HONG KONG REGULATION OF CROWD-FUNDING

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1. INTRODUCTION

In his 2015-16 budget speech, Hong Kong Financial Secretary John Tsang Chun-wah outlined the Government's intention to set up a steering group to study how to develop Hong Kong into a financial technology hub, which would study issues relating to crowd-funding.[1] In March 2016, government advisory body, the Financial Services Development Council (the **FSDC**), recommended regulatory changes to facilitate the development of a Hong Kong equity crowdfunding market, which it considered would be highly beneficial to Hong Kong's small enterprises and start-ups.[2] The Financial Services and Treasury Bureau (the **FSTB**) subsequently published a consultation paper[3] in December 2023, which proposed requiring individuals or entities to obtain prior approval from a proposed new Crowdfunding Affairs Office for raising funds from individuals or entities in Hong Kong. Crowdfunding activities already regulated under Hong Kong's existing legislation were proposed to be exempted from the new approval requirement. As at May 2025, the FSTB has yet to publish its consultation conclusions in relation to the December 2023 proposals. This means that there are still no specific regulations in Hong Kong lightening the regulation of crowd-funding with a view to improving the financing channels available to start-ups and tech companies. As a result, the opportunities for crowd-funding in Hong Kong are currently fairly restricted as will be examined in this note.

2. WHAT IS CROWD-FUNDING

Crowd-funding typically refers to the use of small amounts of money, obtained from a large number of individuals or organisations, to fund a project, a business or personal loan, and other needs through an online web-based platform.[4] There are four main subcategories: peer-to-peer lending, equity crowd-funding, reward/ pre-sale crowd-funding and donation funding.

(i) Peer-to-peer lending (P2P Lending)

Online platforms match lenders (investors) with borrowers (issuers) to provide unsecured loans to individuals or projects. The borrower can either be a business or an individual and P2P Lending typically involves a number of lenders providing money for small parts of the overall loan required by the borrower. These loan parts are then aggregated by the online platform and when there is enough to cover the required loan, the loan is originated and paid to the borrower.

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1 FSTB Press release

LCQ1: Regulation of Crowdfunding. Wednesday, March 18, 2015

2 FSDC. "*Introducing a Regulatory Framework for Equity Crowdfunding in Hong Kong*". March 2016

3 FSTB. (December 2023). "*Public Consultation on Regulation of Crowdfunding Activities*".

4 This is the definition used in the OICU-IOSCO Research Paper "*Crowd-funding: An Infant Industry Growing Fast*". Eleanor Kirby and Shane Worner. March 2014

Usually, the interest rate will be set by the platform and the borrower will repay the loan with interest. The interest rate is typically higher than the savings rate available to the lender but lower than a traditional loan available to the borrower, depending on the borrower's evaluated risk. Interest is paid to the lender until the loan matures, or the borrower repays early or defaults.[5]

Smaller P2P Lending platforms cater to niche markets such as platforms specialising in real estate transaction financing, venture capital, business-to-business, graduate financing, art project financing, tech start-ups or consumer to consumer loans for transactions such as eBay purchases.

There are two key types of P2P Lending business models: the notary model and the client segregated account model.

Notary Model

The crowd-funding platform acts as an intermediary between the lender and the borrower, matching them to each other. The loan is originated by a bank and the platform issues a note to the lender for the value of their contribution to the loan. In many jurisdictions, this note is considered to be a security which shifts the risk of non-repayment of the loan from the bank to the lenders themselves. Both lenders and borrowers pay a fee to the crowd-funding platform.

Client Segregated Account Model

The crowd-funding platform matches an individual lender with an individual borrower and a contract is entered into between them with little involvement by the intermediary platform. Lenders can bid on loans in an auction style and all funds of the lenders and borrowers are separated from the crowd-funding platform's balance sheet and go through a legally segregated client account, over which the platform has no claim in the event that the platform collapses. Thus the contractual obligations between borrower and lender continue despite any collapse or failure of the crowd-funding regulation.

Both lenders and borrowers pay a fee to the platform. The platform provides the service of collecting loan repayments and performing preliminary assessments of borrowers' creditworthiness.

A variation on this model uses a trust fund whereby lenders purchase units or shares in a trust

[5] Ibid. at page 9

structure, with the platform acting as the trustee who manages the fund. The platform uses the fund to match borrowers and lenders and the platform administers the loan repayments. As it is a trust, it is legally separate from the platform itself which prevents the investors suffering loss if the platform fails.

(ii) Equity crowd-funding

Investors invest in a project or business (normally a start-up) and in return receive an interest in shares or debt instruments issued by a company or a share of the profits or income generated from the relevant crowd-funding arrangement managed by a third party.

Equity crowd-funding enables a number of investors to invest through an online platform and gain an interest in the business. It is normally used for early stage start-ups with limited access to other funding sources due to their small size and maturity. These investments involve a number of risks, particularly a relatively high risk of failure, dilution of initial shareholdings through further issues, and the absence of a secondary market making equity stakes illiquid. Equity crowd-funding is currently a small sector, often with many regulatory impediments preventing small public equity raisings or strict limits on the size of retail investments.

(iii) Reward/ pre-sale crowd-funding

In return for sums paid, the payer receives returns in the form of physical goods or services.

(iv) Donation crowd-funding

Sums are raised for charitable causes.

From a regulatory perspective, reward/pre-sale crowd-funding and donation crowd-funding differ from the first two types in that they do not provide a financial return in the form of a yield or return on investment.

The following focuses on P2P Lending and equity crowd-funding.

Approaches to P2P Lending Regulation

The regulation of crowd-funding activities varies across jurisdictions. There are currently five key regulatory approaches to P2P Lending:

(i) Activities are either exempt or unregulated due to lack of definition;
(ii) Crowd-funding platforms are regulated as intermediaries;
(iii) Crowd-funding platforms are regulated as banks;
(iv) The US model under which there are two levels of regulation: Federal regulation through the Securities and Exchange Commission and state level regulations, where platforms must apply on a state-by-state basis; and
(v) Prohibition of P2P lending.[6]

Another possible form of regulation of P2P Lending would be regulation as a collective investment scheme (**CIS**) where a platform actively manages investors' money and automatically invests their money while providing them with a limited choice.

Approaches to Equity Crowd-funding Regulation

There are three main approaches to regulation:

(i) Regulation that prohibits crowd-funding completely;
(ii) Regulation that permits crowd-funding but creates high barriers to entry; and
(iii) Regulation allowing the industry to exist within strict limits.

Some jurisdictions have sought to treat equity crowd-funding as exempt, or lighten the regulation of the issuing of shares in return for crowd-funding investment in order to provide funding for SMEs.

A number of jurisdictions consider P2P Lending in particular to be an efficient vehicle for funding start-ups and SMEs, and some are seeking to encourage the practice but without compromising investor protection through specific, targeted regulation, for example the UK.

3. HONG KONG REGULATION OF CROWD-FUNDING

Hong Kong has yet to introduce specific laws or regulations in relation to crowd-funding. The only regulatory guidance to date is the "Notice on Potential Regulations Applicable to, and Risks of, Crowd-funding Activities" issued by the Securities and Futures Commission (**SFC**) in May 2014.[7] However, crowd-funding activities, such as peer-to-peer lending and equity crowd-funding in Hong Kong, are potentially subject to the following regulatory provisions:

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6 Ibid at page 5

7 SFC. Notice on Potential Regulations Applicable to, and Risks of, Crowd-funding Activities. 7 May 2014 available at https://www.sfc.hk/web/files/ER/PDF/Notice%20on%20Crowdfunding.pdf

(i) The restrictions on offers of shares or debentures to the public under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (**C(WUMP)O**);

(ii) The prohibition on the issue of unauthorised invitations to the public under Section 103(1) of the Securities and Future Ordinance (the **SFO**);

(iii) The prohibition on carrying on a "regulated activity" under the SFO without being licensed/registered to do so by the SFC; and

(iv) The prohibition on carrying on a money lending business without a money lender's licence under section 7 of the Money Lenders Ordinance.

3.1 Restrictions on Offers of Shares or Debentures to the Public under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (C(WUMP)O)

The offer of shares or debentures to the "public" is regulated by C(WUMP)O. In the case of Hong Kong incorporated companies, any prospectus issued (Section 38 C(WUMP)O) by or on behalf of the company, and in the case of overseas companies, any prospectus distributed in Hong Kong (Section 342 C(WUMP)O) must comply with the detailed contents requirements of C(WUMP)O (notably the Third Schedule) and must be registered with the Registrar of Companies. A "prospectus" is defined as any prospectus, notice, circular, brochure, advertisement or other document which:-

(a) offers any shares or debentures of a company to the public for purchase or subscription for cash or other consideration; or

(b) is calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares or debentures of a company.

A company that issues a prospectus that does not comply with the disclosure and registration requirements, and every person who is knowingly a party to the issue, commits an offence under C(WUMP)O. The provision of information on the internet in relation to investment-based crowdfunding (involving investment in equity or debt securities) is therefore likely to constitute the issue of a prospectus in breach of C(WUMP)O.

There are certain exemptions which are set out in the 17th Schedule to C(WUMP)O. Consideration would need to be given to whether these exemptions: are (a) available to; and (b) suitable for, any particular crowdfunding platform. Most of the exemptions require access to the information to be

restricted which presents difficulties for crowdfunding platforms to take advantage of them in practice. The available exemptions include (among others):

(a) **Offers to not more than 50 persons**

Since the limitation is on the number of offers made (not offers accepted), this exemption would not be available where information is available on the internet, unless access is restricted to 50 persons. The upper limit of 50 will include offers made by the same person in the preceding 12 months in reliance on the same exemption, which effectively prevents offers being staggered to make offers to larger numbers of investors.

(b) **Offers only to professional investors** (as defined in the Securities and Futures Ordinance (the **SFO**)

Professional investors under the SFO fall into two main categories:

(i) institutional investors including authorised banks, licensed investment intermediaries; authorised funds; authorised insurers; authorised pension schemes etc.; and

(ii) so called "high net worth investors" who are categorised as professionals by the Securities and Futures Professional Investor Rules Cap. (571D of the Laws of Hong Kong) (the **PI Rules**).

High net worth investors under the PI Rules include:

(1) an individual, who:
(a) either alone or with any of his or her associates[8] on a joint account;
(b) with one or more persons who are not associates of the individual; or
(c) with the individual's wholly-owned investment company,
has a portfolio[9] of not less than HK$8 million or its equivalent in any foreign currency at the relevant date;[10]

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8 An "associate" in relation to an individual, means the spouse or child of the individual.

9 A "portfolio" means a portfolio comprising any of: (a) securities (which include shares, bonds, notes, warrants, funds, options and other instruments defined as securities under the SFO); (b) a certificate of deposit issued by an authorized financial institution or a bank which is not an authorized financial institution but is regulated under the law of any jurisdiction outside Hong Kong; or (c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership.

10 Securities and Futures Professional Investor Rules, section 5(1)

(2) a corporation or partnership which has:

(i) a portfolio of not less than HK$8 million or its equivalent in any foreign currency; or

(ii) total assets of not less than HK$40 million or its equivalent in any foreign currency;[11]

(3) a trust corporation which acts as a trustee of one or more trusts with total assets of at least HK$8 million;[12]

(4) any corporation whose principal business at the relevant date is to hold investments that is wholly owned by any one or more of: (a) an individual as described in paragraph (1); (b) a corporation or partnership as described in paragraph (2); (c) a trust corporation as described in paragraph (3); and (d) a professional investor within the meaning of paragraph (a) or paragraphs (d) to (h) of the definition of professional investor in Section 1 of Part 1 of Schedule 1 to the SFO; and

(5) a corporation which, at the relevant date, wholly owns a corporation referred to in paragraph (2).

For an online platform to take advantage of the professionals exemption, it would therefore need to restrict access to it to professional investors for example by requiring proof of qualification as a professional before providing a potential investor with login details to access the site.

(c) **Offers for which the total consideration payable does not exceed HK$5 million**

Reliance on this exemption is likely to prove problematic as the restriction is on the number of offers made (which is potentially unlimited where the information is available on the internet) rather than the number of offers accepted. The upper limit of HK$5 million also includes offers by the same person in reliance on the same exemption made in the preceding 12 months.

(d) **Offers where the minimum consideration payable (for shares) or the minimum principal amount to be subscribed (for debentures) is HK$500,000**

This exemption would require a minimum investment amount of HK$500,000 by all investors.

3.2 Prohibition on the Issue of Unauthorised Invitations to the Public under Section 103(1) SFO

[11] Securities and Futures (Professional Investor) Rules (Cap. 571D), section 6(1)

[12] Ibid. at section 4

Section 103(1) SFO prohibits the issue, or possession for the purposes of issue, of an advertisement, invitation or document containing an invitation to the public (together "**investment advertisement**"):

(i) to enter into or offer to enter into:

(a) an agreement to acquire, dispose of, subscribe for or underwrite securities; or
(b) a regulated investment agreement; or

(ii) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorised by the SFC.

Section 103(10) contains deeming provisions whereby:

(i) any advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in Section 103(1)(a) or (b) is regarded as an advertisement, invitation or document that is or contains an invitation to do such act; and

(ii) any advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by the public is deemed to be or contain an invitation to the public.

Accordingly, information inviting investment in equity or debt securities or in a collective investment scheme which is available on a website is likely to be regarded as an "invitation to the public" requiring SFC authorisation unless a specific exemption is available.

Exemptions

(i) **Offers exempt under the Seventeenth Schedule to C(WUMP)O**

Offers of shares or debentures which fall within any of the exemptions in the Seventeenth Schedule to C(WUMP)O are exempt from the section 103(1) SFO prohibition by virtue of section 103(2)(ga) SFO.

(ii) **Offers only to professional investors**

The issue of investment advertisements in respect of securities, structured products or interests in a collective investment scheme only to professional investors is exempt under section 103(k) SFO.

Reliance on this exemption raises the same issues as the professionals exemption under C(WUMP)O (please see 1(b) above).

(iii) **Offers not to the public**

Although not strictly an exemption, since the prohibition relates to invitations to the public, an offer would not contravene this provision if it is structured not as a public offer. The "public" is defined only as "the public of Hong Kong, and includes a class of that public".[13] Accordingly an offer to a company's shareholders would amount to a public offer. The SFC has not set a bright line test as to how many offerees constitute the public, although 50, which is the number of offerees allowed for a private placement to be exempt from C(WUMP)O's prospectus regime is sometimes taken as the benchmark. In any event, reliance on this "exemption" would require access to the information to be restricted.

3.3 Unlicensed Carrying on of a Regulated Activity under the SFO

Even where an exemption is available in respect of an offer or invitation of investment products under C(WUMP)O or the SFO, operators of crowd-funding platforms may commit an offence for conducting "regulated activities" as defined in the SFO without being licensed or registered to do so. The types of regulated activities for which crowdfunding platform operators may need to be licensed are:

- Type 1: Dealing in Securities
- Type 4: Advising on Securities
- Type 6: Advising on Corporate Finance
- Type 7: Providing Automated Trading Services
- Type 9: Asset Management
- Type 10: Providing Credit Rating Services

[13] Part 1 of Schedule 1 to the SFO

Consideration needs to be given to how and whether operators of crowd-funding platforms would need to be licensed or registered with the SFC. There are few, if any exemptions, currently available. For example, the regulated activity of "dealing in securities" is widely defined. A person "deals in securities" if he, whether as principal or agent, makes or offers to make an agreement with another person, or *induces or attempts to induce* another person to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities.[14] Information posted online in relation to investment-based crowdfunding is likely to fall within that definition.

A licence for regulated activity Type 7, providing automated trading services, will also be required where electronic facilities are provided whereby:

(a) offers to sell or purchase securities are regularly made or accepted;

(b) persons are regularly introduced, or identified to other persons in order to negotiate or conclude sales or purchases of securities.

A Type 10 licence may be required where an online lending platform provides an evaluation service of borrowers' loan applications, if this constitutes the provision of credit rating services.

Exemptions from the licensing requirement

While there is an exemption from the Type 1 licensing requirement for dealing with professional investors in paragraph (v)(A) of the definition of dealing in securities, this would not be available since it is available only to a person who acts as *principal* in the transaction (this would not typically cover a crowd-funding platform). The exemption also only applies to dealings with institutional investors (and not to professional investors under the Securities and Futures (Professional Investor) Rules (such as high net worth investors)). In any event, crowdfunding typically involves raising funds from individuals – not institutional investors who are not typically interested in start-up investments.

There is an exemption for a person who as principal, acquires, disposes of, subscribes for or underwrites securities (paragraph (v)B of the definition of dealing in securities), but this would again require the crowdfunding platform to act as principal and there is doubt that "disposes of" would extend to cover marketing activities.

Code of Conduct Requirements

Where a crowd-funding platform carries on a regulated activity for which a licence is required, the platform would also be required to comply with the requirements of the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC which contains provisions requiring

[14] Schedule 5 to the SFO

licensed intermediaries to establish clients' financial situation and investment experience etc. and ensure that investment products recommended to the client are suitable for the particular client.

3.4 Money Lending

Crowd-funding activities may constitute the carrying on of a money lending business requiring a money lender licence under section 7 of the Money Lenders Ordinance (Cap. 163 of the Laws of Hong Kong) (the **MLO**).

In Hong Kong, the WeLend platform facilitates online lending but is not a P2P Lending platform. It describes itself instead as an online lender since its online platform (https://www.welend.hk/en/about-us) only enables borrowers to apply for loans online. Lenders cannot apply to lend via the website. Welend apparently has a number of big-name investors including Allianz, China Construction Bank International, International Finance Corporation, Malaysian sovereign wealth fund Nasional Berhad, CK Hutchison's TOM Group and US-based Sequoia Capital. The loans which can be applied for include personal loans, debt consolidation loans to allow the clearing of credit card debt and property owner loans. WeLend is a licensed money lender so that the loans made to borrowers are regulated by the MLO.

Bestlend was previously a licensed money lender but its licence has expired. Bestlend was the internet financing platform of Haitong International Securities Group Limited and matched borrowers in need of funding with licensed money lenders in Hong Kong. Again this was not true P2P lending since the lenders were all licensed money lending businesses. Borrowers were able to choose their preferred offer among the loan quotes provided. Nearly 30 licensed money lenders apparently collaborated with Bestlend.com. The advantage to them was that they gained access to a wider customer base through the platform.[15]

The reason sites have not operated as true P2P Lending platforms matching borrowers and lenders appears to be a concern that P2P Lending by individuals or businesses might constitute the carrying on of business as a money lender, which requires the person or business to become a licensed money lender under the MLO.

A structure that has been used is for a Type 9 licensed fund manager to partner with a licensed money lender. This was used by MoneySQ.com and Bridgeway Prime Shop Fund Management Limited (Bridgeway) to provide an online lending platform. Bridgeway raises funds only from professional investors since its SFC licence restricts it to providing services to professional investors.

[15] Haitong/Bestlend Press Release "Haitong International Sets Foot in Internet Finance by Launching First P2P Online Lending Platform in Hong Kong". 22 January 2015. (http://www.htisec.com/english/aboutus/press/20150209115340.pdf).

Bridgeway is licensed for Regulation Activities Types 1, 4 and 9, but its Type 1 licence restricts it to dealing in collective investment schemes. Bridgeway is thus able to raise funds from professional investors which it onlends to MoneySQ, a licensed money lender. Borrowers were previously able to apply for loans through MoneySQ's website, although a notice on the firm's website has said that it was restructuring and that loans would in future be made through another company.

3.4.1 The Money Lenders Ordinance

The MLO requires that anyone wishing to carry on business as a money lender must apply to a licensing court for a licence.

The term "money lender" is defined in section 2 MLO as "*every person whose business (whether or not he carries on any other business) is that of making loans or who advertises or announces himself or holds himself out in any way as carrying on that business*". Certain persons and loans specified in Schedule 1 to the MLO are excluded from the definition. Exempted loans include:

(i) a loan made bona fide by an employer to his employee;
(ii) a loan made to a company secured by a mortgage, charge, lien or other encumbrance: (a) which is registered, or to be registered, under the Companies Ordinance; or (b) which would, in the case of a company incorporated by any other Ordinance or incorporated or established outside Hong Kong, be able to be registered under the Companies Ordinance if it were a company incorporated under that Ordinance;
(iii) a loan made by a company under a bona fide credit-card scheme operated by the company to any holder of a credit-card issued under that scheme; and
(iv) a loan made bona fide for the purchase of immovable property on the security of a mortgage of that property and a loan made bona fide to refinance such a mortgage; and
(v) a loan made by a company, firm or individual whose ordinary business does not primarily or mainly involve the lending of money, in the ordinary course of that business.

Exempted category (v) (loans by a company, firm or individual whose ordinary business does not primarily or mainly involve the lending of money in the ordinary course of that business) may be an exemption on which P2P lenders can rely. It will however be difficult in the case of any individual lender to determine at what point the lender is "carrying on a business of lending money".

3.4.2 Regulation of Money Lenders' Transactions

Money lenders' transactions are regulated under Part III MLO.

(i) Form of Agreement

In order for a loan agreement entered into by a money lender and any security given in respect of it to be enforceable, the agreement must be in writing and signed personally by the borrower, and a copy of the agreement must be given to the borrower at the time of signing. Any agreement or security will be unenforceable if it is proved that the agreement was not signed by the borrower before the money was lent or the security given. The agreement is required to contain all the terms and must in particular set out:

(a) the name and address of the money lender;
(b) the name and address of the borrower;
(c) the name and address of the surety, if any;
(d) the amount of the principal of the loan in words and figures;
(e) the date of the making of the agreement;
(f) the date of the making of the loan;
(g) the loan's terms of repayment;
(h) the form of any security for the loan;
(i) the rate of interest on the loan expressed as a rate per cent per annum, or the rate per cent per annum represented by the interest charged as calculated in accordance with Schedule 2 of the Ordinance; and
(j) a declaration as to the place of negotiation and completion of the loan agreement.

A court may however give effect to an agreement which does not comply with the provisions of Section 18 if it considers that it would be equitable to do so in the circumstances.

(ii) Duty to Provide Information

A money lender has a duty to provide specified information to any borrower upon receipt of a written demand from the borrower and pay its expenses. For any secured loan, a money lender must within 7 days of the date of the loan agreement, provide the surety with:

(a) a copy of the loan agreement;
(b) a copy of any security instrument; and
(c) a written statement signed by the money lender showing the total amount payable by the borrower under the agreement and the various amounts comprised in that total sum with the date, or the mode of determining the date, when each becomes due.

A surety may also make a written request to receive a statement of the amounts payable under the agreement at any time during its continuance.

(iii) Early Payment by the Borrower

A borrower must be allowed to repay early on giving written notice to the money lender and on payment of all amounts payable as principal together with interest computed up to the date of such payment. The effective rate of interest paid must not exceed the effective rate of interest which would have been payable under the agreement if the borrower had not exercised his right to repay early.

(iv) Illegal Agreements

A loan agreement will be illegal if it provides directly or indirectly for:

(a) the payment of compound interest;

(b) prohibiting the repayment of the loan by instalments; or

(c) the rate or amount of interest being increased by reason of any default in the payment of sums due under the agreement.

A loan agreement may however provide that if default is made in the payment of any sum due, the money lender may charge simple interest on that sum from the date of the default until the sum is paid at an effective rate not exceeding the effective rate payable in respect of the principal.

(v) Charges for Expenses not Recoverable

A loan agreement may not provide for the payment by the borrower of any sum for on account of costs, charges or expenses (other than stamp duties or similar duties) incidental to or relating to the negotiations or the grant of the loan or any guarantee or security to be given in respect of the loan. It is also illegal for any person to receive any sum for or on account of these costs, charges or expenses or to demand or receive any remuneration or reward whatsoever from a borrower for or in connection with a loan (Section 27).

(vi) Restriction on Money-lending Advertisements

Any advertisement, circular, business letter or other similar document published by a money lender must show the name of the money lender as specified in his licence in a manner which is no less conspicuous than any other name (Section 26). Where any such document purports to show the rate of interest at which the money lender is willing to make loans, the proposed rate of interest must be shown as a rate per cent per annum and in a manner which is no less conspicuous than any other matter mentioned. Any advertisement must clearly show the number of the money lender's licence.

(vii) Applying for a Licence

Licence applications are initially submitted to the **Registrar of Companies** as Registrar of Money Lenders (who is appointed by the Chief Executive). A copy is also sent to the **Commissioner of Police** who may carry out an investigation in respect to the application and object to the application if appropriate (Section 9 MLO). The application is advertised, and any member of the public who has an interest in the matter has the right to object.

Licences are granted for a period of 12 months and must be renewed annually.

3.4.3 Consequences of Failure to Comply with the Money Lenders Ordinance

It is an offence punishable by a fine of HK$100,000 and imprisonment for 2 years for a person to carry on business as a money lender without a licence.

Any loan agreement entered into by a money lender and any security taken in respect of such loan will not be enforceable if the money lender was not licensed at the date of the loan agreement or the taking of the security (Section 23 MLO).

3.4.4 Anti-Money Laundering and Counter-Terrorist Financing Regulation

In Hong Kong, legislation dealing with money laundering and terrorist financing includes: the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**), the Drug Trafficking (Recovery of Proceeds) Ordinance (**DTROP**), the Organized and Serious Crimes Ordinance (**OSCO**) and the United Nations (Anti-Terrorism Measures) Ordinance (**UNATMO**).

The AMLO, which came into effect on 1 April 2012, imposes on financial institutions requirements regarding customer due diligence and record-keeping whereas the DTROP, OSCO and UNATMO require reporting of suspicious transactions regarding money laundering or terrorist financing.

Financial institutions (for the purposes of the AMLO) include banks and other types of "authorised institutions" under the Banking Ordinance and entities which are licensed corporations under the Securities and Futures Ordinance (e.g. licensed securities deals, asset managers etc.). Although money lenders are not financial institutions for the purposes of the AMLO, Hong Kong's Licensed Money Lenders Association Ltd. has issued a guideline on Anti-Money Laundering and Counter-Terrorist Financing which members of the association are recommended to follow in order to maintain the same regulatory standard against money laundering and terrorist financing.

3.5 The Way Forward

There have been a number of calls for Hong Kong to consider amending its regulatory regime to facilitate crowd-funding in Hong Kong. A key advantage of introducing regulation for all types of crowdfunding would be greater certainty as to the legality of particular activities. In the case of P2P lending, for example, one option would be to create a new regulated activity of operating an online loan-based crowdfunding platform and regulations to address particular concerns regarding crowd-funding as has been done in the UK.

4. REGULATION OF CROWD-FUNDING IN THE UNITED KINGDOM

The first Financial Services Authority (now the Financial Conduct Authority (**FCA**)) regulated crowd-funding platform launched in the UK was Abundance Generation, approved in July 2011 and launched to the public in the spring of 2012. Abundance Generation provides debt finance to UK-based renewable energy developers. On 6 July 2012, Seedrs Limited launched as the first equity crowd-funding platform to have received regulatory approval anywhere in the world, from the FCA. In February 2013, CrowdCube which launched in 2011, became FCA-authorised. Prior to obtaining FCA authorisation, Crowdcube apparently operated by taking advantage of a loophole for offers to the same group of existing shareholders. When an investor signed up to Crowdcube's website, it becomes a "shareholder" without the standard rights. Crowdcube also takes shares in companies looking to raise capital. Therefore when the investment "opportunities" were advertised they were targeted at the same group of existing shareholders. This is a legal promotion under FCA regulations.

The FCA regulates firms providing the following types of crowd-funding:

- Loan-based crowdfunding platforms: i.e., where people lend money to individuals or businesses in the hope of a financial return in the form of interest payments and a repayment of capital over time (this excludes some business-to-business loans); and

- Investment-based crowdfunding platforms: i.e., where people invest directly or indirectly in new or established businesses by buying shares or debt securities, or units in an unregulated collective investment scheme. Firms operating such platforms require FCA authorisation where they conduct a regulated activity (as specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as amended).

4.1 Investment-based Crowdfunding

The FCA's Policy Statement PS14/4 on the "FCA's Regulatory Approach to Crowdfunding over the

Internet and the Promotion of Non-readily Realisable Securities by other Media" Media" (the "**Policy Statement**") confirmed that firms operating investment-based crowdfunding platforms are regulated by the FCA if, in doing so, they carry on a regulated activity. For example, firms will need to be authorised if they:

- arrange (bring about) deals in relation to equity or debt securities or units in a collective investment scheme;
- agree to carry on a regulated activity; or
- establish, operate or wind up an unregulated collective investment scheme.

Restriction on Direct Offer Financial Promotions to Retail Clients

The Policy Statement also set out rules which impose restrictions on providing direct offer financial promotions (being a promotion which contains an offer or invitation and specifies the manner of response or provides a form by which a response can be made) in respect of "non-readily realisable securities" (i.e. equity or debt securities for which there is no secondary market). Under the rules, direct offer financial promotions in respect of such securities can only be provided to the following types of retail clients:

- those who are certified or self-certify as sophisticated investors;
- those who are certified as high net worth investors;
- those who confirm that, in relation to the investment promoted, they will receive regulated investment advice or investment management services from an authorised person; or
- those who certify that they will not invest more than 10% of their net assets in non-readily realisable securities.

Where no advice is provided to retail clients, an appropriateness test applies which requires firms to check that clients have the knowledge or experience to understand the risks involved.

4.2 Loan-based Crowdfunding

Consumer credit market, including loan-based crowdfunding (both peer-to-peer (**P2P**) and peer-to-business lending) has been regulated by the FCA since 1 April 2014. Rules set out in the Policy Statement created a new regulated activity of "operating an electronic system in relation to lending" (i.e. operating a loan-based crowdfunding platform) which aims to enhance the regulation of peer-to-peer lending platforms that were not regulated under the previous Consumer Credit Act regime.

Transitional arrangements

The FCA assumed the Office of Fair Trading's (**OFT**) responsibility for the consumer credit market and firms holding an appropriate OFT licence and operating loan-based crowdfunding platforms in March 2014 were able to apply for interim permission to continue conducting the activity. The interim permission allowed these firms to remain in the market pending application for full authorisation.

New firms entering the market after the commencement of the rules are required to obtain FCA authorisation before commencing operations.

Scope of Application of the New Rules

Under Article 36H of the Financial Services and Markets Act 2000, a regulated electronic system includes one that:

- facilitates lending by providing a complete service that enables individuals to lend; from finding borrowers and checking their credit status, to collecting or arranging for the collection of repayments; and

- is able to determine the agreements for lenders and borrowers to enter into, taking account of any parameters set by them.

The regulations apply to loans meeting certain criteria, including that the investor and/or borrower must be:

(i) an individual;
(ii) a partnership consisting of two or three persons not all of whom are bodies corporate; or
(iii) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.

These criteria mean that business-to-business loans are not FCA-regulated. Only principal firms (and not their appointed representatives) can perform the new regulated activity.

The Regulations

The FCA considers loan-based crowdfunding activities to be generally less risky than investment-based crowdfunding activities. The regime is primarily disclosure-based and includes:

- minimum capital requirements;
- a requirement for firms to take reasonable steps to ensure that existing loans continue to be managed in the event of platform failure;
- rules that firms must follow when holding client money, to minimise the risk of loss due to fraud, misuse and poor record-keeping and to provide for the return of money in the event of firm failure;
- rules on dispute resolution to allow users first to complain to the firm before complaining to the Financial Ombudsman Service; and
- reporting requirements for firms to send information to the FCA in relation to their financial position, client money holdings, complaints and loans they have arranged.

Disclosure

To address the risk of non-repayment and lenders' potential ineligibility for the statutory compensation scheme,[16] peer-to-peer agreements are categorised as "designated investment business" in the FCA Handbook so that key parts of the handbook apply.

In addition to the rules on financial promotions which require all communications to be fair, clear and not misleading in order to ensure that platform providers give a balanced view and sufficient information, peer-to-peer agreements are also required to disclose information allowing lenders to make an informed lending decision including but not limited to:

(a) expected and actual default rates based on past and future performance;
(b) a description of how loan risk is assessed;
(c) details of the creditworthiness assessment;
(d) details of likely actual rates of return;
(e) exit options for investors; and
(f) the impact of the failure of the firm, including the lack of FSCS cover.

Capital Requirements

P2P firms are required to hold a minimum of the higher of:

(i) £50,000 as capital; or

[16] Financial Services Compensation Scheme (**FSCS**) set up under the Financial Services and Markets Act 2000: http://www.fscs.org.uk/
The FSCS currently does not cover loan-based crowdfunding unless the P2P firm operating the platform in question in in default.

(ii) 0.2% of the first £50 million of total value of loaned funds outstanding; 0.15% of the next £200m of total value of loaned funds outstanding; 0.1% of the next £250m of total value of loaned funds outstanding; and 0.05% of any remaining balance of total value of loaned funds outstanding above £500m.[17]

Firms with transition permission were not subject to these requirements until they received full FCA authorisation (at the latest by 1 April 2016).

If the total value of loans outstanding increases by 25%, firms are required to notify the FCA.

Client Money

P2P firms are also required to comply with the client money rules in terms of monies received from lenders and acting as a conduit for borrower repayments to ensure proper administration of loans in the event of platform failure. This latter function is important particularly since lenders often do not know the actual identity of the borrower and the amount of their investment may not be large enough to justify them seeking repayment.

4.3 CONSUMER CREDIT SOURCEBOOK

Peer-to-peer agreements which involve individual or relevant persons borrowers are subject to more stringent regulation under the Consumer Credit sourcebook (**CONC**) which provides enhanced protections to borrowers. If the platform is captured by CONC, it must:

(a) provide an adequate explanation of the key features of the credit agreement to borrowers;
(b) assess borrowers' creditworthiness;
(c) comply with the Financial Promotions rules;
(d) allow the borrower 14 days to withdraw from the agreement; and
(e) provide post-contract information where the borrower is in arrears or default.

4.4 Rules for Loan-based Crowdfunding Effective 9 December 2019

The FCA's Policy Statement (PS19/14) published in June 2019 set out rules for loan-based crowdfunding platforms which came into effect on 9 December 2019. The updated rules:

[17] The types of financial resources that a firm must hold to meet their capital requirement are detailed in IPRU(INV)12.3.2R

(a) Imposed restrictions on direct offer financial promotions to retail clients similar to those applicable to investment-based crowd funding. P2P platforms can only make direct offer financial promotions to retail clients who:

(i) are certified or self-certify as sophisticated investors;

(ii) are certified as high net worth investors;

(iii) confirm that, in relation to the investment promoted, they will receive regulated investment advice or investment management services from an authorised person; or

(iv) will certify that they will not invest more than 10% of their net assets in P2P agreements in the following 12 months;

(b) Require platforms to conduct an appropriateness assessment to assess an investor's knowledge and experience of P2P investments, where no advice is given to the investor;

(c) Require P2P platforms to review the value of each P2P agreement at least in the following circumstances:

(i) When a P2P agreement is originated;

(ii) When it is considered that the borrower is unlikely to pay its obligations under the P2P agreement in full without the platform enforcing any security or taking similar steps;

(iii) Following a default; and

(iv) When the platform facilitates an exit for a lender before the agreement's maturity date;

(d) Require platforms offering a target rate of return to be able to demonstrate that they have appropriate access to data and the modelling capability and governance arrangements to do so effectively;

(e) Require platforms (depending on the nature, scale and complexity of their business and the nature/range of services they provide) to have an independent risk management and internal audit function. They must also maintain a permanent and effective compliance function which operates independently;

(f) Require an individual performing a senior management function to have overall responsibility for establishing and maintaining the platform's risk management framework;

(g) Require P2P platforms to disclose to investors sufficient information about the risks they are exposed to, the nature of the investment opportunity, the role of the platform and the fees and charges for the services provided;

(h) Require platforms to provide investors with sufficient information to help them understand their

tax obligations and the potential impact on their investment returns;

(i) P2P platforms are required to have wind-down plans and to notify investors of their wind-down arrangements and changes to those arrangements. The FCA clarified that P2P platforms should have arrangements in place to ensure that the P2P agreements they facilitate would have a reasonable likelihood of being managed and administered on an ongoing basis and in accordance with the contract terms even if the platform ceased to conduct those functions itself; and

(j) Require P2P platforms to maintain an up-to-date P2P resolution manual setting out information on their operations that would assist in resolving the platform on insolvency.

4.5 Unregulated and Exempt Activities

The FCA does not regulate firms that only operate donations-based, pre-payment or rewards-based crowdfunding platforms. These firms do not require FCA authorisation.

Activities or organisations which fall within the scope of statutory exemptions from the FCA authorisation requirement or regulation (e.g. Enterprise Schemes) are also not regulated by the FCA.

May 2025

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