



NOTICE UNDER THE SECURITIES MARKETS ORDER, 2013

NOTICE NO. CMU/N-1/2017/6

NOTICE ON EQUITY BASED CROWDFUNDING PLATFORM OPERATORS

1. INTRODUCTION

- 1.1 This Notice is issued pursuant to section 239(1) of the SMO and applies to all ECF Platform Operators.
- 1.2 This Notice shall take effect on 11th August 2017.

2. DEFINITIONS

- 2.1 For the purposes of this Notice:-

“Authority” means Autoriti Monetari Brunei Darussalam;

“capital market services licence” or “CMSL” means a licence that is granted by the Authority under section 157(5) of the SMO to a person to carry on a business in any regulated activity;

“company” has the same meaning assigned to it in the Companies Act (Chapter 39);

“corporation” has the same meaning assigned to it in the Companies Act (Chapter 39);

“ECF” means equity based crowdfunding;

“ECF Platform Operator” means a CMSL holder who operates an ECF Platform;

“ECF Platform” means an equity based crowdfunding platform;

“equity” has the same meaning as share as defined in this Notice;

“financial institution” has the same meaning assigned to it in the Autoriti Monetari Brunei Darussalam Order, 2010;

“conducting Islamic investment business” means carrying on one or more of the regulated activities set out in the SMO in accordance with *Hukum Syara*’;

“share” has the same meaning assigned to it in the Companies Act (Chapter 39);

“SMO” means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;

“SMR” means the Securities Markets Regulations, 2015;

“Sophisticated Investors” means any person who falls within any of the specific classes of investors specified in section 20 of the SMO;

“Syariah Advisory Body” means a body who is responsible to review, advise, give opinion(s) and approve Islamic product(s) and any Syariah-related operations and activities of an ECF Platform Operator to ensure compliance with Syariah principles;

“Syariah Financial Supervisory Board” means the syariah financial supervisory board established by section 3 of the Syariah Financial Supervisory Board Order, 2006.

2.2 Any expression used in this Notice shall, except where expressly defined in this Notice or where the context requires, have the same meaning as in the SMO.

3. PURPOSE

3.1 The purpose of this Notice is to impose additional requirements and to vary existing requirements in the SMO and the SMR relating to the operation of an ECF Platform.

4. APPLICATION FOR LICENCE

- 4.1 Any application for a licence can only be made by a company or a corporation incorporated or registered under the Companies Act (Cap.39).
- 4.2 An applicant applying to operate an ECF Platform must apply for a CMSL allowing it to carry out the regulated activities of dealing and arranging deals in investments and investment advice.
- 4.3 The Authority may grant a CMSL to operate an ECF Platform if it is satisfied that:-
- (a) the applicant has clear and transparent rules relating to the ECF Platform;
 - (b) the applicant will be able to operate an orderly, fair and transparent market in relation to all transactions which are carried out by means of or through its ECF Platform;
 - (c) any person authorised by the Authority may enter at any reasonable time the premise on which the ECF Platform is provided and to inspect the ECF Platform by means of which the services are provided;
 - (d) at the time of licensing and on an ongoing basis, there are sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the services it provides and the range and degree of the risk to which it is exposed;
 - (e) the applicant's board of directors, chief executive and any person who is primarily responsible for the operations must be fit and proper as outlined in regulation 29 of the SMR;
 - (f) the applicant will be able to take appropriate action against a person breaching the ECF Platform rules including directing the person in breach to take any necessary remedial measure;
 - (g) the ECF Platform rules make satisfactory provisions:-
 - (i) for the protection of investors and public interest;
 - (ii) to ensure proper functioning of the ECF platform;

- (iii) to promote fairness and transparency;
 - (iv) to manage any conflict of interest that may arise;
 - (v) to promote fair treatment of its users or any person who subscribe for its services;
 - (vi) to promote fair treatment of any person who is hosted, or applies to be hosted, on its platform;
 - (vii) to ensure proper regulation and supervision of its users, or any person utilising or accessing its platform, including suspension and expulsion of such persons; and
 - (viii) to provide an avenue of appeal against the decision of the ECF Platform Operator;
- (h) the applicant has sufficient financial, human and other resources for the operation of the ECF Platform, at all times; and
- (i) the applicant will be able to demonstrate an IT assurance regarding the system readiness by providing, which includes, but not limited to the following:-
- (i) adequate securities measures, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record keeping and audit trail, for daily operations and to meet emergencies; and
 - (ii) sufficient IT and technical support arrangements.

4.4 Every application for a CMSL to operate an ECF Platform shall also be accompanied by:-

- (a) particulars of any arrangements which the ECF Platform Operator has made or proposes to make for the provision of his services;

- (b) particulars of any arrangements to manage the risks to which he is exposed, to implement appropriate arrangements and systems to identify all significant risks to his operation, and to put in place effective measures to mitigate those risks; and
- (c) particulars of any arrangements for the sound management of the technical operations of his systems, including the establishment of effective contingency arrangements to cope with risks of systems disruptions.

4.5 An ECF Platform Operator who is granted a CMSL under the SMO is subject to the continuous supervision of the Authority and is required to ensure that it complies with all the requirements set out in SMO, this Notice and any other directions issued by the Authority.

5. CONTINUOUS OBLIGATIONS OF THE MANAGEMENT

5.1 The board of directors, chief executive or any person who is primarily responsible for the operations of the ECF Platform must:-

- (a) ensure the ECF Platform Operator complies with all the requirements under the SMO, this Notice and any direction issued or any term or condition imposed by the Authority;
- (b) ensure the board of directors, chief executive or any person who is primarily responsible for the operations of the ECF Platform carries out his responsibilities and duties;
- (c) establish and maintain policies and procedures to:-
 - (i) manage conflicts of interest;
 - (ii) monitor its business activities to detect non-compliance with all the requirements under the SMO, this Notice, directions issued by the Authority and other relevant laws;
 - (iii) ensure that all documents and records of its issuers and investors are maintained for a period of not less than seven years; and
 - (iv) deal with complaints relating to the operations of ECF Platform or the conduct of its issuers and investors;
- (d) immediately notify the Authority:-

- (i) of any irregularities or breach of any provisions under the SMO, this Notice or any directions issued by the Authority, including any alleged or suspected violations of any laws or guidelines in relation to money laundering and terrorism financing by its issuers and investors;
- (ii) of any material changes in the information submitted to the Authority; and
- (iii) if it becomes aware of any matters which adversely affects or is likely to adversely affect its ability to meet its obligations or to carry out its functions under this Notice.

6. REPORTING AND DISCLOSURE REQUIREMENTS

6.1 An ECF Platform Operator must submit to the Authority the following:-

- (a) an annual compliance report to demonstrate the ECF Platform Operator's compliance with the provisions under the SMO, this Notice and any directions issued or conditions imposed by the Authority; and
- (b) its latest audited financial statements, within three months after the close of each financial year or such further period that the Authority may allow.

7. OBLIGATIONS OF ECF PLATFORM OPERATOR

7.1 An ECF Platform Operator must:-

- (a) carry out a due diligence exercise on prospective issuers planning to use its platform;
- (b) monitor and ensure compliance of its rules;
- (c) carry out investor education programmes;
- (d) ensure the issuer's disclosure document lodged with the ECF Platform Operator is verified for accuracy and made accessible to investors through the platform;
- (e) inform investors of any material adverse changes to the issuer's proposal, the meaning of which is contained in paragraph 10.6;
- (f) ensure that the fundraising limits imposed on the issuer are not breached;

- (g) ensure that the investment limits imposed on the investors are not breached;
- (h) obtain and retain self-declared risk acknowledgement forms from the investors prior to them investing on the ECF Platform; and
- (i) have in place processes to monitor and ensure compliance to anti-money laundering requirements in respect of both issuers and investors.

7.2 The scope of the due diligence exercised by an ECF Platform Operator shall include taking reasonable steps to:-

- (a) conduct background checks on the issuer to ensure fitness and propriety of the issuer, its board of directors, senior management and controlling owner;
- (b) verify the business proposition of the issuer;
- (c) Establish appropriate measures to identify, deter and prevent financial crime and money laundering on and through the facilities of the ECF Platform Operator; and
- (d) Report to the Authority any suspicious activities in relation to financial crime and money laundering.

8. OUTSOURCING ARRANGEMENT

8.1 An ECF Platform Operator shall ensure that any outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of his internal control and the ability of the Authority to supervise his compliance with his obligations under the SMO, this Notice and any directions issued by the Authority.

9. MINIMUM FINANCIAL REQUIREMENT

9.1 Pursuant to regulation 33(2) of the SMR, the minimum financial requirement applicable to an ECF Platform Operator shall be as follows:

- (a) If the ECF Platform deals in securities with Sophisticated Investors only, a minimum base capital of \$50,000 shall apply.

- (b) If the ECF Platform deals in securities with both retail and Sophisticated Investors, a minimum base capital of \$300,000 shall apply.

10. TRANSFER OF FUNDS

- 10.1 An ECF Platform Operator shall not accept any monies or assets from any customer as settlement of, or as a margin for, or to guarantee or secure, any contract for the purchase or sale of securities by that customer; and does not enter into any transaction with any customer to deal in securities as principal.
- 10.2 An ECF Platform Operator shall establish systems and controls for maintaining accurate and up-to-date records of investors.
- 10.3 An ECF Platform Operator shall ensure that investors' monies are properly safeguarded from conversion or inappropriate use by the issuer by requiring all monies from investors to be transferred to the issuer through any bank licensed in Brunei Darussalam.
- 10.4 An ECF Platform Operator shall ensure that the funds are only transferred to the issuer after the following conditions are met:-
 - (a) The targeted amount sought to be raised has been met;
 - (b) There is no material adverse change relating to the offer during the offer period; and
 - (c) In the event that there is a material adverse change, a cooling-off period of at least seven calendar days have expired from the date of notification of the material adverse change by the ECF Platform Operator.
- 10.5 Notwithstanding paragraph 10.4, where the targeted amount is not met, the ECF Platform Operator shall immediately notify the investors by the designated date.
- 10.6 For the purpose of subparagraph 10.4(b), a material adverse change concerning the issuer, may include, but is not limited to, any of the following:-
 - (a) The discovery of a false or misleading statement in the disclosure document in relation to the offer;

- (b) The discovery of a material omission of information required to be included in the disclosure document; or
- (c) There is a material change or development in the circumstances relating to the offering or the issuer.

10.7 Notwithstanding paragraph 10.4, the ECF Platform Operator may impose other additional conditions before the fund is transferred provided that they serve the investors' interests.

11. MANAGING CONFLICT OF INTEREST

11.1 An ECF Platform Operator must establish a framework which sets out policies and procedures to effectively and efficiently manage conflicts of interest including potential conflicts of interest which may arise in the course of the ECF Platform Operator carrying out its functions. Such conflicts must be managed in a timely manner.

11.2 An ECF Platform Operator, including its individual directors and shareholders, must disclose to the public on its platform if:-

- (a) it holds any shares in any of the issuers hosted on its ECF Platform; or
- (b) it pays or receives payment in whatever form, including payment in the form of shares to any person who refers or introduces an issuer hosted on its ECF Platform.

11.3 Notwithstanding paragraph 11.2, an ECF Platform Operator's shareholding in any of the issuers hosted on its platform shall not exceed 20 percent.

11.4 In the event that an ECF Platform Operator's shareholding in any of the issuers hosted on its platform exceeds 10 percent, the ECF Platform Operator must notify the Authority and the other shareholders whom are affected by the increase of ECF Platform Operator's shareholding.

11.5 An ECF Platform Operator is prohibited from providing any financial assistance to investors to invest in shares of an issuer hosted on its platform.

12. ADVERTISING RESTRICTION

- 12.1 An ECF Platform Operator shall restrict access to the specific details of offers of shares published on its platform to only registered users. Registered users are only given full access to the platform if they meet the conditions set out by the Authority and the ECF Platform Operator and they shall only be allowed to view the offers after they are logged in to the platform.
- 12.2 An ECF Platform Operator shall not be prohibited from advertising the existence of its platform to the general public. Such advertisement may include general information about the platform and its business model, so long as the advertisement does not include any specific information on offers that may be available on the ECF Platform.

13. PERMITTED AND NON-PERMITTED ISSUERS

- 13.1 An issuer, hosted on the ECF Platform, is required to comply with section 117 (b)(ii) of the SMO.
- 13.2 The following entities are prohibited from raising funds through an ECF platform:
- (a) Commercially or financially complex structures;
 - (b) Public companies and their subsidiaries;
 - (c) Companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool); and
 - (d) Any other type of entity that is specified by the Authority.

For the purpose of this paragraph, commercially or financially complex structures include, but is not limited to:

- (a) Investment fund companies; or
 - (b) Any financial institutions determined by the Authority to be a commercially or financially complex structure.
- 13.3 An issuer shall not be allowed to be hosted concurrently on multiple ECF Platforms.

14. TYPE OF SECURITIES PERMITTED FOR OFFERING

14.1 Only common shares can be listed and offered to investors through an ECF Platform.

15. LIMITS TO FUND RAISED ON AN ECF PLATFORM

15.1 The following limits shall apply to any issuer being hosted on an ECF Platform –

- (a) An issuer can only raise up to BND500,000 within a 12-month period, irrespective of the number of projects an issuer may seek funding for during that 12-month period; and
- (b) An issuer can only utilise the ECF Platform to raise a maximum amount of BND1 million, excluding the issuer's own capital contribution.

15.2 Notwithstanding paragraph 15.1, an issuer must notify and provide full and accurate disclosure to the investors in the event that an offering is oversubscribed.

16. DISCLOSURE REQUIREMENTS

16.1 An issuer proposing to be hosted on an ECF Platform shall submit the relevant information to the ECF Platform Operator including the following:-

- (a) Information that explains key characteristics of the company;
- (b) Information that explains the purpose of the fund raising and the targeted offering amount;
- (c) Information relating to the business plan of the company; and
- (d) Financial information relating to the company:-
 - (i) Audited financial statements of the company where applicable (e.g. where the issuer has been established for at least 12 months); and

- (ii) Where audited financial statements are unavailable (e.g. the issuer is newly established), certified financial statements or information by the issuer's management.

16.2 An issuer proposing to be hosted on an ECF Platform shall ensure that all information submitted or disclosed to an ECF Platform Operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.

16.3 An ECF Platform Operator must disclose and display prominently on its platform, any relevant information relating to ECF including:-

- (a) information relating to an issuer as specified under paragraph 16.1;
- (b) investor education materials and appropriate risk disclosure;
- (c) information on how the platform facilitates the investor's investment including providing communication channels to permit discussions about issuers hosted on its platform;
- (d) general risk warning in participating in ECF;
- (e) information on rights of investor relating to participation in ECF;
- (f) information about complaints handling or dispute resolution and its procedures;
- (g) fees, charges and other expenses that it may charge to, impose on an issuer or investor; and
- (h) information on processes and contingency arrangement in the event the ECF Platform Operator is unable to carry out its operations or cessation of business.

17. INVESTMENT LIMIT

17.1 A person may invest in any issuer hosted on the ECF Platform subject to the limits as follows:-

- (a) Sophisticated Investors: No restrictions on investment amount; and

- (b) Retail investors: A maximum of BND5,000 per issuer with a total amount of not more than BND30,000 within a 12-month period.

17.2 The investment limit specified in paragraph 17.1 is applicable to local and foreign investors.

18. APPOINTMENT OF SYARIAH ADVISORY BODY

18.1 Pursuant to section 23(2) of the SMO, where an ECF Platform Operator conducts, or intends to conduct, Islamic investment business on or through the ECF Platform, the ECF Platform Operator must appoint a Syariah Advisory Body.

18.2 The Syariah Advisory Body must either be:-

- (a) a group of individuals; or

- (b) a corporation,

approved by the Authority.

18.3 An application for the approval of a Syariah Advisory Body may be made concurrently with an application for an endorsement pursuant to section 23(7) of the SMO.

19. ROLE OF SYARIAH ADVISORY BODY

19.1 The role and responsibility of the Syariah Advisory Body shall include, but is not limited to, the following:-

- (a) Advising on compliance with Syariah principles relating to the conducting of Islamic investment business;

- (b) Providing Syariah expertise and guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with the SMO, this Notice and any directions issued by the Authority;

- (c) Ensuring that the applicable Syariah rulings, principles and concepts endorsed by the SFSB are complied with;

- (d) Where applicable, issue Syariah resolutions which must include:-
 - (i) the basis and rationale for the resolution;
 - (ii) the structure and mechanism used; and
 - (iii) the applicable Syariah rulings, principles and concepts used.

20. ADDITIONAL DISCLOSURE

20.1 Where the conducting of Islamic investment business approved by the SFSB is done on an ECF Platform, the ECF Platform Operator must provide the following:-

- (a) the name of the members of the Syariah Advisory Body appointed; and
- (b) a declaration by the issuer(s) that the business activities conducted are in accordance with *Hukum Syara'*.

21. SUBMISSION OF APPLICATION

21.1 An applicant is required to submit to the Authority the relevant forms and documents as determined by the Authority and any other information as may be required by the Authority.

21.2 All submissions relating to this application and any correspondence should be addressed to:-

**MANAGING DIRECTOR,
AUTORITI MONETARI BRUNEI DARUSSALAM,
LEVEL 14, MINISTRY OF FINANCE BUILDING,
COMMONWEALTH DRIVE,
BANDAR SERI BEGAWAN BB3910,
BRUNEI DARUSSALAM.**

Attention to:
**CAPITAL MARKET UNIT,
REGULATORY DEPARTMENT.**

**MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM**

Issue Date: 17 Zulkaedah 1438 / 10 August 2017