



JurisTax

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Financial Services (Crowdfunding) Rules 2021

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1. INTRODUCTION

On the 4th September 2021, the Financial Services Commission (FSC) has issued the **Financial Services (Crowdfunding) Rules 2021** in line with its plan to support and encourage the development of the Fintech ecosystem within the Mauritius International Financial Centre.

These rules shall apply to any person operating a crowdfunding platform in Mauritius, and shall be read in conjunction with the relevant Acts and any guidelines which the FSC may issue from time to time.

In order to cater for this new licence, the Securities (Exemption) Rules 2021 has also been introduced and the Financial Services (Consolidated Licensing and Fees) Rules 2008 has been amended.

These rules came into operation on **4th September 2021**.

2. LICENSING AND RELATED REQUIREMENTS

2.1 Conditions and requirements when applying for a Crowdfunding License

- No person shall operate a crowdfunding platform in Mauritius without a crowdfunding licence issued by the FSC.
- An application for a crowdfunding licence shall be made in accordance with Part IV of the Financial Services Act 2007.
- A crowdfunding operator shall be a **legal person** incorporated in Mauritius.
- The crowdfunding operator shall have its registered office and principal place of business in **Mauritius**.
- The operator shall, at all times, have a **minimum unimpaired stated capital of MUR 2 million** or its equivalent in any other currency, or such higher amount as the FSC may determine.
- The operator shall ensure that, at all times, it has **up to date transactional records on its clients**, including details of the business relationship therewith.

2.1.1 Governance

A crowdfunding operator shall, at all times:

- a. Ensure that its governance structure provides effective oversight of its activities, taking into consideration the nature, scale and complexity of its business,
- b. Have adequate internal controls and adopt strategies, policies, processes and procedures in accordance with principles of sound corporate governance and risk management, and

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- c. Be managed by a board of directors composed of a **minimum of 3 directors**, of which at least:
- 30% shall be independent directors; and
 - one shall be resident in Mauritius.

2.1.2 Employment

A crowdfunding operator shall:

- i. Be required to employ adequate staffs in Mauritius who shall be fit and proper and shall have the appropriate competence, experience and proficiency to properly perform the functions of the crowdfunding platform, and
- ii. Ensure that staffs are provided with appropriate training for their respective duties and responsibilities.

2.1.3 Disaster Recovery, Business Continuity and Risk Management

A crowdfunding operator shall:

- i. Have a **disaster recovery and business continuity plan** to ensure that appropriate measures are in place to address widely disruptive and major events, in particular but not limited to key resources, communication, information technology infrastructure, continuing customer service, safeguarding of data, regulatory responsibility and obligations as well as remote working arrangements.
- ii. Set up and maintain, at all times, a **risk management framework** to identify, assess, manage, mitigate and report risks associated with the business.

2.1.4 Outsourcing

A crowdfunding operator shall:

- Have a documented policy regarding the outsourcing of any of its functions.
- Conduct appropriate due diligence to ensure that the delegate is fit and proper and has the capacity to fulfil the delegated function.
- Ensure that all books and records of the service or transaction outsourced shall be made available for inspection by the FSC.
- Not be discharged of its responsibilities upon any delegation or outsourcing arrangement and shall, at all times, ensure compliance with the requirements of the relevant Acts and any other regulatory requirements imposed by the FSC.

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2.1.5 Information Technology and Cybersecurity

A crowdfunding operator shall have adequate measures in place to ensure:

- i. That its information technology systems are resilient and not prone to failure;
- ii. Protection of its information technology systems from damage, tampering, misuse or unauthorised access; and
- iii. The integrity of data forming part of, or being processed through, its information technology systems.

A crowdfunding operator must **review the above measures at least annually** to ensure that they are adequate. The findings of the review exercise together with the issues identified and remedial actions taken, if any, shall be made available to the FSC.

2 OPERATIONAL REQUIREMENTS

2.1 Reporting issuers and investors of a Crowdfunding Platform

2.1.1 Reporting issuers

A crowdfunding operator shall:

- Not allow a reporting issuer to seek funding on its crowdfunding platform.
- Conduct due diligence on each issuer prior to allowing the issuer to raise funds using the crowdfunding platform.

In addition to the above due diligence requirements, those requirements should be conducted under the AML/CFT legislation and shall include, inter alia, the following checks on the issuer:

- Identity, including details of its incorporation, business registration and good standing;
- The identity and proof of address of each of its directors, officers and controllers;
- The fitness and propriety of each of its directors, officers and controllers;
- Its financial strength including verification of its latest financial statements;
- Its financial history, past performance and credit history including the rating of external credit agencies where available;
- Any credentials or expertise it claims to have;
- The valuation of its business, funding levels if available and the source of any existing funding;
- Its business proposal;
- The commitment of its directors, officers and controllers to the business, including how much capital they have provided; and
- Assessment as to whether the business is being conducted in accordance with all applicable legislation.

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2.1.2 Investors

A crowdfunding operator shall conduct due diligence on each investor providing funding on its crowdfunding platform.

In addition to the above due diligence requirements, those requirements should be conducted under the AML/CFT legislation and shall include, inter alia, the following checks on the investor:

- Identity and proof of address if a natural person;
- Identity including details of its incorporation, business registration and good standing, if a legal person;
- Identify and proof of address of each of its directors, officers and controllers if a legal person;
- Fitness and propriety of the investor and that of its directors, officers and controllers where applicable;
- Level of sophistication;
- Risk assessment and rating; and
- Source of funds.

2.1.3 Agreements with and between investors and issuers

A crowdfunding operator shall ensure that appropriate agreements are entered into between:

- i. The investor and the issuer governing their respective rights and obligations; and
- ii. The investor, the issuer and the crowdfunding operator governing the main terms of the client-platform relationship.

The agreement between the crowdfunding operator and the issuer shall provide for the procedure to be followed in case the amount of funds sought to be raised by an issuer either fail to meet or exceed the target level.

A signed copy of the agreements shall be kept on record and shall be made available for inspection upon request by the FSC.

2.1.4 Maximum Investable Amount, Funds raised on the Platform and Handling of Funds

- A crowdfunding operator shall maintain effective systems and controls to ensure that, over a 12-month period, a retail investor does not invest an amount **exceeding MUR 350,000** on the crowdfunding platform.

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- No investment limit shall apply to **expert investors**.
- An issuer shall offer to raise an amount **not exceeding MUR 15 million** on a crowdfunding platform over a 3-year period or such other period as may be approved by the FSC.
- A crowdfunding operator may **handle funds on behalf of investors**. In case a crowdfunding operator acts as an intermediary in the collection of funds from investors, it shall open and maintain one or more appropriately identified bank accounts for keeping the funds received and such accounts shall be separate from any account which the crowdfunding operator may open and maintain for the keeping of its own funds.
- The dedicated bank accounts shall be non-interest bearing and shall be held with a commercial bank duly licensed by the Bank of Mauritius.

2.1.5 Commitment period

A crowdfunding operator shall ensure that investors who have committed to provide funding to an issuer may withdraw the commitment, without any penalty other than reasonable administrative costs and without giving any reason, within a period of **not less than 48 hours** following the end of the commitment period.

2.2 Crowdfunding Risk Disclosure

A crowdfunding operator shall disclose prominently on its platform the main risks of using the crowdfunding platform, including that:

- i. Investors may lose all or part of their money or may experience delays in being paid;
- ii. Issuers on the platform may include new businesses and, as many new businesses fail, an investment with such an issuer may involve high risks;
- iii. The investors may not be able to sell their investment, when they wish to, or at all; and
- iv. The investors or issuers may lose their money, incur costs or experience delays in being paid if, for any reason, the operator ceases to carry on its business.

2.2.1 Disclosure about default or failure rates

A crowdfunding operator shall disclose prominently on its platform the actual and expected failure rate of issuers who use the crowdfunding platform.

The information shall:

- i. For actual failure rates, cover the period since the crowdfunding operator began providing the service;
- ii. For expected failure rates, set out a summary of the assumptions used in determining those expected rates; and

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- iii. Be presented in a way that is fair, clear and not misleading.

2.2.2 Disclosure about the services

A crowdfunding operator shall disclose prominently on its platform key information about how its services operate, including:

- Details of how the crowdfunding platform operates;
- Details of how and by whom the crowdfunding operator is remunerated for the service it provides, including the fees and charges it imposes;
- The eligibility criteria for issuers that use the platform;
- The minimum and maximum amounts, if any, of funds that may be raised by an issuer using the platform;
- Any security usually sought from issuers, the circumstances whereby the said security might be exercised and any limitations on its use;
- The eligibility criteria for investors who may use the crowdfunding platform;
- Any limits on the amount an investor may invest using the crowdfunding platform, including limits for individual investments and limits that apply over any 12-month period;
- The allowable timeline during which an investor may withdraw a commitment to provide funding, and the procedure for exercising such a right;
- The procedure in case funds sought by an issuer either fail to meet, or exceed, the target level;
- Steps the operator will take if there is a material change in an issuer's circumstances and the rights of the issuer and investor in that situation;
- How the operator will deal with overdue payments or a default by an issuer;
- Arrangements and safeguards for client assets held or controlled by the crowdfunding operator, including details of any legal arrangements that may be used to hold client assets;
- Any facility being provided to help the sale of investments, the conditions for using the facility and any risks relating to the use of that facility;
- Measures in place to ensure that the crowdfunding platform is not used for money laundering or other unlawful activities;
- Measures in place for the security of information technology systems and data protection;
- Contingency arrangements in place to ensure the orderly administration of investments if it ceases to carry on business; and
- Such other disclosures as the FSC may deem necessary.

2.2.3 Disclosure about the issuer

A crowdfunding operator shall disclose prominently on its platform relevant information about each issuer, including as a minimum:

- The name of the issuer, the full name and position of each of its directors and officers and the full name of each controller;

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- The place of incorporation of the issuer and the place of domicile of each director, officer and controller;
- A description of the issuer's business;
- The most recent financial statements, if any, of the issuer;
- The valuation of the issuer's business, its current borrowing levels and the source of its borrowing and its liquidity;
- 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;
- The results of the due diligence carried out by the crowdfunding operator on the issuer and any limits on the due diligence that could be carried out;
- Any grading or rating by the crowdfunding operator of the 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 invested with the issuer;
- Any rights attached to the issue of the share or debenture, such as dividend or interest, voting or preemption rights, where applicable;
- Whether any security is being provided and, if so, the circumstances in which it might be exercised and any limitations on its use;
- If applicable, any other reward or benefit attaching to the investment and the terms on which it is available;
- Whether investors have any protection from their shareholding being diluted by the issue of further shares;
- That the issuer, and information provided about the issuer, are not approved by the FSC; and
- Such other disclosures as the FSC may deem necessary.

2.2.4 Material changes affecting an issuer

- i. Where, during the commitment period, a material change occurs relating to an issuer, its business, its proposal or the carrying out of its proposal, the crowdfunding operator shall:
 - a. Disclose prominently on its platform details of the material change;
 - b. Notify investors, who have committed to invest in the business or proposal, of the material change and require them to reconfirm their commitment within 5 business days; and
 - c. If reconfirmation is not provided within 5 business days, cancel the commitment.

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- ii. Where, after the commitment period, a material change occurs relating to an issuer, its business, its proposal or the carrying out of its proposal, the crowdfunding operator shall disclose prominently on its platform:
 - a. Details of the material change;
 - b. Any change in the rights of the investors and the issuer, arising from the material change; and
 - c. Steps, if any, the crowdfunding operator is proposing to take as a result of the change.
- iii. The disclosure or notification required in paragraphs (i) and (ii) above, shall be made as soon as practicable after the crowdfunding operator becomes aware of the material change.

2.2.5 Equal treatment of investors

A crowdfunding operator shall ensure that investors who use its services are able to have access to the same information on its crowdfunding platform about an issuer or investment proposal, and that access to the information is provided to all investors at the same time.

2.2.6 Risk acknowledgment form

A crowdfunding operator shall ensure that investors sign a risk acknowledgement form for each investment made using the crowdfunding platform.

The risk acknowledgement form shall:

- i. Set out clearly all the risks involved in using the crowdfunding platform and investing in the business of the issuer;
- ii. Require the investors to confirm that they understand all the risks; and
- iii. Be provided to the investors prior to, or at the same time as, the investors commit to make the investment.

2.2.7 Managing conflict of interest

A crowdfunding operator shall have in place adequate arrangements to identify, manage, mitigate and report on conflicts of interests.

A crowdfunding operator shall take reasonable steps to ensure that its officers and employees and their associates do not:

- i. Provide finance to an issuer;
- ii. Receive funding from an investor; or
- iii. Hold any direct or indirect interest in the capital or voting rights of an issuer or investor.

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A crowdfunding operator shall take reasonable steps to restrict an issuer from seeking funding on another crowdfunding platform during the commitment period.

2.3 Facility for Sale of Investments

Where a crowdfunding operator provides a facility that assists the sale of investments, it shall ensure that:

- a. The facility relates only to investments originally facilitated using its crowdfunding platform;
- b. Transfers are possible only between investors who are already clients of the crowdfunding platform;
- c. Potential buyers have access to all information on the issuer that was available to earlier investors; and
- d. Fees it charges for the use of the facility are designed to recover the costs of providing the facility rather than generating additional income.

2.4 Transitional Provisions

Any person who, immediately before the commencement of these rules was operating a crowdfunding platform or similar activity under a Regulatory Sandbox Licence granted in accordance with the Economic Development Board Act shall, within 3 months of the commencement of these rules, apply for a crowdfunding licence in accordance with these Rules.

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