

# Crowdfunding Platforms in the UAE

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June - July 2016

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## 1. Introduction

Crowdfunding has been around for many years, arguably for centuries with one of its earliest uses in the production of books. In the modern era, however, it is ostensibly linked with information technology and online platforms starting in the late 90s and early 2000s in connection with arts and music communities.

Crowdfunding covers many types of activities including equity funding and debt funding, but also extends to the likes of litigation and donation based funding. Today, however, crowdfunding is most closely associated with the online offering of private company equity or debt investments and as such is subject to securities and financial regulation.

## 2. The rise of crowdfunding

There has been a rise in the number of crowdfunding platforms based in or focused on the UAE and wider GCC in recent years. Aflamnah was launched in Dubai in 2012 focusing on locally produced film projects, Eureeca followed in 2013 with an equity crowdfunding platform, in 2014 the first real estate platform focused on the UAE was launched by Humming Crowd Realty and there are now a plethora of other platforms based in the UAE including Durise, Beehive, Yomken and Zoomaal to name a few.

As yet, however, there is no regulatory regime specifically catering for or permitting such activities in the UAE outside of the existing regulation and requirements of either the UAE Central Bank ("Central Bank") or the UAE Securities and Commodities Authority ("SCA") or, in respect of the Dubai International Financial Centre ("DIFC"), the Dubai Financial Services Authority ("DFSA"). However, it should be noted that the DFSA has recently indicated it intends to specifically provide for crowdfunding and will be looking to have a regime in place towards the end of this year catering for debt-based funding.

## 3. Regulatory issues

In short, any financial service or activity in the UAE or the DIFC is regulated either by the Central Bank, the SCA or, in respect of the DIFC, the DFSA. Therefore, depending on a particular crowdfunding platform's model (ie, merely introducing two independently contracting parties or actively establishing a fund or offering securities), it may or may not be deemed as being subject to securities and financial regulation in the UAE.

A typical equity based platform may offer an investment in the ownership of an enterprise or start-up, thus constituting an offer of securities to the public. A typical lending or debt based platform may offer a pooled investment into a fund which will then lend to or purchase debt securities from an enterprise or start-up, thus potentially constituting fund formation, lending and securities offering activities all in the one platform.

The above examples would likely be subject to regulation and will come under the remit of either the Central Bank in respect of banking and debt financing activities or the SCA in respect of securities, fund formation and operation or other financial services related activities, or the DFSA in respect of activities in the DIFC.

Central Bank, SCA or DFSA rules and regulations prohibit any person conducting lending, securities offering, fund formation or management activities in the UAE or DIFC without an appropriate license or licenses, and thus such crowdfunding platforms should be licensed as appropriate depending on the nature of the platform.

However, under existing legislation and regulations, gaining of such licenses is time consuming and costly in the context of crowdfunding activities which are often focused on raising a limited pool of funds and where the full breadth of traditional financial services regulation may not be seen as appropriate or necessary. Indeed, given the particulars of contemporary crowdfunding platforms, many jurisdictions have implemented specific crowdfunding regimes to assist in their establishment and operation and alleviate the somewhat onerous regulation focused at traditional securities offers and company financing. Such regimes typically try to effect a balance in allowing crowdfunding platforms to operate and small enterprises to access funding with limited regulatory burden but at the same time protecting investors by limiting the size of individual and overall subscriptions. Jurisdictions which have promulgated such regimes in recent years include the United States, the United Kingdom, Belgium, Canada, China, Italy, New Zealand and Portugal to name only a few.

However, to date, there is no such regime currently in place or contemplated for the UAE and, as things stand, any crowdfunding platform in the UAE will face licensing and authorisation issues concerning marketing and distribution, fund set-up and operation, lending and securities offerings where deemed to be conducting these activities in the UAE. However, as noted above, the DFSA has recently indicated it intends to specifically accommodate debt-based crowdfunding within its rules towards the end of this year.

#### **4. UAE free zone based platforms**

A number of existing crowdfunding platforms are domiciled in one or other of the many free zones within the UAE. However, notwithstanding any particular free zone approval or licenses, financial services and activities are not permitted within free zones and should be conducted and appropriately licensed within the UAE outside of the free zones by the Central Bank or SCA (with the exception of certain activities within the DMCC and the separately regulated DIFC). Therefore, depending on the platform's particular model, if an operator is deemed to be conducting lending, securities offering or fund formation and operation activities they run a regulatory risk where doing so in the UAE without appropriate Central Bank or SCA licenses and approval.

#### **5. Foreign based platforms**

As an alternative to locally domiciled platforms, and in an effort to alleviate the UAE regulatory burden and/or risk, many of the UAE and GCC focused platforms are in fact domiciled in off-shore jurisdictions where there is a specific enabling regime or, despite there being no specific crowdfunding regime, the local requirements are not as onerous as in the UAE, such as a non-regulated fund structure in the likes of the Cayman Islands. However, with such structures there still remain issues, and care must be taken regarding marketing and distribution in the UAE without appropriate Central Bank or SCA licensing to ensure that local entities are not deemed to be conducting regulated activities by proxy without appropriate licensing.

#### **6. Conclusion**

There are locally domiciled crowdfunding platforms operating in, or foreign domiciled platforms focused on, the UAE which are either confident that their models do not bring them within reach of the Central Bank's or SCA's regulatory remit or, alternatively, have made a risk assessment in this regard and are operating within the appropriate regulatory framework. However, while crowdfunding platforms may be seen by regulators as towards the lower end of the spectrum in terms of systemic risk, there still exist regulatory risks for the platform operators and they should be cognizant of the regulatory restrictions within which they are operating and aware of the issues noted above.