

SCA - The Cabinet Resolution No. (36) of 2022 Concerning Regulating Activity of the Crowdfunding Platform Operator

The entities listed below shall be prohibited from applying for crowdfunding through the platform:

- 1- Joint stock companies.
- 2- Investment funds.
- 3- Entities that operate activities within the securities, insurance, or banking sectors.
- 4- Companies that intend to use crowdfunding to grant loans or invest in other existing companies.

The operator undertakes to provide the following to the investors

- 1) Entering into an **agreement** with the investor, and to specifically include data related to investment in financing applications. This shall explicitly state the investor's awareness of the investment **risks**, including the **inability to sell or transfer ownership to other investors** after the company has been established, except in accordance with the applicable laws in the country.
- 2) **Disclosing** to investors their **rights** to retract their investment decisions and the **mechanisms** for exiting projects funded by them through the platform after investment and execution of the project has taken place, as well as clarifying the difficulty of exiting, all in accordance with the provisions of this resolution.
- 3) Disclosing the mechanisms available to investors to receive **distributions of profits** earned on their investments or due to them from the financing applicant.
- 4) **Educating** the investor on how to invest through the platform and the type of investment offered to them.
- 5) Ensuring that the investments of an investors– except for professional investors or counterparties –**during a twelve-month period do not exceed**, the following amounts:
 - a. A sum of thirty thousand dirhams (**AED 30,000**) is for each financing applicant for all requests presented by that applicant on the platform.
 - b. A sum of one hundred thousand dirhams (**AED 100,000**) for all financing requests presented on the platform.
- 6) **Restricting** transactions on the platform to the aggregation of funds for the purpose of establishing a company or increasing the company's capital. **Refraining from selling or transferring partners' ownership to other investors** after establishment through the platform.
- 7) Retaining the funds deposited by investors in an **escrow account** with one of the licensed banks in the country or a licensed foreign bank outside the country, in accordance with the regulations issued by the authority. This retention shall continue until the proposed offer period ends or the offer is closed to complete the required financing.
- 8) **Segregation** of the operator's bank accounts from bank accounts where investors' monies are held (escrow accounts) when presenting bank balances in the financial statements and accompanying footnotes.
- 9) The transfer of aggregated funds to the financing applicant shall occur **within the agreed-upon period between the parties**, following the completion of the required financing in accordance with the provisions of this resolution. This is contingent upon confirming and verifying the financing applicant's fulfilment of their obligations as stipulated, following the established procedures in the state. The financing applicant must undertake all necessary establishment or capital increase procedures with the relevant authorities in the state.
- 10) Establishing procedures to ensure the financing applicant's compliance with their obligations towards investors, including the completion of ownership procedures for their ownership interests.

- 11) Closing the offering immediately upon reaching the maximum required financing, even if the financing applicant's proposed offering period has not concluded. Ensure that the aggregated funds do not exceed the maximum target amount.
- 12) Returning funds to the investor **within 5 days** in the following circumstances:
 - i. From the end date of the offering period without reaching the minimum target amount unless the financing applicant is satisfied with the aggregated amount.
 - ii. From the date of the financing applicant's failure to fulfill their commitments or a material change occurring, either during or after the offering period.
 - iii. From the date of cancellation of the financing request.
 - iv. From the date of exceeding the aggregated funds beyond the maximum target amount, limited to the surplus funds only.
 - v. From the date of the investor retracting their investment decision in accordance with the provisions of this resolution.
- 13) Ensuring that there are no material changes in the financing request, the financing applicant, or the project itself.
- 14) **Publishing the business plan**, financial feasibility, and economic aspects of the project related to the financing request **on the platform**, with a specific and clear presentation. Ensure the accuracy of all documents and procedures related to them.
- 15) publishing information about the financing applicant on the platform and communication channels, along with details about other projects previously funded through the platform and their performance, at least 14 days before allowing investors to invest in the project.
- 16) Providing credit information about the financing applicant, the chairman, and the board members, if the financing applicant is a legal person, provided that it is issued by the **Ethad Credit Bureau** or the concerned entity if the individual is a foreigner.
- 17) Publishing the applicants' disclosures on the platform while retaining these disclosures and verifying their validity and accuracy.
- 18) Immediately disclosing on the platform any errors, misleading information, or investment risks related to the financing applicant or their projects and investments.
- 19) Promptly disclosing to the investor if the financing applicant decides to settle for the aggregated amount after the expiration of the offering period without covering the minimum required, within the period specified by the regulatory authority.
- 20) Verifying the absence of any fraudulent activities, deception, or harm to investors by the financing applicant.
- 21) Rejecting the financing applicant's offer on the platform or removing their listing from the platform if it becomes apparent that the financing applicant is compromising the interests of investors or violating the provisions of this resolution or any applicable laws of the state.
- 22) Refraining from providing investment advice to investors, negotiating financing offered on the platform, or advertising financing requests through any means other than the platform. An exception to this is when the operator advertises financing requests through crowdfunding platforms owned by them outside the state, in accordance with the conditions set by the Authority.

Financing Applicant Obligations:

- 1) Obtain preliminary approval from the competent authorities for the intended project to be presented on the platform.
- 2) Immediately disclose, during the financing request period and in accordance with the operator's procedures, the specified data below:

- i. All information related to the applicant, its management, financial information, business plan, project purpose, minimum and maximum amount required for the project, and the proposed offering period not exceeding 15 working days. It may be extended for the same period, in accordance with the operator's procedures, without harming the investors' interests.
 - ii. Any data, information, errors, or material changes related to the applicant or its projects.
 - iii. Interests and any potential or expected investment risks.
 - iv. Mechanisms and procedures for investors to exit the investment, in accordance with the laws applicable in the State.
- 3) Refrain from presenting the financing request simultaneously on more than one platform and from collecting any funds related to the financing request presented on the platform by any external means.
- 4) The total financing applications for the applicant and its affiliated entities – parent company, subsidiary, sister company, or associated companies – shall not exceed AED 15 million throughout the company's duration. The Authority may adjust the specified amount in this provision according to the requirements of the public interest.**
- 5) Pay the fees due to the operator.
- 6) Implement the purpose of the financing request by initiating the establishment of a company or increasing the capital of an existing company in accordance with the provisions of the Commercial Companies Law within 5 working days from the expiration date of the offering period, whether the required amount has been collected or satisfied with the amount collected, or by closing the offering immediately upon reaching the maximum required financing.

Operator, investor, and financing applicant rights

- 1. The operator shall be entitled to charge fees from the financing applicant to enable it from offering any of its applications at the platform according to the agreement concluded between them.
- 2. The financing applicant shall be entitled to re-offer the financing application at the platform, be satisfied with what was collected, or cancel the financing application in the following cases:
 - If the investor retracts his investment decision.
 - If the investor did not pay the financing value after the end of the granted time limit.
 - The expiry of the offering period without covering the required amount.
- 3. The investor shall be entitled to retreat his investment decision and recover the financing amount that he deposited in the following cases:
 - At any time during the offering period.
 - Within a period not to exceed five (5) working days from the date of collecting the requested financing amount.
 - Expiry of the offering period without covering the minimum required amount.

- Within a period not to exceed five (5) working days from date of the operator disclosure of the financing applicant decision and being satisfied with the collected amount.
- Within a period not to exceed five (5) working days from date of extending the proposed offering period. In this case, the investor shall be entitled to the fees he paid.
- Any other cases determined by the Authority.

Obligations of the operator towards the Authority

1. Enter **an agreement** with the financing applicant that includes the rights and obligations of both parties and the channels of communications between them in a manner consistent with the provisions of this Resolution.
2. Refrain from financing, assisting, or soliciting any investor to invest in financing applications presented on the platform, negotiating its terms, favouring one investor over another, or inducing the investor to invest in certain financing applications only.
3. Refrain from investing in financing applications on behalf of the investor.
- 4. Refrain from investing with more than (10%) of any project presented on the platform.**
5. Refrain from placing its own financing applications or any of its parent, subsidiary, or sister companies on the platform **except after obtaining the approval of the Authority** and in accordance with its terms and procedures.
6. Take into consideration that financing applications are not restricted to specific investment sectors in order to avoid the risks of investment concentrations.
7. Disclose on the platform about the following details:
 - a. The operator general information including for example: the names of its owners, legal form, capital, members of its board of directors, and the crowdfunding platforms that it manages.
 - b. The ownership of the operator or the chairman and members of its board of directors, its executive management and any of its employees or partners therein of any shares in the capital of the financing applicant, and any conflict of interests' cases between any of them with the investors or the financing applicants and the way of managing the same.
 - c. Minimum and Maximum investment in the platform and the financing applications.
 - d. Investors rights.
 - e. The fees payable to the operator from the investor in exchange for investing through the platform.
 - f. The procedures agreed upon that will be taken in case there is a violation or non-commitment by the financing applicant.
 - g. The information related to the platform, its nature, work mechanism, operation, services, and risks.
 - h. Any other disclosure required by the Authority.

Crowdfunding Guidance as per UAE Central Bank - Loan based Crowdfunding Activities ("LCAs") - Crowdfunding Platform ("CFP") - Central Bank by the Decretal Federal Law No (14) of 2018 regarding the Central Bank and Organization of Financial Institutions and Activities

LCAs are categorised according to lending volume:

- Category 1 (Large): Cumulative loans facilitated in a calendar year AED 5,000,000 and above; or Category 2 (Small): Cumulative loans facilitated in a calendar year below AED 5,000,000.

There are two types of clients who may participate in a CFP:

- **Retail Lender:** a Client that is not a Market Counterparty; and
- **Market Counterparty:** a Client that can evidence net assets of over AED 2,000,000 outside of their primary residence and self-attests to being treated as a Market Counterparty. Such self-attestation appropriately reviewed and verified by the CFP.

RISK GOVERNANCE FRAMEWORK

The crowdfunding company must have an appropriate risk governance framework in place that identifies all material risks. This includes policies, processes, procedures, systems and controls to identify, measure, evaluate, monitor, report and control or mitigate material sources of risk on a timely basis.

The crowdfunding company must have in place mitigating action plans for key material risks and monitor these on an ongoing basis.

The risk governance framework shall address, amongst other key risks, the following areas:

Operational risk, conduct risk; Fraud by employees; Cybercrime and attacks; Money laundering; Managing defaults; Miss-selling risk;² and Terrorist financing.

The crowdfunding company must have a detailed exit plan to provide for the orderly wind down of the crowdfunding company business. The exit plan must also assume that in the event of failure of the crowdfunding company, loans will continue to be administered, and lender funds protected.

External Audit

A crowdfunding company shall ensure that the external audit firm responsible for their audit does not undertake that function for more than six (6) successive years and that the Partner in charge of the audit is rotated every three (3) years.

CONDUCT OF BUSINESS

A crowdfunding company must take reasonable care in on-boarding Lenders, assessing the suitability of the Lender and ensuring the Lender has a clear understanding of the risks they are undertaking. This process shall be documented, and relevant employees shall have appropriate training.

In addition to other checks (e.g. for money laundering), a crowdfunding company shall verify and document the identity of a Lender/investor and confirm their address. Such measures include (but are not limited to) the following:

- **Call the client on their home or business contact numbers;**
- **Contact an employer to confirm employment, after gaining the client's consent;**
- **Review bank statements for details of salary and other income; or**
- **Requesting documents confirming their identity**

A crowdfunding company shall obtain sufficient information from Lenders about their financial circumstances and objectives through **self-declared assessment questionnaire forms**, or by any other equivalent means.

Based on the information provided and independently reviewed by the crowdfunding company, the CFP shall classify all Lenders as a Retail or Market Counterparty. The classification shall be shared with the Lender/investor.

Lending structure

A crowdfunding company shall structure its activities in a clear, transparent format using plain language that shall be stipulated within an enforceable (lending) contract.

A crowdfunding company must ensure that, when a loan is made using its platform, 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.

Borrower Risk Scoring, Loan Pricing and Due Diligence

1. Ensure there is a sufficient and transparent **risk scoring** and **loan pricing system** in place. The basis and methodology of risk scoring, loan pricing and due diligence shall be made publicly available.
2. Obtain **self-declared risk assessment questionnaire** forms from their Borrowers/farmers.
3. Take reasonable steps to confirm the information provided in the risk assessment questionnaire.
4. Take adequate measures to prevent Borrowers/farmers from seeking loans for personal use.
5. Requiring a range of information, including **Al-Etihad Credit Bureau reports**, to enable the risk scoring and loan pricing, including cash flow forecasts.
6. Carry out a risk assessment on prospective Borrowers based on the information required.
7. Taking reasonable care to undertake thorough anti-money laundering (AML) checks and establishing the **ultimate beneficial owner of the Borrower**.
8. **Default rates** on projects/borrowers listed on the platform **must be made publicly available**.
9. Implement policies to **manage disputes / conflicts of interest**.
10. In the event that a crowdfunding company identifies any issues with the Borrower that increase the risk score of that Borrower, the crowdfunding company shall communicate its findings with the relevant Lenders and develop an action plan for how outstanding balances on any loans related to that borrower will be managed.
11. A crowdfunding company shall require Borrowers to declare its current and intended borrowing from other CFPs and other sources in a calendar year. A crowdfunding company should take reasonable steps to monitor whether Borrowers are accessing loans through any other sources, including regularly checking with Al Etihad Credit Bureau.

Ceilings on lending/investing

A crowdfunding company shall impose a limit on lending **per person per project** (per calendar year) to:

- Retail Client: AED 20,000; and
- Market counterparty: AED 50,000

A crowdfunding company shall impose a limit on **total lending per person** (per calendar year) to:

- Retail Client: AED 200,000; and
- Market counterparty: AED 500,000

Ceilings on borrowing - Farmer

- The borrowing limit for Borrowers in any calendar year is AED 10,000,000.
- Borrowers may only list themselves on one CFP per project. The crowdfunding company and its management shall be responsible for ensuring, as part of the due diligence of Borrowers, that the borrower is not listed on any other CFP for the same project.

Loan release

Crowdfunding companies shall prevent borrowers from gaining access to:

- Any amounts raised unless the borrowers raised 100% of its funding goal.
- Any amount exceeding the funding goal.

Client information confidentiality

A crowdfunding company shall maintain the strictest standards of client information confidentiality including implementing the necessary systems and controls to ensure such standards are met.

Client money

- A crowdfunding company shall not accept, take, or receive the transfer of full ownership of money from clients.
- A crowdfunding company shall ensure adequate protection of Client Money.
- Where a crowdfunding company makes arrangements on behalf of a client to receive and disburse funds, such monies shall be maintained in segregated/ escrow accounts in the name of the client as per the agreed arrangements.
- The segregated/escrow accounts holding clients' money must be externally audited:
- on a monthly basis for Category 1 CFPs; and on a quarterly basis for Category 2 CFPs
- Client funds shall only be held with local retail banks who are licensed and regulated by the Central Bank.

Information disclosures

1. All crowdfunding companies shall disclose the **terms and conditions** of their business to their Clients and any subsequent updates to these terms and conditions.
2. All crowdfunding companies shall provide necessary **(written) warnings of material risks** to Clients.
3. A crowdfunding company shall **collaborate and coordinate with Al Etihad Credit Bureau** and share information concerning both its Lender(s) and Borrower(s).

Disclosures to Lender

- Information on the business model or operation of the Borrower, both historical and projected.
- Critical success factors and important dependencies.
- Information on the financial condition of the Borrower.
- Risks relevant to the Borrower based on due diligence undertaken by the CFP including expected default rates.
- CFP's fees and charges on the specific project.
- Terms of repayment and controls and precautionary measures taken, and
- Right of cancellation of contracts and lawful jurisdiction applicable for any disputes.

Conflicts of interest

- a. A crowdfunding company lists a Borrower who is a related party to a CFP (or its significant shareholders / directors / employees);
- b. A crowdfunding company has an interest in the outcome of a service provided to the Client, which is distinct from the Client's interest in that outcome;

- c. A crowdfunding company has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client;
 - d. A crowdfunding company receives or will receive from a person other than the Client an inducement in relation to a service provided to the Client, in the form of money, goods or services, or
 - e. A crowdfunding company (or its significant shareholders / directors / employees) has financial interest in a Borrower.
- A crowdfunding company **shall not allow** any of its shareholders, directors or employees to **borrow** on the platform.
 - A crowdfunding company **shall not provide advice to Clients** relating to any crowdfunding available through its CFP.
 - A crowdfunding company **may not directly market any offer**, Borrower or project available on the CFP to any current or prospective Client.

Dispute management

- Establish dispute handling and grievance redress mechanisms to deal with complaints from clients or other parties and include in client agreements the details of these mechanisms.
- Develop an adequate collections policy and procedures, setting out actions to be taken against borrowers who fail to make timely payments.
- Maintain records demonstrating to the Central Bank that it has control mechanisms in place to address complaints and grievances.

Contingency Portfolio Administration Arrangements

In the event that a crowdfunding company fails or is wound up (either voluntarily or involuntarily), the crowdfunding company must have in place documented arrangements to ensure that the loan portfolio continues to be administered.

The board of the crowdfunding company bears ultimate responsibility for ensuring that contingency portfolio administration arrangements are in place.

Reporting to the Central Bank

A crowdfunding company shall submit reports to the Central Bank in the prescribed form within thirty (30) days of the period specified below:

- Category 1: Quarterly (as of the end of 31 March, 30 June, 30 September and 31 December);
- Category 2: Semi-annually (as of the end of 30 June and 31 December); and
- A crowdfunding company shall file its annual audited financial statements with the Central Bank.

The crowdfunding company shall report the following (at a minimum) to the Central Bank:

- Financial position;
- Client money held;
- Description of complaints received and resolution status of these complaints;
- Details of loans arranged each quarter; and
- Defaults and near-defaults.

Record keeping

All records and materials must be made available for inspection by the Central Bank from time to time.

Records of Client Money and completed transactions shall be kept for a minimum period of ten **(10)** years.

The records maintained shall include:

- Historical records of information displayed online (websites / social media / any other media) and any print copies, if applicable, displaying the crowdfunding company's promotional communication, advertisements or online banners and tag lines.
- Internal policies, procedures and operating documents.
- Corporate and financial records and general ledger and sub-ledgers.
- Reports and statements issued to Clients and regulators.
- Any communications related to Clients, including confirmations related to risk understanding, classification documents and confirmation related to classification, amongst others.
- All suitability assessments of Clients, including any clients (both Lenders and Borrowers) that were deemed not suitable by the crowdfunding company.
- Management information, accounts and communications.
- **HR records; and IT architecture and security related documents.**

Additional Terms for Crowdfunding Platforms

The following terms must be included in a Client Agreement between a crowdfunding company and a Lender:

1. the crowdfunding company's obligations to administer the loan, including:
 - how payments made by the Borrower will be transferred to the Lender.
 - steps that will be taken if payments by a Borrower are overdue or the Borrower is in default.
 - Clear guidelines on what is considered to be a default.
2. if the Lender is a Market Counterparty, the steps that will be taken by the CFP and Lender to ensure that the Lender complies with any applicable limits relating to the amounts of loans that may be made using the platform.
3. the contingency arrangements that the crowdfunding company will put in place to deal with a platform failure or if the CFP ceases to carry on its business.
4. The following terms must be included in a **Client Agreement** between a crowdfunding company and a Borrower:
 - a. a restriction on the Borrower using any other Crowdfunding service to raise funds during the commitment period;
 - b. a restriction on the Borrower or any Person that is connected to the Borrower, lending or financing, or arranging lending or finance for a Lender using the service;
 - c. a restriction on the Borrower advertising its proposal, or soliciting potential lenders or investors, outside the platform during the commitment period;
 - d. a requirement on the Borrower to give reasonable advance notice to the operator of any material change affecting the Borrower, its business or the carrying out of its proposal;
 - e. the obligations of the Borrower to disclose if there is any material change after funds have been provided;

- f. An obligation on the Borrower to produce financial statements, including bank statements at least annually.

A crowdfunding company must prominently disclose on its website key information about how its service operates, including:

- a. Details of how the CFP functions.
- b. Details of how and by whom the crowdfunding company is remunerated for the service it provides, including fees and charges it imposes.
- c. Any financial interest of the crowdfunding company or significant shareholders, directors or employees of the crowdfunding company, that may create a conflict of interest.
- d. The eligibility criteria for Borrowers that use the CFP.
- e. The minimum and maximum amounts of loans that may be sought by a Borrower.
- f. What, if any, security is usually sought from Borrowers, when it might be exercised and any limitations on its use.
- g. The eligibility criteria for Lenders that use the service.
- h. Any limits on the amounts a Lender may lend using the CFP, including limits for individual loans and limits that apply over any twelve (12) month period.
- i. When a Lender may withdraw a commitment to provide funding ('cooling –off period') and the procedure for exercising such a right.
- j. What will happen to funds raised if Loans sought by a Borrower either fail to meet, or exceed, the target level.
- k. Steps the crowdfunding company will take if there is a material change in a Borrower's circumstances and the rights of the Lender and Borrower in that situation.
- l. How the crowdfunding company will deal with overdue payments or a default by a Borrower.
- m. Which jurisdiction's laws will govern the loan agreement between the lender and borrower.
- n. Arrangements and safeguards for Client Money held or controlled by the crowdfunding company, including details of any legal arrangements that may be used to hold Client Money.
- o. Any facility it provides to facilitate the transfer of Loans, 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 CFP 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.**
- r. Contingency portfolio administration arrangements the crowdfunding company has in place to ensure the orderly administration of Loans if the CFP ceases to carry on business.

Additional risks that the crowdfunding company must prominently disclose on its website include:

- By participating in the CFP, Clients are exposing themselves to material risks pertaining to the business model of the CFP.
- Listing the specific material risks for Borrowers and for Lenders separately and clearly.
- Lenders are not placing deposits and are not protected by any insurance or guarantee scheme.
- Lenders may face material risks, including the loss of some or all of their money, should the Borrower fail or default on loan repayments.

A crowdfunding company shall also disclose additional information including (but not limited to) the following:

- Lack of full visibility of use of funds and means to monitor Borrowers closely similar to methods adopted by conventional financing channels such as banking channels.
- Risk of misleading or insufficient information disclosure by the borrower.
- Dispute resolution and redress mechanisms.

A crowdfunding company must:

- Attach key disclosure clauses in agreement which must be initialled by the borrower;
- Issue statement of transactions (monthly);
- Provide 30-day notice of any changes to fees, interests etc.