



NOTICE UNDER THE SECURITIES MARKETS ORDER, 2013

NOTICE NO. CMA/N-1/2019/13

NOTICE ON PEER TO PEER FINANCING PLATFORM OPERATORS

1. **INTRODUCTION**

- 1.1 This Notice is issued pursuant to section 239(1) of the SMO and applies to all P2P Platform Operators.
- 1.2 This Notice shall take effect on 10th April 2019.

2. **DEFINITIONS**

- 2.1 For the purposes of this Notice:-

“Authority” means Autoriti Monetari Brunei Darussalam;

“CMSL” means capital markets services licence;

“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);

“P2P” means peer to peer financing;

“P2P Platform Operator” means a CMSL holder who operates a P2P Platform;

“P2P Platform” means a peer to peer financing platform;

“permitted securities” means securities specified under paragraph 15 of this Notice;

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

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

“SMR” means the Securities Markets Regulations, 2015; and

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

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 a P2P 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 a P2P 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 a P2P Platform if it is satisfied that:-

(a) the applicant has clear and transparent rules relating to the P2P 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 P2P Platform;
- (c) any person authorised by the Authority may enter, at any reasonable time, the premises of the P2P Platform and to inspect the P2P 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 P2P Platform rules including directing the person in breach to take any necessary remedial measure;
- (g) the P2P Platform rules make satisfactory provisions:-
 - (i) for the protection of investors and public interest;
 - (ii) to ensure proper functioning of the P2P 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 P2P Platform Operator;
- (h) the applicant has sufficient financial, human and other resources for the operation of the P2P Platform, at all times; and
- (i) the applicant will be able to demonstrate IT assurance regarding the system's readiness of which includes, but is 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 a P2P Platform shall also be accompanied by:-

- (a) particulars of any arrangements which the P2P 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 A P2P 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 the 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 P2P Platform must:-

- (a) ensure that the P2P 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 it carries out its 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 the P2P 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 A P2P Platform Operator must submit to the Authority the following:-

- (a) an annual compliance report to demonstrate the P2P Platform Operator's compliance with the provisions under the SMO, this Notice and any directions issued or conditions imposed by the Authority;
- (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; and
- (c) any other document(s) that the Authority may determine to be necessary.

7. OBLIGATIONS OF P2P PLATFORM OPERATOR

7.1 A P2P Platform Operator must:-

- (a) ensure there is an efficient and transparent risk scoring system in place relating to the permitted securities;
- (b) carry out a risk assessment on prospective issuers planning to use its platform;
- (c) monitor and ensure compliance of its rules;
- (d) carry out investor education programmes;
- (e) ensure the issuer's disclosure document lodged with the P2P Platform Operator is verified for accuracy and made accessible to investors through the platform;
- (f) inform investors of any material adverse changes to the issuer's proposal, the meaning of which is contained in paragraph 10.6;
- (g) ensure that the fundraising limits imposed on the issuer are not breached;
- (h) ensure that the investment limits imposed on the investors are not breached;
- (i) ensure that it does not engage in any business practices appearing to the Authority to be deceitful, oppressive or improper (whether unlawful or not) or which otherwise reflect discredit on its method of conducting business;

- (j) obtain and retain self-declared risk acknowledgement forms from the investors prior to them investing on the P2P Platform;
- (k) have in place processes to monitor and ensure compliance to anti-money laundering and counter-terrorism financing requirements in respect of both issuers and investors; and
- (l) have in place processes or policies to manage any default by issuers including using its best endeavours to recover amount outstanding to investors. ~~and~~

7.2 The scope of the due diligence exercised by a P2P 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) carry out an assessment of the issuer's creditworthiness;
- (d) establish appropriate measures to identify, deter and prevent financial crime and money laundering on and through the facilities of the P2P Platform Operator; and
- (e) report to the Authority any suspicious activities in relation to financial crime and money laundering.

8. OUTSOURCING ARRANGEMENT

8.1 A P2P 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 its compliance with its 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 a P2P Platform Operator shall be as follows:-

- (a) If the P2P Platform deals in securities with Sophisticated Investors only, a minimum base capital of \$50,000 shall apply;
- (b) If the P2P 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 A P2P 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 must not enter into any transaction with any customer to deal in securities as principal.
- 10.2 A P2P Platform Operator shall establish systems and controls for maintaining accurate and up-to-date records of investors.
- 10.3 A P2P 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 A P2P 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 P2P Platform Operator.
- 10.5 Notwithstanding paragraph 10.4, where the targeted amount is not met, the P2P Platform Operator shall immediately notify the investors.
- 10.6 For the purpose of sub-paragraph 7.1(f) and 10.4(b), a material adverse change 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 P2P Platform Operator may impose other additional conditions before the funds are transferred provided that they serve the investors' interests.

11. MANAGING CONFLICT OF INTEREST

11.1 A P2P 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 P2P Platform Operator carrying out its functions. Such conflicts must be managed in a timely manner.

11.2 A P2P Platform Operator, including its individual directors, shareholders and employees, must disclose to the public on its platform if:-

- (a) it invests in any permitted securities executed or offered on or through its platform;
or
- (b) it pays or receives payment in whatever form, including payment in the form of permitted securities to any person who refers or introduces an issuer hosted on its platform.

11.3 A P2P Platform Operator, including its individual directors, shareholders and employees, is prohibited from providing any financial assistance to investors to invest in any permitted securities executed or offered on or through its platform.

12. ADVERTISING RESTRICTION

12.1 A P2P Platform Operator shall restrict access to the specific details of offers of permitted securities 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 P2P Platform Operator and they shall only be allowed to view the offers after they are logged in to the platform.

- 12.2 A P2P 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 P2P Platform.

13. PERMITTED AND NON-PERMITTED ISSUERS

- 13.1 An issuer hosted on the P2P Platform is required to comply with section 117(b)(ii) of the SMO.

- 13.2 The following entities are prohibited from raising funds through a P2P 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);
- (d) Companies that propose to use the funds raised to provide loans or make investment(s) in other entities; and
- (e) Any other type of entity that is specified by the Authority.

For the purpose of this paragraph, commercially or financially complex structures includes, 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 hosted on the P2P Platform must be a company or a corporation incorporated or registered under the Companies Act (Cap.39).

13.4 An issuer shall not be allowed to be hosted concurrently on multiple P2P Platforms in Brunei Darussalam.

14. RISK SCORING

14.1 All issues, offers or invitations to subscribe for or purchase permitted securities must be rated by the P2P Platform Operator.

14.2 The P2P operator is accountable for the risk scoring mechanism and methodology employed.

14.3 The final risk scoring for the purchase of the permitted securities must be made available to the investor at the time of offer.

15. TYPE OF SECURITIES PERMITTED FOR OFFERING

15.1 The following securities can be listed and offered to investors on or through a P2P Platform:

(a) debentures; or

(b) rights and interests in investments which are in accordance with *Hukum Syara'*.

16. LIMITS TO FUNDS RAISED ON A P2P PLATFORM

16.1 The following limits shall apply to any issuer being hosted on a P2P 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 P2P Platform to raise a maximum amount of BND1 million, excluding the issuer's own capital contribution.

16.2 Notwithstanding paragraph 16.1, an issuer must notify and provide full and accurate disclosure to the investors in the event that an offering is oversubscribed. The issuer is not allowed to keep any amount which exceeds the initial target amount.

17. **DISCLOSURE REQUIREMENTS**

17.1 An issuer proposing to be hosted on a P2P Platform shall submit the relevant information to the P2P Platform Operator including the following:-

- (a) Information that explains key characteristics of the company;
- (b) Information that explains the purpose of the permitted securities and the targeted offering amount;
- (c) Information relating to similar offering or fund raising activities of the company in other jurisdictions;
- (d) Information relating to the business plan of the company; and
- (e) 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.

17.2 An issuer proposing to be hosted on a P2P Platform shall ensure that all information submitted or disclosed to a P2P 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.

17.3 A P2P Platform Operator must disclose and display prominently on its platform, any relevant information relating to P2P including:-

- (a) information relating to an issuer as specified under paragraph 17.1;
- (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) explanatory notes on its risk scoring mechanism, methodology and parameters;
- (e) general risk warning in participating in P2P;
- (f) information on rights of investor relating to participation in P2P;
- (g) information about complaints handling or dispute resolution and its procedures;
- (h) information on what constitutes an event of default for permitted securities;
- (i) information including statistics on late payment and default rate of issuers hosted on its platform;
- (j) fees, charges and other expenses that it may charge to or impose on an issuer or investor; and
- (k) information on processes and contingency arrangement in the event the P2P Platform Operator is unable to carry out its operations or cessation of business.

18. INVESTMENT LIMIT

18.1 A person may invest in any issuer hosted on the P2P 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. In this regard, the P2P Platform Operator shall require the retail investors to file a declaration confirming their compliance with the limit.

18.2 The investment limits specified in paragraph 18.1 is applicable to local and foreign investors.

19. SUBMISSION OF APPLICATION

- 19.1 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.
- 19.2 All submissions relating to this application and any correspondence should be addressed to:-

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

Attention to:
**CAPITAL MARKET,
REGULATORY AND SUPERVISION DEPARTMENT.**

**MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM**

Issue Date: 6 Sya'aban 1440 / 12 April 2019