

Access to Capital (Private Companies) Regulations 2024

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In exercise of the powers conferred on me by [section 00] of the Access to Capital (Private Companies) Act 2024, I hereby make these Regulations—

Part 1—Preliminary

Short title and commencement

- 1(1) These Regulations may be cited as the Access to Capital (Private Companies) Regulations 2024.
- (2) These Regulations come into force on [date] 2024.

Interpretation

- 2 In these Regulations, unless the context otherwise requires—
- Act** means the Access to Capital (Private Companies) Act 2024;
 - crowd funding service** has the same meaning as in the Act;
 - financial product** has the same meaning as in the Act;
 - issuer** means a private company that issues financial products under the Act;
 - licence** means a licence issued under [section 21] of the Act;
 - peer-to-peer lending service** has the same meaning as in the Act;
 - provider**, in relation to a service, means the provider of the service;
 - regulator** means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act (Cap. 210);
 - retail investor** has the same meaning as in the Act;
 - service** has the same meaning as in the Act;
 - service disclosure statement** or SDS means the disclosure statement that a provider of a service must provide under [section 18] of the Act;
 - small offer** has the same meaning as in the Act.

PART 2—CROWD FUNDING SERVICE

Outline of this Part

- 3(1) This Part sets out the additional criteria for licensing a crowd funding service under [section 21] of the Act.
- (2) The additional criteria are—
 - (a) proper systems and procedures (see regulation 4);
 - (b) externality (see regulation 5);
 - (c) anti-fraud policy (see regulation 6);
 - (d) access to investment information (see regulation 7);
 - (e) fair dealing policy (see regulation 8);
 - (f) implementation of policies (see regulation 9);
 - (g) checks on offer limits (see regulation 10);
 - (h) conflict of interests management (see regulation 11).

Proper systems and procedures

- 4 The provider must have fair, orderly, and transparent systems and procedures for providing the service.

Externality

- 5 The provider's service must be intended and designed primarily for offers by persons other than the provider and its associated persons.

Anti-fraud policy

- 6(1) The provider must have an adequate anti-fraud policy that complies as a minimum with the protections set out in subclause (1).
- (2) An adequate anti-fraud policy must, as a minimum—
- (a) check, against information that is readily accessible and information that is otherwise available to the public, the identity of the issuer and information provided by the issuer relating to the identity and character of its directors and senior managers; and
 - (b) exclude an issuer from using the service if the provider—
 - (i) is not satisfied as to the identity of the issuer or of the issuer's directors and senior managers; or
 - (ii) has reason to believe that any of the issuer's directors or senior managers are not of good character; or
 - (iii) has reason to believe that the issuer is not likely to comply with the obligations imposed on it under the service.

Access to investment information

- 7(1) The provider must have adequate disclosure arrangements to give investors, or to enable investors to readily obtain, timely and understandable information to assist investors to decide whether to acquire the financial products (for example, through initial disclosure, or question and answer forums, or other information that is made available).
- (2) In considering whether disclosure arrangements are adequate, the regulator must have regard to—
- (a) the limits on the amount that retail investors may invest under the service; and
 - (b) the amount that issuers may raise under the service.

Fair dealing policy

- 8 The provider must have an adequate fair dealing policy for excluding an issuer from using the service if the provider has information (for example, from checks or assessments it carries out (if any)) that gives it reason to believe that the issuer, in relation to any dealing in financial products using the service, has—
- (a) engaged in conduct that is misleading or deceptive or likely to mislead or deceive; or
 - (b) committed an offence under the Act.

Implementation of policies

- 9 The provider must have adequate systems and procedures for implementing its anti-fraud policy and the fair dealing policy.

Checks on offer limit

- 10 The provider must have adequate systems and procedures for ensuring that each issuer does not raise more than \$5 million in any 12-month period under the service.

Conflict of interest management

- 11 The provider must have adequate systems and procedures for handling conflicts between—

- (a) the commercial interests of the provider (or of its associated persons); and
- (b) the need for the provider to have fair, orderly, and transparent systems and procedures for providing the service.

PART 3—PEER-TO-PEER LENDING SERVICE

Outline of this Part

- 12(1) This Part sets out the additional criteria for licensing a peer-to-peer lending service under [section 21] of the Act.
- (2) The additional criteria are—
- (a) proper systems and procedures (clause 13);
 - (b) externality (clause 14);
 - (c) identity checks and risk assessment (clause 15);
 - (d) fair dealing policy (clause 16);
 - (e) conflict of interest management (clause 17).

Proper systems and procedures

- 13 The provider must have fair, orderly and transparent systems and procedures for providing the service.

Externality

- 14 The provider's service must be intended and designed primarily for offers by persons other than the provider and its associated persons.

Identity checks and risk assessment

- 15 The provider must have adequate systems and procedures for—
- (a) checking the identity of each issuer of debt securities, and of each director and senior manager of the issuer, before the issuer is authorised to offer debt securities using the service; and
 - (b) assessing, before debt securities are offered using the service, the risk of investors not being repaid in full or not receiving the interest or other returns that will be offered (for example, assessing the creditworthiness of the issuer, any guarantees, and any charge or other security to secure the performance of obligations under the securities); and
 - (c) disclosing information about that checking and assessment to investors.

Fair dealing policy

- 16(1) The provider must have an adequate fair dealing policy for excluding an issuer from using the service if the provider has information (for example, from checks or assessments it carries out (if any) that gives it reason to believe that the issuer, in relation to any dealing in debt securities using the service, has—
- (a) engaged in conduct that is misleading or deceptive or likely to mislead or deceive; or
 - (b) has committed an offence under the Act.
- (2) The provider must have adequate systems and procedures for implementing its fair dealing policy.

Conflict of interest management

- 17 The provider must have adequate systems and procedures for handling conflicts between—

- (a) the commercial interests of the provider (or of its associated persons); and
- (b) the need for the provider to have fair, orderly and transparent systems and procedures for providing the service.

PART 4—ADDITIONAL CONDITIONS

Outline of this Part

- 18 This Part prescribes the following additional conditions for the issue of a licence to a provider—
- (a) provider must notify regulator if \$5 million limit breached (clause 19);
 - (b) crowd funding provider must display warning statement (clause 20);
 - (c) crowd funding provider must obtain investor confirmation (clause 21);
 - (d) provider must keep documents (clause 22).

Provider must notify regulator if \$5 million limit breached

- 19(1) It is a condition of its licence that a provider must notify the regulator in accordance with this clause if the provider knows or suspects that an offer by an issuer that uses the provider's service has breached, or is breaching, the \$5 million limit referred to in [section 13] of the Act.
- (2) The provider must give the notice immediately after becoming aware of or suspecting the breach.
- (3) The notice must include—
- (a) the issuer's name and contact details; and
 - (b) the obligation to which the known or suspected breach relates; and
 - (c) the facts supporting the provider's view relating to the known or suspected breach; and
 - (d) any supporting evidence for that view.

Crowd funding provider must display warning statement

- 20(1) It is a condition of its licence that a provider of a crowd funding service must display a warning statement in accordance with this clause.
- (2) The provider must ensure that a warning statement is prominently displayed in all application forms for acquiring financial products by using the service.
- (3) In addition, if the service is available through a website, the provider must ensure that a warning statement is prominently displayed—
- (a) on the home page of the site; and
 - (b) to an investor, on a page on the site, immediately before the investor uses the site to apply for, or otherwise acquire, financial products.
- (4) The warning statement must be in the following form—

“Warning statement about crowd funding

Equity crowd funding is risky.

*Issuers using this service include new or rapidly growing ventures. *Investment in these types of businesses is very speculative and carries high risks.

You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

Fiji law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to offers by issuers using this service. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.”

*Omit this sentence if the facility is confined to issuers for whom the sentence would be inapplicable.

Crowd funding provider must obtain investor confirmation

21(1) It is a condition of its licence that a provider of a crowd funding service must obtain from each of its investors, in accordance with this clause, the following confirmation—

“I confirm that I have seen the warning statement about crowd funding and—
I understand that equity crowd funding is risky and I may lose my entire investment;
and
I confirm that I could bear that loss without suffering undue hardship; and
I understand that the usual legal protections do not apply to this investment; and
I understand that I may not be given the same information as is usually required by Fiji law for investments.”

- (2) The confirmation must be obtained in writing in a separate document or, if it is obtained by electronic means, through a process by which it is obtained separately from the agreement to use the service.
- (3) The confirmation must be obtained by the provider before the investor is authorised to use the service.

Provider must keep material documents

22(1) It is a condition of its licence that a provider must keep material documents in accordance with this clause.

- (2) The provider must keep a copy of the document for at least 7 years after the document comes into the provider’s possession.
- (3) A document is material if—
 - (a) it is a document required by or for the purposes of the Act or these regulations in connection with the provider’s service; and
 - (b) it is given, made or provided by or to the provider.

Provider must provide copy of material document to investor

23(1) It is a condition of its licence that a provider must provide an investor, in accordance with this clause, with a copy of or an extract from a material document.

- (2) The provider must provide the copy or extract if—
 - (a) the investor requests the document; and
 - (b) the document is relevant to the investor; and
 - (b) the investor pays the fee (if any) for providing the document.
- (3) The provider must—
 - (a) provide the document within 15 days after receiving the request for it; and
 - (b) provide it by giving it to the investor or delivering or sending it to the investor’s address.
- (4) In this regulation—
 - (a) a document is relevant to an investor if the investor has or had a right to access or obtain a copy of the document under these regulations or the terms of the offer of a financial product;

- (b) **fee** means a reasonable printing and administration fee set by the provider.

PART 5—DISCLOSURE FOR CROWD FUNDING OR PEER-TO-PEER LENDING

Outline of this Part

24 This Part—

- (a) prescribes the requirements for a service disclosure statement (an **SDS**) that a provider of a service must give to a retail investor under [section 18] of the Act; and
- (b) requires reporting of transactions to investors.

Content of service disclosure statement

25(1) An SDS must contain a brief description of—

- (a) the nature of the service provided; and
- (b) how investors apply for, and obtain, access to the service and the eligibility criteria that apply; and
- (c) how issuers apply for, and obtain, access to the service and the eligibility criteria that apply; and
- (d) how investments are made and financial products are issued under the service; and
- (e) how investor money is received and dealt with; and
- (f) the nature and extent of the checks and assessments made by the provider of the following—
 - (i) each issuer that offers financial products under the service;
 - (ii) the directors and senior managers of those issuers;
 - (iii) the risks involved in those financial products (or, if checks and assessments of those risks are not made as part of the service, a statement to that effect); and
- (g) the nature and extent of the disclosure arrangements that apply in relation to the financial products offered under the service; and
- (h) the charges that may be payable to the provider by an investor under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed) and when the investor must pay the charges; and
- (i) the rights of the provider or any other person to alter any of the charges applicable to the service; and
- (j) the charges that may be payable to the provider by an issuer under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed); and
- (k) if the provider is, or issuers that are associated with the provider are, restricted or prohibited from issuing under or using the service, the nature of the restrictions or prohibitions (see also subclause (2)); and
- (l) the nature and extent of any interest held by or in the provider that may materially adversely impact on the provider's ability to have fair, orderly, and transparent systems and procedures for providing the service, and of the steps taken to manage any risks of that adverse impact; and
- (m) contact details of the provider; and
- (n) how investors may complain about the service to the provider and to any dispute resolution scheme that is available; and
- (o) the type of information relating to the service that is required to be, or otherwise will be, available on request from the provider and how the request should be

made (including whether any charge may be made for the information and the amount of the charge).

- (2) If subclause (1)(k) does not apply in relation to the provider or issuers that are associated with the provider (or both), an SDS must also contain a statement to the effect that the provider or those issuers (or both) are not restricted or prohibited from issuing under or using the service.
- (3) An SDS for a crowd funding service must also contain the warning statement required by [clause 20(4)].

Peer-to-peer lending service: additional SDS content

- 26 An SDS for a peer-to-peer lending service must also contain—
- (a) a brief description of the nature and extent of the provider’s monitoring of compliance by the issuer with its obligations to make repayments and payments under the debt securities (or, if such monitoring is not part of the service, a statement to that effect); and
 - (b) a brief description of processes in the event of a default by an issuer of those obligations or (if such processes are not part of the service) of the investor’s remedies in the event of a default.

Presentation requirements for SDS

- 27(1) An SDS must be worded and presented in a clear, concise, and effective manner.
- (2) The format, font and font size of the SDS must be easily readable.

SDS may refer to service’s website

- 28(1) If the service is available through an website, the SDS may incorporate any information required by [clause 25] by reference to the page or section of the website on which the information is located.
- (2) The reference in the SDS must include—
 - (a) a link to or URL for the page or section of the website where that information is located; and
 - (b) a brief description of the information on the relevant page or section.

Transaction reporting to investors

- 29(1) A provider must report the information specified in subclause (2) to each investor who uses the provider’s service.
- (2) The information is a record of all transactions made by the investor under the service, including for each transaction (to the extent applicable)—
 - (a) the names of the parties (unless the parties are anonymous under the service); and
 - (b) a product description; and
 - (c) the price per product; and
 - (d) the quantity of products; and
 - (e) the total amount of the transaction; and
 - (f) the date of the transaction; and
 - (g) in the case of a loan, any security given.

How transaction information must be reported

- 30 Transaction information that must be reported under [clause 29] must be reported to the investor (A)—

- (a) through an electronic facility on a substantially continuous basis (but only if A has agreed to this method); or
- (b) by giving it to A or delivering or sending it to A's address not later than 15 days after the last day of each reporting period in each year (but only if A has agreed to this method); or
- (c) by giving it to A or delivering or sending it to A's address not later than 10 days after a financial product is issued under each transaction.

Scope of transaction information

- 31(1) Transaction information that must be reported under [clause 29] must cover,—
- (a) in the case of continuous reporting under [clause 30(a)], the investor's transactions since the investor's first transaction using the service;
 - (b) in the case of reporting by reporting period under [clause 30(b)], the transactions entered into in the last reporting period.
- (2) For any reporting period in which the investor made no transactions, the provider must report that there were no transactions for that period.
- (3) In this clause, **reporting period** means—
- (a) each of the 4 quarters of a year ending on 30 June, 30 September, 31 December, and 31 March; or
 - (b) any period shorter than a quarter of a year that is agreed with the investor.

Made this 00 day of [month] 2024.

Deputy Prime Minister and Minister of Trade, Co-operatives and Small and Medium Enterprises