

Client Alert

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Malaysia Establishes Framework for Equity Crowdfunding

Brief Summary

Equity crowdfunding (“ECF”) enables issuers, through the facilitation of online portals (“ECF platform”), to obtain seed or other capital in return of small equity offering to investors. The Securities Commission (“SC”) had on 21 August 2014, began a dialogue with the public on the regulatory framework for the ECF platform, which seeks to bridge the capital gap for early start-ups and other small enterprises to access funding for their business expansions.

The outcome of the public dialogue led to the issuance of the Guidelines on Regulation of Markets under Section 34 of the CMSA by the SC on 10 February 2015 (“Guidelines”). The Guidelines, which sets out the framework for the regulation of a registered electronic facility (“REF”), accords recognition and permits ECF in Malaysia.

Operator of an ECF Platform

A person who wishes to operate, provide or maintain an ECF platform in Malaysia must register such platform as a REF with the SC. This will entail the operator of the ECF platform (“ECF Operator”) having to fulfill the criteria for registration, implementing reporting procedures and establishing various measures to safeguard the interests of investors who invest on the ECF platform.

In particular, the operator of an ECF platform must manage conflicts of interest with care. It is prohibited from providing any financial assistance to investors to invest in shares of an issuer hosted on the platform, and compensating any finder or introducer for providing the ECF operator with information about potential investors. There are however limited exceptions which would enable the operator to invest in the issuers.

Issuers of the ECF framework

Generally, only locally incorporated private companies (excluding exempt private companies) are eligible to participate on the ECF platform through the issuance of shares. An issuer is not allowed to host concurrently on multiple ECF platforms. There are also strict limits on the amount of funds which an issuer is allowed to raise through a listing on an ECF platform. A listing on the ECF platform is also attractive as such listings will not require the SC’s approval under section 212 of the Capital Market and Services Act nor would it be subject to having to register a prospectus.

Microfunds are also permitted under the Guidelines to participate and raise unlimited funds from sophisticated investors and angel investors through the ECF platform, provided the microfund meets the criteria prescribed under the Guidelines.

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Investors of the ECF framework

Participation in the ECF platform is open to all investors subject to compliance with the investment limits as prescribed in the Guidelines. The extent of investors' participation / investment in ECF differs among sophisticated investors, retail investors and angel investors. Investors on the ECF platform also benefit from a cooling-off period - they are free to withdraw their investment should they change their mind during the period.

Forthcoming developments on the ECF framework

Given the infancy of the framework, the efficacy of the ECF framework as a fund raising platform in Malaysia is yet untested. The conflicts and concerns associated with the ECF framework, e.g. striking a balance between the need for growth of the ECF industry and achieving appropriate level of investor protection and the potential undermining of public capital markets and existing forms of collective investment schemes.

There is also the issue of reconciling the inconsistency between the fundamental characteristics of the ECF framework and the restriction on public offering of shares of private companies under the Malaysian Companies Act will need to be addressed. On this note, the SC had earlier indicated in its Public Consultation Paper that it is in discussion with the Companies Commission of Malaysia to create a safe harbour to enable private companies to offer their shares to the public and avail themselves of the benefits that can be offered by an ECF platform as a funding avenue. This may come to fruition soon as Parliament is currently in session.

It is also worthwhile noting that whilst the SC had stated in the Public Response Paper that the ECF platform may, in addition to facilitating primary offerings, provide an avenue for investors to dispose of their shares in a secondary market, the Guidelines had not laid down any specific rules for secondary trading post initial offerings. It remains to be seen if this proposal is to be given effect by the SC leveraging on its supervisory power over the rules of a REF and its discretionary power to impose any terms and conditions as well as to issue any directions on the ECF operator.