rule A2.1.6).
3. The DFSA expects that it would be only in limited circumstances that a material change would occur during the commitment period. This is because full information about the borrower, ~~or Issuer~~, seller or property will only recently have been verified and published (see Rules 11.3.6 and 11.3.7). As a material change during the commitment period could significantly affect a lender or investor's decision, in addition to notifying investors or lenders, the operator must require anyone who has already committed to lend or invest to reconfirm their commitment. This reconfirmation is separate from the cooling-off period for investors under Rule 11.5.2 or 11.6.5 which starts when the commitment period ends.
4. If a material change occurs after the commitment period, in addition to notifying lenders or investors of the details, the operator is required to inform lenders or investors whether this affects their rights and whether the operator is proposing to take further steps e.g. to clarify the situation or to take action for a default.

### **Borrower, ~~or Issuer~~ or seller not to use other platforms**

- 11.3.10** An operator must take reasonable steps to restrict a borrower, ~~or an Issuer~~ or seller from seeking funding on another crowdfunding platform during the commitment period.

### Guidance

Allowing users of a platform who are seeking funding ~~a borrower or an Issuer~~, to use different platforms at the same time creates the risk that they ~~borrower or Issuer~~ might offer different terms and information about the proposal, causing potential confusion for lenders or investors and creating the potential for arbitrage by users of a platform who are seeking funding ~~a borrower, or an Issuer~~. This restriction only applies during the commitment period i.e. the period during which lenders may commit to making loans to the borrower or investors may commit to investing with the Issuer or in the property.

### **Equal treatment of lenders and investors**

- 11.3.11** An operator must ensure that lenders or investors who use its service are able to have access to the same information on its website about a borrower, ~~or an Issuer~~, seller or a lending or investment proposal or a property, and that access to the information is provided at the same time.

**11.3.12** If an operator provides an auto-lending system or auto-investing system, or any other facility that provides some lenders or investors with the opportunity to lend or invest money ahead of other lenders or investors, it must disclose prominently on its website that some lenders or investors may have preferential access to better proposals.

**Guidance**

1. An ‘auto-lending system’ or ‘auto-investing system’ is a facility that automatically allocates certain loans or Investments to a lender or investor according to parameters chosen by the lender or investor. The availability of this type of facility creates the risk that other lenders may not be aware that the best lending or investment opportunities have already been allocated and that remaining lending or investment opportunities may be of lower quality.
2. Further, if an operator permits some lenders or investors using its service to lend or invest on terms that are better than those offered to other lenders or investors on the platform, a potential conflict of interest may arise between the interests of the different lenders or investors. The operator will need to consider under Rule 3.5.1 what steps it should take to ensure that other Clients are not prejudiced by the conflict of interest.

**No suitability disclosure**

**11.3.13** If an operator provides an auto-lending system or auto-investing system, it must disclose prominently to lenders or investors who use the facility that no assessment is made that any loan or Investment selected by the system is suitable for the lender or investor.

**Operator not to permit staff to use the platform**

**11.3.14** An operator must take reasonable steps to ensure that its officers and employees and their family members do not:

- (a) in the case of Investment Crowdfunding or Loan Crowdfunding:
  - ~~(a)~~ lend money or provide finance to a borrower or an Issuer;
  - ~~(b)~~ borrow money from a lender or receive funding from an investor; or
  - ~~(c)~~ hold any direct or indirect interest in the capital or voting rights of a borrower or lender or an Issuer or investor; and
- (b) in the case of Property Investment Crowdfunding:
  - (i) invest in a property using the platform;
  - (ii) rent a property that has been purchased using the platform; or
  - (iii) sell a property or any interest in a property using the platform.

**Guidance**

1. Rule 11.3.14 is intended to ensure that staff of an operator do not enter into transactions with clients of the operator. This is because staff may have access to additional confidential information about a borrower, ~~or Issuer,~~ seller or property that is not available to clients. Such transactions may also create other conflicts of interest.

2. The Rule does not prohibit an operator itself from lending money to a borrower, or investing in an Issuer or in the property of a seller, that uses the platform. However, if it does so, it is likely to be carrying on a separate Financial Service of Providing Credit or Dealing in Investments as Principal and require an additional authorisation for that activity. As well as complying with additional Rules relating to capital and the conduct of that business, it would need to take reasonable steps to prevent or manage conflicts of interests that may arise between its interests and those of its Clients (see Rule 3.5.1). If the operator discloses conflicts of interests to Clients under Rule 3.5.1, it should disclose details of each specific transaction that creates a potential conflict of interest.

### Forums

**11.3.15** If an operator provides a means of communication (a “forum”) for users ~~lenders and borrowers or Issuers and investors~~ to discuss funding proposals made using the service, it must:

- (a) refer lenders or investors to the forum as a place where they can find, or take part in, further discussion about proposals, while clearly stating that the operator does not conduct due diligence on information on the forum;
- (b) restrict posting of comments on the forum to Persons who are Clients using the service;
- (c) ensure that all Clients using the forum have equal access to information posted on the forum;
- (d) require a Person posting a comment on the forum to disclose clearly if he is affiliated in any way with a borrower, ~~or an Issuer,~~ or seller or is being compensated, directly or indirectly, to promote a proposal by a borrower, ~~or an Issuer~~ or seller;
- (e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent;
- (f) immediately take steps to remove a post, or to require a post to be deleted or amended, if the operator becomes aware that (d) or (e) have not been complied with; and
- (g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

### Facility for transfer of loans or Investments

**11.3.16** If an operator provides a facility that assists the transfer of rights or obligations under a loan agreement or the sale of Investments, it must ensure that:

- (a) the facility relates only to loans or Investments originally facilitated using its service;
- (b) transfers can take place only between lenders or investors who are already Clients using the service and have initially lent money under loan agreements or initially subscribed for Investments using the service;



- (c) in the case of a loan agreement, the facility allows only a lender (and not the borrower) to transfer rights and obligations under the agreement;
- (d) in the case of a loan agreement, a lender must transfer the rights and obligations relating to the whole of a loan made (and not just a part of the loan);
- (e) potential transferees or buyers have access to all information on the website about the borrower, ~~or Issuer,~~ seller or property that was available to earlier lenders or investors; and
- (f) fees it charges for the use of the facility are designed to recover its costs of providing the facility, rather than generating additional income.

### **Guidance**

1. A facility for the transfer of rights and obligations under loan agreements or for the sale of Investments should exist mainly to provide an exit route for lenders or investors rather than being a facility for the active trading of loans or Investments. For example, the operator should ensure that transferees or buyers are Clients who already initially lent money to either the particular borrower or another borrower, or initially invested funds in the Issuer or property or another Issuer or property, using the platform. That is, the facility should not be used by persons who are only involved in secondary trading of loans or Investments.
2. The conditions in Rule 11.3.16 apply only to a transfer or sale using the facility provided by the operator. They do not affect transfers of rights and obligations or sales of Investments that may occur outside that facility, for example, by operation of law such as under a will or by a Court order.

### **Information technology**

- 11.3.17** (1) An operator must have adequate measures in place to ensure:
- (a) its information technology systems are resilient and not prone to failure;
  - (b) business continuity in the event that an information technology system fails;
  - (c) protection of its information technology systems from damage, tampering, misuse or unauthorised access; and
  - (d) the integrity of data forming part of, or being processed through, its information technology systems.
- (2) An operator must review the measures referred to in (1) at least annually to ensure they are adequate.

### **Business cessation plan**

- 11.3.18** The operator must:

- (a) maintain a business cessation plan that sets out appropriate contingency arrangements to ensure the orderly administration of loan agreements or Investments in the event that it ceases to carry on its business; and
- (b) ensure, as far as reasonably practicable, that the contingency arrangements can be implemented if necessary.

**Guidance**

The business cessation plan may, for example, set out arrangements for another appropriately regulated third party to take over the administration of existing loans or Investments. The operator should put in place measures that, as far as reasonably practicable, ensure that the contingency arrangements can be implemented if necessary e.g. by entering into an agreement with a third party to provide certain services. The operator will need to disclose the contingency arrangements it has in place (see Rule 11.3.3 (r)).

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**11.4 Loan Crowdfunding – extra requirements**

**Written loan agreement**

- 11.4.1** A Loan Crowdfunding Operator must ensure that, when a loan is made using its service, there is a written loan agreement in place between the borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the borrower and lender.

**Lending limits**

- 11.4.2** A Loan Crowdfunding Operator must maintain effective systems and controls to ensure that a Retail Client does not lend more than:
- (a) US\$5,000 to any single borrower using its service; and
  - (b) US\$50,000 in total in any calendar year using its service.

**11.5 Investment Crowdfunding – extra requirements**

**Risk acknowledgement form**

- 11.5.1** (1) An Investment Crowdfunding Operator must ensure that a Retail Client provides a signed risk acknowledgement form for each Investment that it makes using the platform.
- (2) The risk acknowledgement form under (1) must:
- (a) set out clearly the risks referred to in Rule 11.3.1;
  - (b) require the Retail Client to confirm that he understands those risks; and

- (c) be provided before, or at the same time as, the Retail Client commits to making the Investment.

### **Cooling-off period**

- 11.5.2** (1) An Investment Crowdfunding Operator must ensure that investors who have committed to providing funding to a particular Issuer may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.
- (2) In (1), “cooling-off period” means the period of at least 48 hours starting at the end of the commitment period.

### **Guidance**

An operator may provide investors with a cooling-off period that is longer than the period specified in Rule 11.5.2(2).

### **Investment limit**

- 11.5.3** An Investment Crowdfunding Operator must maintain effective systems and controls to ensure that a Retail Client does not invest more than US\$50,000 in total in any calendar year using its service.

## **11.6 Property Investment Crowdfunding – extra requirements**

- 11.6.1** This section applies to a Property Investment Crowdfunding Operator.

### **Property characteristics**

- 11.6.2** The operator must ensure that each property listed for sale on its platform satisfies both of the following conditions:
- (a) the property consists of an individual apartment, house or building with a single discrete title deed; and
- (b) the property may be used only for residential purposes.

### **Guidance**

Property Investment Crowdfunding permits investors to invest in one or more Special Purpose Vehicles that each hold a single property. The operator should not facilitate investments in a pool of properties held in a single Special Purpose Vehicle; as such a pooling arrangement is likely to constitute a Collective Investment Fund. GEN Rule 2.2.10E prohibits an operator from operating such a Fund.

### **Valuation Report**

- 11.6.3** (1) The operator must obtain an independent valuation report for each property listed on the platform.
- (2) The valuation must be provided by a Person:
- (a) who is a professional and reputable valuer;

- (b) who is not Related to the platform operator or to the seller; and
- (c) whom the operator reasonably believes will provide an objective valuation.
- (3) The report must:
  - (a) be prepared on the basis of an 'open market' valuation;
  - (b) include the valuation and all material details about the basis of the valuation and assumptions used;
  - (c) outline the overall structure of the market including market trends;
  - (d) include a brief description of the property, its location, its existing use, any encumbrances concerning or affecting the property, the capital value and net monthly income expected from the property;
  - (e) confirm the professional status of the valuer and that the valuation report is prepared on a fair and unbiased basis; and
  - (f) be disclosed to investors as soon as it is available.
- (4) The valuation must be carried out before a property is listed on the platform and not more than three months before a property is due to be sold.
- (5) The operator must disclose the valuation report to investors and potential investors immediately after it becomes available.

#### **Risk acknowledgement form**

- 11.6.4**
- (1) The operator must ensure that a Retail Client provides a signed risk acknowledgement form for each Investment that it makes using the platform.
  - (2) The risk acknowledgement form under (1) must:
    - (a) set out clearly the risks referred to in Rule 11.3.1;
    - (b) require the Retail Client to confirm that he understands those risks; and
    - (c) be provided before, or at the same time as, the Retail Client commits to making the Investment.

#### **Cooling-off period**

- 11.6.5**
- (1) The operator must ensure that investors who have committed to make an Investment in a property may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.
  - (2) In (1), "cooling-off period" means the period of at least 48 hours starting at the end of the commitment period.
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**Special Purpose Vehicle**

**11.6.6** The operator must ensure that a separate Special Purpose Vehicle is established to hold title to each property.

**Credit cards not to be used**

**11.6.7** The operator must take reasonable steps to ensure that a Retail Client does not use a credit card to invest using the platform.

**Guidance**

An operator may permit an investor to use a debit card to fund an Investment provided it has adequate systems in place to distinguish between a debit and credit card.

**Investment limit**

**11.6.8** The operator must maintain effective systems and controls to ensure that a Retail Client does not invest more than US\$50,000 in total in any calendar year using its service.

**Restriction on remuneration sources**

- 11.6.9** (1) The operator must ensure that it, and a person Related to it, does not receive any remuneration, fee, payment or commission for, or in connection with, its service, except from investors or sellers who use the platform.
- (2) Without limiting (1), an operator, or a person Related to the operator, must not receive any remuneration, fee, payment or commission from a real estate agent, property manager, valuer, custodian or any other person providing a service related to the property.

**Property not to be mortgaged**

**11.6.10** The operator must ensure that no mortgage, lien or other security is granted over a property that investors invest in using its platform.

**Guidance**

Rule 11.6.10 prevents an operator or a Special Purpose Vehicle from taking a loan secured against the property.

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## **APP2 KEY INFORMATION AND CLIENT AGREEMENT**

### **A2.1 Key Information and content of the Client Agreement**

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#### **Additional terms for Crowdfunding Platforms**

**A2.1.5** The following terms must be included in a Client Agreement between a Crowdfunding Operator and a Client that is a lender or an investor:

- (a) the operator's obligations to administer the loan or Investment, including:
  - (i) how payments made by the borrower, ~~or Issuer,~~ or in respect of a property, will be transferred to the lender or investor; and
  - (ii) steps that will be taken if payments by a borrower, ~~or an Issuer,~~ or in respect of a property are overdue or the borrower or Issuer is in default;
- (b) if the Client is a Retail Client, the steps that will be taken by the operator and lender or investor to ensure that the lender or investor complies with any applicable limits relating to the amounts of loans or investments that may be made using the platform;
- (c) for Investment Crowdfunding or Property Investment Crowdfunding, if the Client is a Retail Client, that the Client agrees to sign a risk acknowledgement form each time before he makes an Investment using the platform; and
- (d) the contingency arrangements that the operator will put in place to deal with a platform failure or if the operator ceases to carry on its business.

**A2.1.6** The following terms must be included in a Client Agreement between a Crowdfunding Operator and a Client that is a borrower, ~~or an Issuer~~ or seller:

- (a) a restriction on the borrower, ~~or Issuer,~~ or seller using any other crowdfunding service to raise funds during the commitment period;
- (b) a restriction on the borrower, ~~or Issuer,~~ seller or any Person that is Connected to the borrower, ~~or Issuer,~~ or seller, lending or financing, or arranging lending or finance for a lender or an investor using the service;
- (c) a restriction on the borrower, ~~or Issuer,~~ or seller advertising its proposal, or soliciting potential lenders or investors, outside the platform during the commitment period;
- (d) a requirement on the borrower or Issuer to give reasonable advance notice to the operator of any material change affecting the borrower or Issuer, its business or the carrying out of its proposal;

- (e) the obligations of the borrower or Issuer if there is any material change after funds have been provided; and
- (f) an obligation on the borrower or Issuer to produce financial statements at least annually.