

## **FINANCIAL SERVICES ACT**

### **Rules made by the Financial Services Commission under section 93 of the Financial Services Act**

#### **1. Citation**

These rules may be cited as the Financial Services (Peer to Peer Lending) Rules 2017.

#### **2. Interpretation**

In these rules –

“Act” means the Financial Services Act;

“bank” has the same meaning as in the Banking Act 2004;

“borrower” means –

(a) a person who is resident in Mauritius and seeks to borrow or has borrowed funds pursuant to an agreement with a lender, through a Peer to Peer Lending platform;

(b) but does not include:

- i. a collective investment scheme and closed-end fund, as defined in the Securities Act;
- ii. a public listed entity or any of its subsidiaries;
- iii. an entity that proposes to access a Peer to Peer Lending platform for further lending to other entities; and
- iv. any other scheme as may be approved by the Commission.

“Commission” has the same meaning as in the Act;

“controller” has the same meaning as in the Act;

“credit information bureau”, for the purposes of these rules, means a credit information bureau which is established by statute or is duly licensed, in Mauritius;

“escrow account” means an account held by the P2P Operator on behalf of lenders and borrowers of a Peer to Peer Lending platform;

“financial institution” has the same meaning as in the Banking Act 2004;

“lender” means any person who has agreed to provide funds to a borrower pursuant to an agreement, through a Peer to Peer Lending platform;

“officer” has the same meaning as in the Act;

“P2P” means Peer to Peer in these rules;

“P2P Operator” means a body corporate operating a Peer to Peer Lending platform;

“Peer to Peer Lending platform” means an online portal or electronic platform that shall facilitate the offering, execution or issuance of funds between prospective lenders and borrowers.

“project” means a business proposal in respect of which funds are being sought by a borrower through a Peer-to-Peer Lending platform;

“relevant Acts” has the same meaning as in the Act.

### **3. Application of the rules**

- (a) These rules shall apply to any P2P Operator which is licensed by the Commission.
- (b) An application for a P2P Operator Licence shall be made in accordance with Part IV of the Act.
- (c) These rules shall be read in conjunction with the relevant Acts and guidelines which the Commission may issue from time to time.

### **4. Application of limits on Peer to Peer Lending**

- (a) Unless otherwise approved by the Commission, the following limits shall apply to lenders whenever they shall transact with P2P Operators:
  - i. A lender, who is a legal person, shall not lend more than Rs 500,000 in any 12-month period; and
  - ii. Any lender, who is a natural person, shall not lend an amount in excess of 10% of his annual income or a maximum of Rs 300,000, whichever is lower, in any 12 month-period.
- (b) The maturity of all lending executed through Peer to Peer Lending platforms shall not exceed 60 months.
- (c) In all circumstances, monies shall be made available to borrowers only after the required total funding has been pooled or raised for any project.

## P2P OPERATOR

### 5. Incorporation and management

- (a) A P2P Operator shall:
- i. be incorporated in Mauritius;
  - ii. have a minimum unimpaired stated capital equivalent to 2 million rupees or such other amount as may be determined by the Commission, in Mauritian rupees or any other foreign currency approved by the Commission; and
  - iii. be a participant of a credit information bureau in Mauritius.
- (b) A P2P Operator shall be managed by a board of directors consisting of a minimum of three directors, one of whom shall be a resident and independent director in Mauritius.
- (c) A P2P Operator shall –
- i. establish an office and appropriate Information Technology infrastructure in Mauritius;
  - ii. employ staff appropriate to the size, nature and complexity of its business activity; and
  - iii. unless otherwise specified in these rules, preserve the integrity and privacy of lenders' and borrowers' information hosted on its Peer to Peer Lending platform, in conformity with the Data Protection Act of Mauritius.
- (d) A P2P Operator shall not have a bank as a shareholder, unless approved by the Commission.

## OBLIGATIONS OF A P2P OPERATOR

### 6. General disclosure of information

(a) A P2P Operator shall clearly disclose on its website key information relating to the conduct of its business, including:

- i. general details on how the Peer to Peer Lending platform will function;
- ii. measures to prevent money laundering and terrorist financing activities;
- iii. measures to ensure the security of the information technology and data protection systems on the Peer to Peer Lending platform; and
- iv. dispute resolution process that will be applicable.

(b) A P2P Operator's website shall, in addition, disclose in a prominent position these two general warning statements:

***“All funds transacted through this Peer to Peer Lending platform do not tantamount to bank deposits or credits in Mauritius and therefore, there shall not be any statutory compensation in case of loss through the use of this Peer to Peer Lending platform”.***

***“Furthermore, the Financial Services Commission, Mauritius does not vouch for the correctness of any information or statements published on this Peer to Peer Lending platform”.***

(c) A P2P Operator's website shall otherwise comply with the Guidelines for Advertising and Marketing of Financial Products issued by the Commission, as appropriate.

## **7. Due diligence and creditworthiness of borrowers**

A P2P Operator shall conduct due diligence and assess the creditworthiness of borrowers, prior to their admission on the Peer to Peer Lending platform. This shall include, as a minimum, taking reasonable steps to:

- (a) verify their identity, including details of incorporation and business registration, where appropriate;
- (b) ascertain the fitness and propriety of their officers and controllers;
- (c) ensure their financial standing, based on their financial or credit history, amongst others; and
- (d) verify the soundness of their projects, in accordance with the applicable laws of the jurisdiction where they will be executed.

## **8. Specific disclosure of information about borrowers**

Notwithstanding rule 6, a P2P Operator's website shall also prominently disclose the following specific information in relation to borrowers:

- (a) a comprehensive description of the borrowers' project for which financing is being sought through the Peer to Peer Lending platform;
- (b) where appropriate, the latest financial statements, if any, of the borrowers and a disclaimer to the effect that the P2P Operator gives no assurances about their accuracy. If the borrowers have not started operations, relevant financial projections shall be displayed in conformity with the Guidelines for Advertising and Marketing of Financial Products issued by the Commission;

- (c) a signed confirmation by the borrowers that they have not concurrently sought for financing of their project on other Peer to Peer Lending platforms;
- (d) any credit scoring conducted by the P2P Operator on the borrowers and a statement to the effect that this shall not be construed as an advice from the P2P Operator as to whether money should be lent to the borrowers; and
- (e) the historical default rate by borrowers on the Peer to Peer Lending platform.

#### **9. Escrow account**

- (a) A P2P Operator shall establish systems and controls for maintaining accurate and up-to-date records of both lenders' and borrowers' funds with whom the Peer to Peer Lending platform shall transact.
- (b) A P2P Operator shall be required to establish an escrow account with a licensed financial institution in Mauritius in order to intermediate and facilitate the transfer of funds between lenders and borrowers through the Peer to Peer Lending platform.

#### **10. Risk Acknowledgement Form**

- (a) A P2P Operator shall retain a signed Risk Acknowledgement Form from lenders in relation to each of their lending through the Peer to Peer Lending platform.
- (b) The above records shall be kept for a period of at least seven years after the completion of the transaction to which it relates.

## **11. Reporting Obligations**

Notwithstanding any other reporting obligations that shall apply under the relevant Acts, a P2P Operator shall be required to submit quarterly reports to the Commission including, as a minimum:

- (a) list of lenders and borrowers;
- (b) amount of funds transacted on the Peer to Peer Lending platform;
- (c) credit score of and default amount by borrowers; and
- (d) any other information as may be required by the Commission.

## **12. Commencement**

These rules shall come into operation on .....

Made by the Financial Services Commission on .....

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