

*Government Notice No. 184 of 2020***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 2020.

2. Interpretation

In these Rules –

“Act” means the Financial Services Act 2007;

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

“body corporate” means a company incorporated under the Companies Act 2001;

“borrower” means –

- (a) a person who 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 2005;
 - ii. a public listed entity or any of its subsidiaries;
 - iii. a person that proposes to access a Peer to Peer Lending platform for further lending to other persons; and
 - iv. any other scheme as may be determined by the Commission.

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

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

“cooling off period” means the time limit prescribed under Rule 16 within which participants have the right to cancel an agreement from the date of signature of the agreement;

“credit information bureau”, for the purposes of these Rules, means a credit information bureau or its equivalent which is established by statute or is duly licensed in or outside 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;

“funds” excludes securities as defined under the Securities Act 2005;

“lender” means any person who has agreed to provide funds in its own name, 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;

“Peer to Peer Lending” has the same meaning as in the Act;

“Peer to Peer Lending Licence” means a licence issued under section 14 of the Act;

“P2P Operator” means a body corporate issued with a Peer to Peer Lending Licence by the Commission to operate a Peer to Peer Lending platform;

“Peer to Peer Lending platform” means an online portal or

electronic platform that facilitates the offering, execution or issuance of funds between prospective lenders and borrowers;

“project” means a 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;

“resident” means a person who has its domicile or place of incorporation or registration, as appropriate, in Mauritius;

“sophisticated investors” has the same meaning as in the Securities Act 2005.

3. Application of the Rules

- (1) These Rules shall apply to any P2P Operator holding a Peer to Peer Lending Licence issued by the Commission.
- (2) These Rules shall be read in conjunction with the relevant Acts and guidelines which the Commission may issue from time to time.

4. Peer to Peer Lending Licence

- (1) No person shall operate a Peer to Peer Lending platform without a Peer to Peer Lending licence issued by the Commission.
- (2) An application for a Peer to Peer Lending Licence shall be made in accordance with Part IV of the Act.

5. Membership of self-regulatory organisations

The Commission may require that an applicant for a Peer to Peer Lending Licence becomes a member of a self-regulatory organisation recognised by the Commission under PART VII of the Act.

6. Application of limits on Peer to Peer Lending

- (1) The following limits shall apply to lenders and borrowers whenever they transact through P2P Operators:
 - (a) A borrower shall not borrow through a P2P Operator an amount less than Rs 50,000.
 - (b) A borrower shall not, in the aggregate, borrow through P2P Operators –
 - (i) an amount exceeding Rs 1 million, if the borrower is a natural person; and
 - (ii) an amount exceeding Rs 3 million, if the borrower is a legal person,at any time until at least one third of the amount borrowed is reimbursed.
 - (c) A lender shall not, in the aggregate, lend through P2P Operators over any 12 month period –
 - (i) an amount exceeding Rs 1.5 million, if the lender is a natural person; and
 - (ii) an amount exceeding Rs 3 million, if the lender is a legal person.
 - (d) The lending limits under sub-paragraph (c) shall not apply to sophisticated investors when they lend in any other currency through P2P Operators to borrowers that are not resident in Mauritius.
- (2) The reimbursement period of lending through Peer to Peer Lending platforms shall not exceed 84 months.
- (3) In all circumstances, funds shall be made available to borrowers only after the required total funding has been pooled or raised for any project.

7. Incorporation and management of a P2P Operator

- (1) A P2P Operator shall:
 - (a) be incorporated in Mauritius; and
 - (b) have a minimum unimpaired stated capital of Rs 2 million or its equivalent in any other currency, or such higher amount as the Commission may determine.
- (2) A P2P Operator may establish a branch outside Mauritius, subject to the prior approval of the Commission.
- (3) A P2P Operator shall be managed by a board of directors consisting of a minimum of three directors, one of whom shall be an independent director and a resident of Mauritius.
- (4) A P2P Operator shall, at all times, –
 - (a) establish an office and have in place relevant Information Technology infrastructure for the carrying out of its business activities within Mauritius;
 - (b) put in place a business continuity and disaster recovery plan for its business;
 - (c) employ staff proportionate to the size, nature and complexity of its business activity;
 - (d) 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 2017 of Mauritius; and
 - (e) obtain the consent of borrowers for the purpose of ascertaining their credit profiles from a credit information bureau and upon the grant of funds to the borrowers, forthwith provide particulars of the borrowing to the credit information bureau, as may be required.

- (5) A P2P Operator shall not have a bank or a foreign bank as a shareholder, unless approved by the Commission.
- (6) A P2P Operator shall maintain at all times a professional indemnity insurance cover commensurate with the nature and scope of its activities.

8. Borrowing for project financing

- (1) A P2P Operator shall consider a request for borrowing from any person provided that the funds being sought by that person are applied to finance a project.
- (2) For the purposes of this Rule, the borrower shall provide to the P2P Operator a description of the project.

9. Restrictions on activity

- (1) A P2P Operator shall be restricted from undertaking the following activities, in its own name:
 - (a) deposit taking business, in any form;
 - (b) lending; and
 - (c) providing or arranging for any credit enhancement or guarantee.
- (2) The activities of a lender on a Peer-to-Peer Lending platform shall exclude deposit taking business, in any form.

10. General disclosure of information

- (1) A P2P Operator shall disclose on its website key information relating to the conduct of its business, including:
 - (a) general details on how the Peer to Peer Lending platform functions;

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- (b) information on costs and charges applicable to its business;
 - (c) measures to prevent money laundering and terrorist financing activities;
 - (d) measures to ensure the security of the information technology and data protection systems on the Peer to Peer Lending platform; and
 - (e) dispute resolution process that is applicable.
- (2) A P2P Operator’s website shall, in addition, disclose in a prominent position these two general risk statements:
- “All funds transacted through this Peer to Peer Lending platform are 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”.***
- “The Financial Services Commission, Mauritius does not vouch for the correctness of any information or statements published on this Peer to Peer Lending platform”.***
- (3) A P2P Operator’s website shall comply with the Guidelines for Advertising and Marketing of Financial Products issued by the Commission, as appropriate.

11. Specific disclosure of information about borrowers

Notwithstanding Rule 10, a P2P Operator’s website shall prominently disclose the following specific information in relation to borrowers:

- (a) a description of the borrowers’ project for which financing is being sought through the Peer to Peer Lending platform;

- (b) the latest financial statements, where applicable, of the borrowers and a disclaimer that the P2P Operator gives no assurances about the accuracy of those financial statements;
- (c) relevant financial projections in conformity with the Guidelines for Advertising and Marketing of Financial Products issued by the Commission, where the borrowers have not started operations;
- (d) a signed confirmation by the borrowers that they have not concurrently sought funds for the same project from other Peer to Peer Lending platforms;
- (e) any credit scoring conducted by the P2P Operator on the borrowers and a statement to the effect that such information shall not be construed as an advice from the P2P Operator as to whether money should be lent to the borrowers; and
- (f) the historical default rate by borrowers on the Peer to Peer Lending platform.

12. Due diligence and creditworthiness

- (1) A P2P Operator shall conduct due diligence of lenders, in accordance with the requirements of the prevailing laws and Code on the Prevention of Money Laundering and Terrorist Financing in Mauritius.
- (2) A P2P Operator shall similarly conduct due diligence of borrowers and assess their creditworthiness, prior to their admission to the Peer to Peer Lending platform.
- (3) For the purposes of paragraph (2), the P2P Operator shall take reasonable steps to:
 - (a) verify their identity, including details of incorporation and business registration, where appropriate;

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- (b) ascertain the fitness and propriety of their officers and controllers, if any;
 - (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.

13. Escrow account

A P2P Operator shall be required to establish escrow account arrangements with a licensed financial institution in Mauritius in order to facilitate the transfer of funds between lenders and borrowers through the Peer to Peer Lending platform.

14. Records

- (1) A P2P Operator shall establish and manage systems and controls for maintaining accurate records of both lenders' and borrowers' funds with whom the Peer to Peer Lending platform shall transact.
- (2) 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.
- (3) Every record required to be kept under this Rule shall be maintained for a period of at least seven years after the completion of the transaction to which it relates.

15. Reporting obligations

Notwithstanding any other reporting obligations that shall apply under the relevant Acts, a P2P Operator shall submit in respect of every financial year, quarterly reports to the Commission including:

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

16. Cooling off period

- (1) P2P Operators shall provide a cooling off period of 2 business days to borrowers and lenders during which they may cancel their written agreements without the imposition of any penalty.
- (2) P2P Operators shall disclose the existence of the cancellation right to borrowers and lenders before the agreements are signed.

17. Transitional provisions

Any person who, immediately before the commencement of these Rules was carrying out P2P lending or a similar activity under a Regulatory Sandbox Licence granted in accordance with the Economic Development Board Act 2017 shall, within 3 months of the commencement of the Rules, apply for a Peer to Peer Lending Licence in accordance with these Rules.

18. Commencement

These Rules shall come into operation on 15 August 2020

Made by the Financial Services Commission on 15 August 2020
