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Please deal
31/10/22

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY
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KENYA

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Ref: TNT/ZZ/38/07/C TY (81)

October 25, 2022

Mrs. Serah M. Kioko, MBS
Ag. Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
NAIROBI

(3) Bishara,
Please process
for Tabling.

Rkain
2/11/2022

Dear **Serah**

RE: LEGAL NOTICE NO. 175 ON THE CAPITAL MARKETS
(INVESTMENT-BASED CROWDFUNDING) REGULATIONS, 2022

The above Regulations have been issued under Legal Notice No. 175 and notification of the same made vide the Kenya Gazette Vol. CXXIV No. 206 of 7th October, 2022.

Attached herewith please find the above Regulations and the explanatory memorandum together with the cover page of the Kenya Gazette, for your necessary action, pursuant to Section 11 of the Statutory Instruments Act, 2013.

Yours **Sincerely**

**JULIUS MUIA, PhD, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY**

THE NATIONAL ASSEMBLY PAPERS L AID	
DATE: 03 NOV 2022	DAY: THURSDAY
BY: LOM	
CLERK-AT THE NATIONAL ASSEMBLY	Gertrude Chebet

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THE NATIONAL ASSEMBLY PAPERS L AID	
DATE: 03 NOV 2022	DAY: THURSDAY
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CLERK-AT THE-TABLE:	GERTRUDE CHEBET

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CLERK'S OFFICE P. O. Box 41842, NAIROBI		

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LEGAL NOTICE NO. 175

THE CAPITAL MARKETS ACT

(Cap. 485A)

THE CAPITAL MARKETS (INVESTMENT-BASED
CROWDFUNDING) REGULATIONS, 2022

Regulation

PART I—PRELIMINARY

- 1 – Citation.
- 2 – Interpretation.
- 3 – Application.

PART II—THE CROWDFUNDING PLATFORM OPERATOR


- 4 – Licensing requirements and accompanying documents.
- 5 – Application for a license.
- 6 – Eligibility for licensing.
- 7 – Criteria for license.
- 8 – Rules for the operation of business.
- 9 – Grant of license.
- 10 – Denial of grant of license.
- 11 – Suspension, restriction or revocation of a license.
- 12 – Cessation of business.

PART III— CROWDFUNDING PARTICIPANTS

- 13 – Eligible issuers.
- 14 – Fundraising limits.
- 15 – Prohibited issuers.
- 16 – Eligible investors.

PART IV—THE CROWDFUNDING TRANSACTION

- 17 – Permitted investments instruments.
- 18 – The offering document.
- 19 – Requirements for issuers.

 THE NATIONAL ASSEMBLY PAPERS L A O	
DATE: 03 NOV 2022	DAY: THURSDAY
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- 20— The crowdfunding transaction.
- 21— Use of funds.
- 22— Transaction fees.
- 23— Restrictions on crowdfunding platform operator.
- 24— Trading Facility.

PART V— DUTIES OF A CROWDFUNDING PLATFORM
OPERATOR

- 25— Requirements for the crowdfunding platform operator.
- 26— General obligations.
- 27— Risk acknowledgment form.
- 28— Obligations on risk disclosures.
- 29— Cautionary statement.
- 30— Due diligence.
- 31— Operation of a trust account.
- 32— Duties of a custodian.
- 33— Data protection and privacy.
- 34— Record keeping.
- 35— Continuous reporting obligations.

PART VI— GENERAL PROVISIONS

- 36— Inspections.
- 37— Offences.
- 38— Applicability of capital markets laws.
- 39— Transition provision.

SCHEDULES

- First Schedule: Application Form for a Licence to operate as a Crowdfunding Platform Operator
- Second Schedule: Directors and Key Personnel Fit and Proper Form.
- Third Schedule: Applicable Fees
- Fourth Schedule: Minimum Disclosure requirements to be contained in the offering Document

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers under section 12(1)(d) of the Capital Markets Act, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE CAPITAL MARKETS (INVESTMENT-BASED CROWDFUNDING) REGULATIONS, 2022

PART I—PRELIMINARY

1. These Regulations may be cited as the Capital Markets (Investment Based Crowding) Regulations, 2022. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “Act” means the Capital Markets Act;
 - “Authority” means the Capital Markets Authority established under section 5 of the Act;
 - “cooling off period” means a contractual period within which an investor can withdraw from a crowdfunding transaction without any restrictions;
 - “crowdfunding” means the act of raising money from many individuals or entities to either finance a project or business through a crowdfunding platform;
 - “crowdfunding platform” means a website, internet based portal or such other technological application, which facilitates interactions between investors and issuers and other related interactions;
 - “crowdfunding platform operator” means an entity licensed by the Authority to facilitate transactions involving the offer or sale of investment instruments through a crowdfunding platform;
 - “custodian” means a bank licensed under the Banking Act and appointed by the Crowding Platform Operator to receive and hold funds raised through the crowding platform; Cap. 488.
 - “investment-based crowdfunding” means crowdfunding in exchange for shares, debt securities or any other investment instruments approved by the Authority;
 - “investor” means any person or entity that seeks to make, or has made an investment through a crowdfunding platform;
 - “investment instruments” means securities as defined under the Act;
 - “issuer” means a company which issues the security or investment instrument, which is hosted on the crowdfunding platform for purposes of crowdfunding;

“key personnel” has the meaning assigned to it under the Act;

“liquid capital” means part of an entity’s assets that it holds as cash or assets that can easily be converted into cash;

“medium enterprise” means a company whose annual turnover ranges between five million and fifty million Kenya shillings and employs between fifty to three hundred employees;

“micro enterprise” means a company registered as such under the Micro and Small Enterprises Act, 2012;

No. 55 of 2012.

“retail investor” means an investor who is not a sophisticated investor;

“small enterprise” means a company registered as such under the Micro and Small Enterprises Act, 2012;

“sophisticated investor” has the meaning assigned to it under the Act;

“start-up” means a company incorporated in Kenya that is newly established or has not been in existence for more than ten years, which is established for the sole purpose of developing an innovative and scalable product or service;

“trading facility” means system that facilitates the exchange of crowdfunded investment instruments between parties; and

“trust account” means a bank account opened in trust by the Crowdfunding Platform Operator for the benefit of the issuers and investors and managed and monitored by the Custodian.

3. (1) These Regulations shall apply to an investment-based crowdfunding platform established, maintained or operated in Kenya.

Application.

(2) A person shall be considered to be operating, providing or maintaining an investment-based crowdfunding platform in Kenya where—

- (a) the platform is established in Kenya;
- (b) the platform is located outside Kenya but actively targets Kenyan investors as provided for under sub-regulation (3); or
- (c) the key components of the platform when taken together are physically located in Kenya even if any of its component parts, in isolation, is located outside Kenya.

(3) For purposes of these Regulations, a crowdfunding platform operator located outside Kenya shall be considered as actively targeting investors in Kenya if the operator, or the operator’s representative, promotes crowdfunding activities either directly or indirectly in Kenya.

(4) A crowdfunding platform operator deemed to be actively targeting investors in Kenya for purposes of these Regulations shall be required to obtain a license from the Authority.

(5) In deciding whether there is direct or indirect promotion of the crowdfunding activity, the Authority may take into consideration the following activities—

- (a) advertising the crowdfunding platform, investment instruments that are subject to the crowdfunding or the issuer hosted on the platform in any publication or electronic media in Kenya;
- (b) sending direct mail to a Kenyan address or electronic message to a person domiciled in Kenya marketing or promoting the crowdfunding platform or activity; or
- (c) direct or indirect solicitation through agents.

(6) Notwithstanding subregulations (1), (2), (3), (4) or (5), in determining whether a crowdfunding platform is targeting investors in Kenya, the Authority shall assess all relevant facts and circumstances while taking into account the protection of investors and the integrity of Kenya's capital markets.

PART II —THE CROWDFUNDING PLATFORM OPERATOR

4. (1) A person shall not establish, maintain or operate an investment based crowdfunding platform unless that person is duly licenced as a crowdfunding platform operator by the Authority.

Licensing requirement.

(2) A person who contravenes sub regulation (1) commits an offence and is liable to the penalty prescribed in section 34A of the Act.

5. A person who intends to be a crowdfunding platform operator shall apply to the Authority for licensing in the form set out in the First Schedule accompanied by the following documents—

Application for licence and accompanying documents.

- (a) a certified copy of certificate of incorporation;
- (b) evidence of its financial soundness and capital adequacy confirming the financial position of the company including audited financial statements, management accounts and certified bank statements, where applicable;
- (c) rules for the operation of its business setting out the planned activities and conduct of its platform users;
- (d) details of the organization structure and profiles of the directors, management and other key personnel including duly completed fit and proper forms as provided in the Second Schedule;
- (e) evidence of adequate human resources with adequate knowledge and competence on crowdfunding business;
- (f) a business plan that includes financial projections;
- (g) detailed information of the crowdfunding website or application to be used including system capacity and security measures and evidence of its functionality;
- (h) details of platform outsourcing arrangements, if any;
- (i) proposed procedures to verify the completeness, correctness and clarity of the information of the issuer and investment hosted on the platform;

- (j) business continuity and disaster recovery plan;
- (k) record keeping procedures including audit trail for daily operations to meet emergencies;
- (l) adequate risk management framework that includes details of its fraud detection and prevention measures;
- (m) the proposed standard offer document to be used;
- (n) data protection policy in compliance with the relevant laws;
- (o) policy on prevention of anti-money laundering and terrorism financing;
- (p) the application fees set out in the Third Schedule; and
- (q) any other additional documents or information as the Authority may require.

6. An applicant shall be eligible for licensing as a crowdfunding platform operator, if that applicant— Eligibility for licensing.

- (a) is a company limited by shares;
- (b) has a minimum paid up share capital of Kenya shillings five million; and
- (c) has a minimum liquid capital of Kenya shillings ten million or eight percent of its liabilities, whichever is higher.

7. The Authority shall license an applicant as a crowdfunding platform operator if it is satisfied that the applicant— Criteria for licensing.

- (a) has complied with the licensing requirements set out in regulation 5;
- (b) has the capacity to operate an orderly, fair and transparent market in relation to the securities or investment instruments issued through its platform;
- (c) has as its directors and key personnel determined as fit and proper persons as prescribed under section 24A of the Act;
- (d) has demonstrated that the platform to be used has the adequate functionality, capacity and security measures necessary for the conduct of its business;
- (e) has demonstrated ability to manage any risks associated with its business and operations;
- (f) has demonstrated ability to take appropriate action against any person in breach including directing such persons to take any necessary remedial measures;
- (g) has robust rules to guide operations of the crowdfunding activities; and
- (h) has sufficient financial, human and other resources for the operation of its crowdfunding platform.

8. The Rules of the crowdfunding platform operator shall provide for—

Rules for the operation of business.

- (a) criteria for on boarding its users including issuers and investors;
- (b) procedure for transfer of proceeds for each funding round and monitoring of the proceeds;
- (c) code of conduct and ethics for its users including misconduct and proposed penalties;
- (d) general obligations and liability of its platform users;
- (e) rules and procedure for their trading facility (if any);
- (f) proposed communication policy;
- (g) cyber security, backup systems and disaster recovery mechanisms for the platform;
- (h) protection of investors and public interest;
- (i) promotion of fairness and transparency in the market;
- (j) management of conflicts of interest that may arise including disclosures to be made where the crowdfunding platform operator or its employees participate in a crowdfunding transaction;
- (k) promotion of fair treatment of its platform users;
- (l) resolution of disputes and provision for appeal to the Authority;
- (m) fees and associated costs to be charged to the crowdfunding platform users; and
- (n) any other matter as may be required by the Authority.

9. (1) The Authority shall, if satisfied that the applicant has met all the requirements for licensing and upon payment of the fees set out in the Third Schedule, grant a licence to operate as a crowdfunding platform operator.

Grant of a license

(2) The crowdfunding platform operator shall be required to pay an annual regulatory fee as set out in the Third Schedule.

(3) A licence granted shall remain valid unless suspended or revoked by the Authority as specified under regulation 11.

10. (1) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity to be heard.

Denial of grant of license.

(2) If the Authority, after hearing the applicant, refuses to grant a licence, it shall communicate the decision to the applicant within fourteen days of the decision, stating the grounds for refusal.

(3) An applicant aggrieved by the decision of the Authority may appeal against such refusal to the Capital Markets Tribunal within fifteen days of communication of the decision.

11. The Authority may suspend, restrict or revoke a crowdfunding platform operator's licence in accordance with sections 26 of the Act. Suspension, restriction or revocation of a licence.

12. A crowdfunding platform operator shall not cease to operate as such without prior thirty days' notice in writing to the Authority who may impose any terms and conditions to ensure orderly cessation of business of the crowdfunding platform operator. Cessation of business.

PART III— CROWDFUNDING PARTICIPANTS

(A) Issuers

13. (1) A micro, small or medium enterprise incorporated in Kenya with a minimum of two years' operating track record and a good corporate governance record shall be eligible to raise funds through a crowdfunding platform in exchange for the issuance of an investment instrument. Eligible issuers.

(2) Despite sub-regulation (1), start-ups with a good operating track record and a good corporate governance record shall be eligible to raise funds through a crowdfunding platform.

14. (1) The aggregate amount that may be raised by an eligible micro, small and medium enterprises or startup within a twelve months period shall be a maximum amount of Kenya shillings one hundred million. Fundraising limits.

(2) A crowdfunding platform operator may apply to the Authority for a no-objection where an issuer seeks to raise more than the set maximum amount within the given duration.

(3) The Authority may issue a no-objection to raise additional funds subject to such conditions as may be imposed from time to time.

15. The entities listed below are prohibited from raising funds through a crowdfunding platform— Prohibited issuers.

- (a) public listed companies and their subsidiaries;
- (b) entities with a poor governance record;
- (c) entities that intend to use the funds raised to provide loans or invest in other entities; and
- (d) any other entity as may be specified by the Authority.

(B) Investors

16. The following persons are eligible to invest in crowdfunding investments— Eligible investors.

- (a) sophisticated investors; and
- (b) retail investors subject to investment limits prescribed by the crowdfunding platform operator but up to a maximum of Kenya shillings one hundred thousand.

PART IV— THE CROWDFUNDING TRANSACTION

17. Investment instruments allowed for purposes of crowdfunding under these Regulations include shares, debt securities including bonds or debentures or any other instruments as shall be approved by the Authority from time to time.

Permitted investment instruments.

18. (1) A crowdfunding platform operator shall develop a standardized offering document for entities offering securities, which shall have the disclosures set out in the Fourth Schedule and shall be submitted to the Authority not later than forty-eight hours prior to publication.

Offering document.

(2) The crowdfunding platform operator shall make available the offering document through the crowdfunding platform to the investors at least fourteen days before the commencement of the offer period.

(3) The issuer and the crowdfunding platform operator shall not avail the offering document on any other communication medium other than the crowdfunding platform on which the issuer intends to offer its securities.

(4) A person who makes a false or misleading statement in form or context in an offering document knowing the statement to be false or misleading shall commit an offence and is liable to the penalties under the Act.

19. An eligible issuer shall, in addition to any other obligations that may be imposed by a crowdfunding platform operator—

Requirements for issuers.

- (a) clearly outline, in the offering document, investors' rights and ownership of the investment instruments to be issued;
- (b) file a duly completed standardised offering document with the crowdfunding platform operator for approval to crowdfund on their platform; and
- (c) provide the disclosures set out in the Fourth Schedule.

20. (1) The issuer shall determine and disclose in the offering document—

Crowdfunding transaction.

- (a) the period in which the offer shall remain open; and
- (b) the threshold amount for the offer to be deemed a successful offer.

(2) Where an issuer is unable to meet the prescribed minimum threshold for the targeted amount, the offer shall be withdrawn and the crowdfunding platform operator shall effect a refund of the monies to the investors within forty-eight hours and the costs for such refunds shall be fully borne by the issuer.

(3) Where an offer is withdrawn under sub regulation (2), the issuer may only commence a fresh crowdfunding offering not earlier than ninety days after the said withdrawal.

(4) Where the crowdfunding transaction is successful, the crowdfunding platform operator shall make the funds available to the issuer within five business days after the close of the offer.

(5) The crowdfunding offer by the issuer shall include a contractual right of a cooling off period allowing the investor to withdraw an offer or agreement to purchase the investment instrument by delivering a notice in the manner prescribed by the crowdfunding platform operator within forty-eight hours from the date of investments subscription, but no withdrawal shall be made after the close of the offer period.

(6) The crowdfunding platform operator shall ensure that any changes made to the offering documents prior to the close of the offer, must be communicated to the investors and the investors shall be given an opportunity to withdraw the investments within forty-eight hours of such communication.

(7) Where an investor cancels the offer or agreement to purchase investment instruments, all funds of the investor shall be refunded or released within forty-eight hours of the request to cancel.

(8) A crowdfunding platform operator who does not comply with the timelines provided in sub-regulations (5) will be liable to the penalties specified under section 25A of the Act.

21. (1) The crowdfunding platform operator shall take reasonable steps to ensure that the funds raised through its platform are used for the stated purpose.

Use of funds.

(2) An issuer who uses the proceeds for any other purpose other than that stated or a purpose related thereto commits an offence and shall be liable to the penalties prescribed under the Act.

22. A crowdfunding platform operator shall, in addition to any other fees that they may charge for use of their platform, levy a transaction fee as specified in the Third Schedule for each successful crowdfunding transaction facilitated through its platform which amount shall be payable and remitted to the Authority directly within thirty days of such transaction.

Transaction fees.

23. (1) A crowdfunding platform operator is prohibited from—

Restrictions on crowdfunding platform operator.

- (a) raising own funds through its own platform;
- (b) offering investment advice;
- (c) handling investor funds;
- (d) promising a guaranteed return to investors; and
- (e) promising a guaranteed outcome of the offer to the issuer.

(2) An issuer shall not host an offer concurrently on multiple crowdfunding platforms.

PART V—TRADING FACILITY

24. (1) A crowdfunding platform operator may operate a trading facility for the transfer of the crowdfunded investment instruments originally offered on the crowdfunding platform.

Requirements of the trading facility.

(2) A crowdfunding platform operator providing such an additional facility shall comply with the following requirements—

- (a) have in place transparent rules and procedures for fair and orderly trading on the crowdfunded investment instruments;
 - (b) inform its platform users on the nature of the facility, including applicable fees;
 - (c) provide prospective investor(s) intending to buy the investment instruments availed on the facility with information that was availed to the earlier investors and information on the performance of the investment availed on the facility; and
 - (d) ensure that the prospective investor(s) affirms to the risk acknowledgment form under regulation 29.
- (3) The Cabinet Secretary shall formulate such rules as may be required to regulate such trading activities.

PART VI— DUTIES OF A CROWDFUNDING PLATFORM OPERATOR

25. A crowdfunding platform operator shall—

Requirements for the crowdfunding platform operator.

- (a) discharge its duties as required by these Regulations in relation to a crowdfunding transaction;
- (b) communicate to investors any material changes to an issuer's proposal.

26. (1) Every crowdfunding platform operator shall disclose and display on its platform relevant information relating to the platform and its use, including—

General obligations.

- (a) how the platform operates;
- (b) users rights and responsibilities;
- (c) eligibility criteria for prospective issuers and investors;
- (d) investor education materials;
- (e) complaint handling and dispute resolution procedures;
- (f) disclaimers and limitation of liability, highlighting the platforms legal liability for damages incurred by its users; and
- (g) related fees and charges for using the platform.

(2) In addition to the requirements set out in sub-regulation (1), a crowdfunding platform operator shall undertake—

- (a) to establish custodial arrangements as required by these Regulations;
- (b) to monitor and ensure compliance of its rules;
- (c) to take reasonable steps to prevent fraud and ensure compliance with these Regulations and relevant laws;

- (d) to maintain a register and records of all investors and issuers including details of the management of all issuers and details of investor holdings;
- (e) to avail any relevant document or information to the investor upon request;
- (f) to notify the Authority immediately of any material changes that may occur during operations which would affect its authorization and licensing;
- (g) to comply with continuous reporting obligations as specified by these Regulations; and
- (h) to perform any other obligation as may be required by these Regulations or the Authority.

27. A crowdfunding platform operator shall disclose all risks associated with the crowdfunding investment which includes information on—

Obligations on risk disclosures.

- (a) risk warning on investing through the platform;
- (b) restrictions on the ability to cancel the investment; and
- (c) any other appropriate risk disclosures.

28. (1) A crowdfunding platform operator shall prominently display a cautionary statement—

Cautionary statement.

- (a) to all visitors to the site of the home page of the platform;
- (b) to every investor, on the subscription landing page of the issuer; and
- (c) on all application forms for investing through the platform.

(2) The cautionary statement should caution and advise investors that—

- (a) investing in the issuers hosted on the platform may be high risk investment;
- (b) investors must be in a position to bear the risk associated with the loss of investment without undue hardship; and
- (c) investors must read the information carefully and may seek independent financial advice.

29. (1) A crowdfunding platform operator shall require each investor to affirm to a risk acknowledgement form, prior to acceptance of the offer, in which the investor affirms that the investor—

Risk acknowledgement form.

- (a) understands that the proposed investment is a risky investment;
- (b) has ability to absorb the complete loss of the amount invested;
- (c) understands that they may not be able to sell the securities, or investment instruments;

- (d) has been provided with the required disclosures for the offer; and
- (e) understands that crowdfunding investments are not covered by the Investor Compensation Scheme under the Act.

(2) The information in the risk acknowledgment form shall be provided in a manner that is clear and easily understood by all investors.

(3) The information in the risk acknowledgment form shall be written in such a manner as to be capable of being read with reasonable ease by the investor.

(4) The crowdfunding platform operator shall obtain and retain the self-declared risk acknowledgement forms from the investors prior to them investing on a crowdfunding platform.

30. (1) A crowdfunding platform operator shall carry out due diligence on prospective issuers and investors intending to use its platform.

Due diligence.

(2) The scope of the due diligence exercised by the operator shall include taking reasonable steps to—

- (a) conduct background checks on the issuer and investor;
- (b) determine the level of sophistication of the investor;
- (c) conduct fitness and probity checks on the directors and management;
- (d) interrogate the information in the issuer's disclosure documents lodged before they are made accessible to investors through the platform;
- (e) ensure their compliance with anti-money laundering rules in place; and
- (f) ensure compliance with the disclosure requirements.

31. (1) A crowdfunding platform operator shall appoint a custodian to hold in trust any funds raised through the platform.

Operation of trust account.

(2) The custodian shall establish and maintain a separate trust account for each funding round on its platform with a financial institution duly licensed and approved by the Authority as a custodian.

32. The duties of a custodian shall include—

Duties of a custodian.

- (a) opening and maintaining a segregated account in the name of each issuer for the exclusive benefit of each issue; and
- (b) conducting any other duty as shall be guided by the crowdfunding platform operator or the Authority.

33. A crowdfunding platform operator—

Data protection and privacy.

- (a) shall establish appropriate safeguards for ensuring the integrity of the information received and published;

- (b) shall ensure security and confidentiality of information collected from both the issuers and investor to facilitate a crowdfunding transaction;
- (c) shall maintain reliable and secure operating systems;
- (d) shall install and ensure the operation of suitable backup facilities;
- (e) shall develop and implement a written identity theft prevention program;
- (f) shall provide detailed information on the data privacy rights of users and a description of the technical and organizational security measure taken to ensure integrity and confidentiality of the data; and
- (g) shall comply with the Data Protection Act, 2019, to the extent applicable. No. 24 of 2019.
34. (1) A crowdfunding platform operator shall keep a copy of all relevant documents, including— Record keeping.
- (a) a detailed list of all the issuers and investors;
- (b) evidence of individual holdings of each investor;
- (c) a record of past and present holders of the crowdfunded investments and their holdings; and
- (d) a transfer journal or log recording the transfer of the crowdfunded investments.
- (2) All records shall be kept for a period of at least seven years from the date which the information was lodged in the portal.
35. (1) A crowdfunding platform operator shall on a monthly basis report and provide information to the Authority on— Continuous reporting.
- (a) details of the issuers and amounts raised through its platform;
- (b) statistics on investor profiles and investment trends;
- (c) a quarterly monitoring report on the use of proceeds; and
- (d) any other information as the Authority may require from time to time.
- (2) A crowdfunding platform operator shall submit to the Authority—
- (a) on a quarterly basis management accounts for each quarter; and
- (b) audited annual accounts within four months following the end of its financial year.

PART VII—GENERAL PROVISIONS

36. The Authority may carry out inspections on a crowdfunding platform operator or on any of its facilities satisfy itself Inspections.

as to the integrity of the platform, financial soundness and stability, risk management and its control systems.

37. Any person who contravenes the provisions of these Regulations for which no penalty is provided, that person shall be liable, upon conviction, to the penalty specified under section 34A of the Act and general damages where applicable, for any loss occasioned to the other party.

Offence.

38. A crowdfunding platform operator shall comply with—

Applicability of capital markets laws.

- (a) the Capital Markets (Conduct of Business)(Market Intermediaries) Regulations, 2011;
- (b) the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011;
- (c) the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets; and
- (d) any other existing capital market laws and Regulations to the extent applicable except where expressly exempted by the Authority.

LN. No.145/2011

LN. No. 144/2011

39. (1) Any person operating an investment-based crowdfunding platform or holding itself out as a crowdfunding platform operator prior to the commencement of these Regulations shall obtain a license within twelve months after the commencement of these Regulations.

Transition provision.

FIRST SCHEDULE

(r. 5)

APPLICATION FORM FOR A LICENCE TO OPERATE AS A
CROWDFUNDING PLATFORM OPERATOR

Application is made for a Crowdfunding Platform Operator license under the Capital Markets (Investment Based Crowdfunding) Regulations, 2022 and the following statements are made in respect thereof:

Note:

- (a) If space is insufficient to provide details, please attach annexure(s).
- (b) Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

INFORMATION ON THE APPLICANT	
1. Name of company.....
2. Registered Office
3. Date of Incorporation
4. Address.....
5. E-mail
6. Location of Principal Office.....
Telephone number of principal office.....
Branch offices (if any)
Details of Branch Offices.....
INFORMATION ON THE APPLICANT'S BUSINESS	
7. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority	
8. Information on the business model (please attach a business plan if necessary)	
9. Description of the internal controls to secure the integrity of the business (e.g. risk management, Data Protection, IT security, control mechanisms for compliance with investor protection requirements)	
10. Evidence and details of the platform (e.g. ownership, readiness for use)	

OWNERSHIP STRUCTURE, DIRECTORS AND OTHER KEY PERSONEL

Fit and proper: Your directors and senior managers must be fit and proper persons to hold their respective positions.

Capability: Your organisation must have the right mix of people with the right skills and experience, in the right roles, to monitor your licensed business properly and effectively.

Financial resources: Your organisation must have adequate financial resources to effectively and efficiently run the business.

11. Details of capital structure:

- (a) Nominal capital (KSh.).....
- (b) Number of shares
- (c) Paid up capital (KSh.)... ..
- (d) Liquid capital (KSh.)... ..

12. Shareholders (please attach a list showing the following details)

<i>Name</i>	<i>Address and telephone number</i>	<i>Number of shares held</i>
-------------	-------------------------------------	------------------------------

13. Directors (please attach a list with the following details)

<i>Name</i>	<i>Identity Card/ Passport number</i>	<i>Date of Appointment</i>	<i>Date of birth</i>	<i>Permanent address and telephone number</i>	<i>Academic or Professional qualification</i>	<i>Number of shares held in the company</i>
-------------	---------------------------------------	----------------------------	----------------------	---	---	---

14. Company Secretary (details)

- i. Name.....
- ii. Address.....
- iii. Institute of Certified Secretaries of Kenya Registration No. ...

15. Details of the Chief Executive Officer and other Key personnel (please attach a list with the following details)

Name	Identity Card/ Passport number	Date of Appointment	Date of Birth	Permanent address & telephone number	Academic or Professional qualification	Number of shares held in the company

16. Profile of the persons listed in note 12

Name	Post	Qualifications	Experience

OTHER PARTICULARS ON THE KEY PERSONEL OF THE APPLICANT

17. Particulars of other directorship(s) of the directors and secretary.

.....

18. Particulars of shares held by directors or secretary in other companies

.....

19. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

20. Has any director, secretary or senior management of the applicant been a director of a company that has been:

a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

<p>.....</p> <p>b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the relevant authority? Yes/No.</p> <p>If Yes, give details.</p> <p>.....</p> <p>c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No.</p> <p>If yes, give details.</p> <p>.....</p>
<p>21. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No.</p> <p>If 'yes', give details.</p> <p>.....</p>
<p>22. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (21)? Yes/No.</p> <p>If 'yes,' give details.</p> <p>.....</p>
<p>23. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities or derivatives exchange or any over the counter platform? Yes/ No.</p> <p>If 'yes', give details.</p> <p>.....</p> <p>(2) Have any of the above persons been -</p> <p>a) refused membership of any securities or derivatives organization? Yes / No.</p>

If 'yes', give details

b) expelled from or suspended from trading on or membership of any securities orderivatives organization or any over the counter platform? Yes/No.
 If 'yes' give details

c) subjected to any other form of disciplinary action by any stock/securities or derivatives exchange?
 Yes/No.
 If 'yes', give details.

REFERENCE

24. Business references:

<i>Name</i>	<i>Address</i>	<i>Telephone number(s)</i>	<i>Occupation</i>

25. One bank reference, (where the applicant is a bank the reference shall be given by another bank independent of the applicant

ADDITIONAL INFORMATION

26. Any other additional information considered relevant to this application:

We.....(Director)
(Director) and
 (Secretary)

declare that all the information given in this application and in the attached documents is true and correct

Dated this day of 20

Signed:
) Director

.....) Director

.....) Secretary

Secretary Note:

1. The following shall be submitted with the application for a licence:

- a) articles of association
- b) certificate of incorporation
- c) Business plan complying with the relevant capital markets laws
- d) Detailed rules of operation of the business
- e) Risk management plan
- f) A copy of the platform's terms and conditions
- g) a declaration by persons authorized as prescribed to accompany the application form
- h) any other document(s) referred to under these Regulations
- i) an application fee of Ksh. 10,000.

SECOND SCHEDULE

(r. 5(d))

<i>FIT AND PROPER FORM FOR INDIVIDUALS WHO ARE OR ARE PROPOSING TO BECOME DIRECTORS OR KEY PERSONNEL OF THE CROWDFUNDING PLATFORM OPERATOR.</i>	
COMPANY	
Name of Applicant Company: <input type="text"/>	
<i>PERSONAL INFORMATION OF THE KEY PERSONNEL</i>	
Full names (Including former surname(s) and /or forenames by which you may have been known): <input type="text"/>	
ID/Passport number:	<input type="text"/>
Please state the capacity in which you are completing this form (i.e. as a director or key personnel) <input type="text"/>	
Please state your full title and describe the particular duties and responsibilities attaching to the position(s), which you hold or will hold. If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the applicant's business. In addition, please provide a copy of your curriculum vitae.	

<div style="border: 1px solid black; height: 150px; width: 100%;"></div>	
Place and date of birth:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Citizen of:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Resident of:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Present business address:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Present residential address:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>

ACADEMIC AND PROFESSIONAL RECORD

Professional & academic qualifications (starting with highest qualification)

--

Special awards or honors (if any)

--

Membership in professional organizations

--

--

Occupation or employment (Present or most recent and for the past ten years) Note to include the dates, Name & business of employer and positions held.

--

Bodies corporate (other than the applicant) where you are now an, officer, shareholder, or manager? Give relevant dates.

--

Bodies corporate other than the applicant and those listed above where you have been a director, shareholder, controller or manager at any time during the last 10 years. Give relevant dates:

--

Past and present business affiliations (direct and indirect): Nature of affiliation (That is, director, officer, share Inclusive date holder with 10% and above (month and year):

Nature of business:

From:

To:

--	--	--

Do any of the above business affiliations maintain a business relationship with the institution? If so, give particulars:

--

Family group: Business affiliation (State name of business and nature of affiliation i.e. director, officer, significant shareholder. Also indicate the nature of the family group member's relation to the Applicant. *A family group member can be a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, son-in-law, grandchild or spouse of a grandchild*).

--

PROBITY, COMPETENCE AND SOUNDNESS OF JUDGEMENT

Have you, in Kenya or elsewhere, been dismissed from any office or employment, or been subjected to disciplinary proceedings by your employer or barred from entry to any profession or occupation? If so give particulars:

--

Has an adverse finding been made against you at any time preceding the date of this questionnaire in any civil or criminal proceedings by a court of law (whether in the Republic of Kenya or elsewhere) in which you were found to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty. If so give particulars:

Have you at any time preceding the date of this questionnaire been found guilty by any professional or financial services industry body (whether in the Republic of Kenya or elsewhere) of an act of dishonesty, negligence, incompetence or management. If so give particulars:

Have you at any time preceding the date of this questionnaire been denied membership of any body on account of an act of dishonesty, negligence, incompetence or mismanagement? If so give particulars:

Have you at any time preceding the date of this questionnaire been found guilty by any regulatory or supervisory body (whether in the Republic of Kenya or elsewhere), or has an authorization to carry on business been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement by yourself? If so give particulars:

Have you at any time prior to the date of this questionnaire been disqualified or prohibited by any court of law (whether in the Republic of Kenya or elsewhere) from taking part in the management of any company or other statutorily created, recognized or regulated body, irrespective of whether such disqualification has since been lifted or not? If so give particulars:

--

DILIGENCE WITH RESPECT TO THE PROPOSED ROLE

Would you confirm that if appointed as a director of the Company that you will undertake your role diligently, in accordance with the duties of a director under the law and that you will do so without reservation? If so give particulars:

--

Are there any reasons, which might impair your ability to undertake your role diligently?

--

WHETHER INTERESTS OF CUSTOMERS MAY BE THREATENED BY VIRTUE OF PAST CONVICTIONS OR OFFENCES

Have you at any time preceding the date of this questionnaire had any judgment (including a finding of fraud, misrepresentation or dishonesty) given against you in any civil or criminal proceedings, in the Republic of Kenya or elsewhere or are there any proceedings now pending which may lead to such judgment? If so give particulars:

--

Have you at any time preceding the date of this questionnaire had any judgment (including a finding of fraud, misrepresentation, misappropriation of funds, manipulation or securities/market transactions, dishonesty) given against you in any civil or criminal proceedings, in the government of Kenya, Africa or elsewhere or are any proceeding now pending which may lead to such judgment? If so give particulars:

--

Have you at any time preceding the date of this questionnaire knowingly or negligently aided or abetted other persons in the breaching of any laws, regulations, exchange rules and/or codes of conduct? If so give particulars:

Have you at any time preceding the date of this questionnaire been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in the Republic of Kenya or elsewhere) or exchange, professional body or government body or agency. If so give particulars:

CONTRAVENTION OF LAWS DESIGNED TO PROTECT MEMBERS OF THE PUBLIC

Have you at any time preceding the date of this questionnaire ever been found to have contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transactions with marketable securities? If so give particulars:

Have you at any time preceding the date of this questionnaire ever been a controlling shareholder, director of a company or member of a corporation or been involved in any business which has been found to have contravened the provision of any law designed for the protection of members of the public against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in transaction with marketable securities? If so give particulars:

<div style="border: 1px solid black; height: 50px;"></div>
--

LIQUIDATION OR STATUTORY MANAGEMENT

Have you ever been a director of a brokerage firm that has been liquidated or has been under liquidation or statutory management?

<div style="border: 1px solid black; height: 80px;"></div>
--

Has any entity with which you were associated as a director, shareholder or manager in any country made any compromise or arrangement with its creditors, been wound up or otherwise ceased business either while you were associated with it or within one year after you ceased to be associated with it?

<div style="border: 1px solid black; height: 70px;"></div>
--

IMPROPER BUSINESS PRACTICES

Have you ever taken part in or been associated with any business practice that is fraudulent, prejudicial or which otherwise could be viewed to have discredited your methods of doing business? If so give particulars:

Have you ever taken part or been associated with any other business practice as would, or have you otherwise conducted yourself in such a manner as to cast doubt on your competence and soundness of judgment? If so give particulars:

ADDITIONAL INFORMATION

Do you have any additional information, which should be brought to the attention of the Capital Markets Authority which may have an impact on the evaluation by the Authority of your good character, integrity, suitability or otherwise for the position(s) held/to be held? If so give particulars (The omission of material facts may represent the provision of misleading information).

Indicate the names, addresses, telephone numbers and positions of three individuals of good standing who would be able to provide a reference on your personal and professional integrity. (The referees must not be related to you, and should have known you for at least three years).

<i>CONFIDENTIALITY</i>	
<i>The information given in response to this questionnaire shall be kept confidential by the Authority except in cases provided for by law.</i>	
<i>DECLARATION</i>	
<p>I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading. I am also aware that omitting material information intentionally shall be construed to be an offence and may lead to rejection of my application.</p> <p>I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the supervisory authority should be aware.</p> <p>I undertake to inform the Authority of any changes material to the applications, which arise while the application is under consideration and after taking up of the relevant post.</p>	
Name:	
Signature:	
Dated:	
Witnessed before me:	
Signed:	
Sworn at 20	<input type="text"/> this <input type="text"/> day of <input type="text"/>
Before me:	<p style="text-align: center;">Commissioner for Oaths</p>

THIRD SCHEDULE (rr. 5(p), 9(1)&(2) and 22)

APPLICABLE FEES

(a) Application, Licensing and Annual Regulatory fee

Application fee	Ksh. 10,000/-
Licensing fee	Ksh. 100,000/-
Annual regulatory fee	Ksh. 100,000/-

(b) Other fees

A transaction fee of 0.15% of the value of the amount raised in each crowdfunding round facilitated through the platform.

FOURTH SCHEDULE

(rr. 18(1) & 19(c))

MINIMUM DISCLOSURE REQUIREMENTS TO BE CONTAINED IN THE
OFFERING DOCUMENT

1. The investor:
 - (a) Warning to investors.
 - (b) Key information of the investors including contact details and details of key personnel (if a body corporate).

2. The Issuer
 - (a) Key information on the issuer.
 - (b) Ownership and capital structure.
 - (c) The nature of its existing or proposed business and business plan.
 - (d) Issuer's source of revenue (if applicable).

3. Information on the crowdfunding
 - (a) Amount to be raised.
 - (b) Minimum amount that must be raised to consider the funding round successful.
 - (c) Maximum amount to be raised in a funding round subject to the prescribed limits.
 - (d) Price of the investment.
 - (e) Nature of the investment.
 - (f) Term of the investment
 - (g) Description of activity to be financed.
 - (h) The offer period.
 - (i) Offer timetable.
 - (j) Transfer method of the amounts raised.
 - (k) Associated costs of the fund raising.
 - (l) Any guarantees.
 - (m) Detailed schedule on the use of proceeds.

4. Financials

- (a) Two years audited financial statements (where applicable).
- (b) Corporate governance structures.
- (c) Financial ratios such as, solvency, profitability, efficiency and liquidity ratios.
- (d) Schedule of outstanding debts including bank loans or any other off-balance sheet liabilities.
- (e) Financial projections for 3 years including any assumptions.
- (f) Any other relevant financial information.

5. Other information

- (a) Rights and obligations of the issuer, investor and crowdfunding platform operator.
- (b) The custodian to provide the safekeeping services, the nature and terms and conditions of those services.
- (c) Conditions and warranties.
- (d) Risks and risk mitigation measures.
- (e) Material contracts, trademarks, licenses.
- (f) Litigation history including ongoing court cases.
- (g) Description of fees applicable to the crowdfunding platform operator.

Made on this 27th July, 2022.

UKUR YATANI KANACHO,
Cabinet Secretary for the National Treasury and Planning.

EXPLANATORY MEMORANDUM ON THE CAPITAL MARKETS (INVESTMENT-BASED CROWDFUNDING) REGULATIONS, 2022.

GAZETTE NO: Vol. CXXIV-No. 206

PART I

Statutory Instrument: Capital Markets (Investment-Based Crowdfunding) Regulations, 2022

Parent Act: Capital Markets Act, Cap 485A.

Enacted Pursuant to: Section 12 (1) (d) of the Capital Markets Act.

Name of the Ministry: The National Treasury.

Gazetted on: 7th October 2022.

PART II

1. Purpose of Statutory Instrument

Crowdfunding is the collection of funds from the population at large (the crowd) through a technological platform. As consideration, the crowd may receive different tangibles or intangibles, depending on the crowdfunding model.

Noting the different models of crowdfunding, investment-based crowdfunding is the type where issuers (fundraiser) raise money from the crowd by issuing either shares or a debt instrument and where the investors (the crowd) give money albeit with an expectation for a financial return on their investment.

In a typical crowdfunding transaction, the platform owner links the issuers and the investors through its platform to enable the crowdfunding activity to take place. The issuers are usually charged a fee to allow them to issue their products in exchange for a consideration at a fee and in return, the platform operator is expected to provide a secure service. After a successful funding round, the platform operator facilitates the transfer of money to the issuer within an agreed period and in the event of a failed funding round, the money collect is refunded to the investors and the issuer is then only allow to attempt another funding round after the expiry of a particular period.

2. Legislative Context

The Draft Capital Markets (Investment-Based Crowdfunding) Regulations, 2022 are made pursuant to **section 12 (1) (d) of the Capital Markets Act, Cap 485A** Laws of Kenya (the Act), which empowers the Authority through the Minister to issue regulations to guide on the operations of any other persons not provided for under the existing capital markets laws dealing with capital market instruments to enable it to fulfill its objectives under the Act.

In cognisance of the fact that investment based crowdfunding activities fits within the broader context of 'offering of securities to the public' with regards to its form, the Authority now seeks to regulate this practice by licensing the crowdfunding platform operator and providing for both the issuer(s) and investor(s) pursuant to its powers under **section 12 A** as read with **section 30A** of the Capital Markets Act.

Specifically, the regulation shall provide for this peculiar offering of securities to the public by regulating such activities in Kenya. It shall apply to an investment-based crowdfunding platform established, maintained, or operated in Kenya falling within the context of **regulation 3(2)**. The framework will primarily focus on the platform operator (the licensee) and place a duty upon them to 'supervise' its users i.e., issuers and investors through its rules, which shall be approved by the Authority at the point of licensing. It further set out the eligibility for investors and provide for the issuers by also setting out their eligibility criteria, fundraising limits, and disclosure requirements.

The regulations limit its applicability to issuers who fits within the scope of small, micro, and medium enterprises (MSMEs) and Startup Companies in need for capital. This is to give them an opportunity to leverage on the capital markets to acquire financing.

The regulations are divided into the following parts:

Part I on the preliminary: Provides for key terms and scope of application of the regulations.

Part II on the crowdfunding platform operator: Provide for the licensing requirements for crowdfunding platform operator, grant and denial of a license. Also, provides for the details of rules of the operator.

Part III on the crowdfunding participants: Provides for both the issuers and the investors, fundraising and investment limits.

Part IV on the crowdfunding transaction: Provides for the requirements for issuers and investors, crowdfunding transaction, prohibitions and use of proceeds.

Part V on duties of the crowdfunding platform operator: Provides for general duties e.g. investor education, disclosures, compliance, maintenance of registers, obligation on risk disclosures and due diligence, operation of a trust account, data protection and privacy and continuous reporting obligations.

Part VI on the trading facility: Allows a platform operator to maintain such a facility to enable the trading and exchange of crowdfunded securities for liquidity purposes and provides for the requirements thereof.

Part VII on general provisions: Provides for inspection of the platform of the crowdfunding platform operator, compliance with other applicable of laws and regulations and transition.

Part VIII contains a list of various forms and additional information under the schedules.

3. Consultation

The draft regulation was taken through a series of both internal and external consultation during the drafting phases. Internally, it underwent several reviews at the departmental and committee levels before its publication to the public. Externally, the draft regulations were exposed to the public for 30 days, which ended on 11th August 2021 which period was extended for a further 14 days to allow for additional input.

The public participation was done in compliance with article 10 of the Constitution and the Statutory Instruments Act.

The Comments received were reviewed and considered in the refinement of the regulation to provide the final draft.

4. Impact

The regulation will have the following impact on the economy and the people: -

4.1 The Impact on Fundamental Rights and Freedoms

The crowdfunding regulation neither has a direct impact nor negatively affect the fundamental rights and freedoms under the Constitution. Contextually, the regulation upholds the right to a fair administrative action, the fair treatment of all parties in crowdfunding by balancing their rights versus obligations and preserves Kenya's capital markets integrity by promoting transparency and accountability through the disclosure-based approach.

It also upholds consumer rights by ensuring that investors are well informed of all the details of their choice of investments before and after committing.

4.2 Economic impact on the Private Sector

The regulations require the licensing of entities seeking to operate as platform operators and payment of a licensing, annual regulatory renewal fee and a transaction fee as provide thereunder. Although this may be seen as an increase in the cost of doing business, the fees are however affordable in the light of the platform operator's capacity and are meant motivate legal compliance, enable the Authority expand its supervision capacity, fund investor education, market development and industry capacity.

4.3 Economic impact on the Public Sector

The regulation allows the platform operator to charge a fee to its platform users. This appreciates the uniqueness of crowdfunding transactions and enables platform operators who are also in business preserve the integrity of their platform by offering quality services

To balance out this right versus that of the public, the regulation requires disclosure of such and related fees and additional disclosures on the prospective issues to enable the investing public exercise their right to discretion from an informed perspective.

Impact Assessment

The regulation presents a new mode of financial intermediation and alternative financing by connecting issuers to investors via electronic platforms. This provides micro, small and medium enterprises and Startups with an alternative for raising funds through the capital markets. It also promotes market integrity by requiring the licensing of platform operators, compliance with disclosure requirements and a balance between the rights of the issuers and investors.

5. Monitoring and review

Upon gazettelement, implementation of the Regulation will be done through the approval and supervision processes. The framework requires the licensing of platform operators, continuous disclosures, and inspection of the licensed entity to ascertain its compliance to the framework and other applicable laws.

6. Contact

The Cabinet Secretary
The National Treasury & Planning
Harambee Avenue, Treasury Building,
P.O Box 30007-00100

Nairobi

Tel. +254 20 2252299

Website: <https://www.treasury.go.ke>



REPUBLIC OF KENYA



**CAPITAL
MARKETS AUTHORITY**

Promoting the Integrity and Growth of the Capital Markets

THE CAPITAL MARKETS ACT (CAP 485A)

PUBLIC NOTICE

REQUEST FOR STAKEHOLDER AND PUBLIC FEEDBACK ON THE DRAFT CAPITAL MARKETS (INVESTMENT BASED CROWDFUNDING) REGULATIONS 2021.

Investment based crowdfunding is one of the more compelling and promising financial technology innovations that provides a source of alternative finance through the capital markets. It allows start-ups and growing businesses that are unable to raise capital through existing securities issuances to raise money from members of the public through technological portals (crowdfunding platforms) to help finance or re-finance their activities.

In recognition of the inclusive role that investment based crowdfunding plays, the Authority pursuant to Section 12(1) (d) of the Capital Markets Act, CAP 485A has developed draft Investment Based Crowdfunding Regulations to facilitate businesses in Kenya seeking to leverage on this type of financing to fund their activities.

The draft regulations require all investment based crowdfunding transactions to take place on platforms run by licensed intermediaries, require disclosures of information and permit businesses to raise funds up to the prescribed maximums.

In accordance with Section 12A(3) of the Capital Markets Act, the Authority now invites stakeholders and the general public to submit comments on the proposed Regulations on Investment Based Crowdfunding available on www.cma.or.ke.

Kindly submit your comments by 11 August 2021 to:

The Chief Executive
Capital Markets Authority
P.O. Box 74800-00200 Nairobi
3rd Floor, Embankment Plaza
Longonot Road, Upperhill
Email: comments@cma.or.ke
Website www.cma.or.ke

STAKEHOLDER MATRIX OF COMMENTS ON THE DRAFT CAPITAL MARKETS (INVESTMENT BASED CROWDFUNDING) REGULATIONS 2022 EXPOSED FOR PUBLIC PARTICIPATION FOR 30 DAYS PERIOD WHICH ENDED IN AUGUST 11, 2021

No.	Clause of the Regulation	Comments/ Proposal	Justification	Action
1	<p>Interpretations</p> <p>Title</p>	<p>(Investment Based Crowdfunding) Regulations, 2021. Please clarify that "investment based" covers either debt or Equity investment or either.</p>		<p>Not adopted. The regulations provides a definition for investment-based crowdfunding to give context of the scope of the regulations.</p>
2	<p>2- Interpretation</p>	<p>The definition of Crowdfunding platform has not specified whether the platform is accessible to the public. The definition to include accessibility to the public</p>	<p>To increase the scope of its application</p>	<p>Adopted. Definition amended for clarity.</p>
3	<p>Interpretation Section</p>	<p>For Clarity Consider the Capital Markets Act, CAP 485A and the Micro and Small Enterprises Act No. 55 of 2012</p>		<p>Adopted. Amendment done.</p>
4	<p>Interpretation Section</p>	<p>Definition of Micro Enterprises has been referenced to the Micro and Small Enterprises Act No 55 of 2012. However, regulation 14(1) and (2) makes reference to micro, small and medium enterprises. There is need to define small</p>		<p>Adopted. "Medium enterprise" means an entity whose annual turnover ranges between five million and fifty million Kenya shillings and employs between</p>

		enterprises under the interpretations section. It should be noted that the Micro and small Enterprises act No 55 of 2012 does not provide for a definition of medium enterprises. A reference for medium enterprises may need to be referenced to other Kenyan laws/regulations or operationalized by the Authority		fifty to three hundred employees;
5	2 on definition of crowdfunding platform	This is defined circularly (as a function of the definition of an operator, which in turn is a function of the definition of a crowdfunding platform). This is a little unhelpful to you given that 'crowdfunding platform' is the term that defines who must obtain a licence from the CMA.	Basically, you want a definition that removes the term 'operated by a crowdfunding platform operator'. This now makes article 5 more meaningful and allows you to enforce against unlicensed platforms.	Adopted. Definition amended to remove ambiguity.
6	2 on definition of start up	I think the reason startups are included in the eligibility criteria for crowdfunding is because (correctly) you want to allow some businesses to scale, potentially beyond the micro-small boundary, while still having access to CF investors. However, the reference to a 'unique' product is likely to cause you a few headaches. Even in niche markets,		Adopted. Definition amended to remove the word unique

7	2 and 3 on the crowdfunding platform	it is actually really hard to establish that a product is unique. I would remove this.	What is the distinction between these paragraphs?		
8	2 on sophisticated investor	This Regulation provides that a sophisticated investor is "a high-net-worth investor with significant knowledge on capital markets investment products". This would require an investor to be both of high-net-worth investor and have significant knowledge on capital markets investment products. The approach taken by the UK in its Securities Act is requiring only one of the requirements to be met i.e., one is either a high-net-worth investor or has significant	There is a need to clarify what is meant by a high-net-worth investor and significant knowledge. We propose that, seeing, as Kenya's economic climate is different from that in the US, a lower threshold of about USD 50,000 may be adopted to classify an individual as a high-net-worth individual. Additionally, the requirement to have significant knowledge should be quantified to years of practice. This should, for example, be ten (10) years, so that a threshold may be in place in terms of experience.	Adopted One of the provisions was on licensing of the operator and the other on approval of the platform. For clarity, previous reg. 4 on approval of platform deleted. Approval of the platform will be part of the licensing process.	Adopted Definition of sophisticated investor amended to expand the scope of who may qualify as such by adopting the definition under the Act.

	<p>knowledge and experience when it comes to the market.</p> <p>Additionally, the Regulation does not define what constitutes high net worth nor what significant knowledge would entail.</p>	<p>Furthermore, the requirement to be a high-net-worth individual should be disjunctive to having significant knowledge in capital markets investment products.</p>	
<p>9</p> <p>2 on definition of sophisticated investor</p>	<p>We propose to expand the definition of a Sophisticated Investor to cover the below two entities;</p> <ol style="list-style-type: none"> 1. Retail Investors 2. Institutional Investor <p>Additionally, we have defined a Retail Investor as</p> <ul style="list-style-type: none"> • Individuals willing to invest a minimum of Ksh. 100,000 • Confirm if the investment is per round, per year or time • bound and exemptions • We propose there should be no age limit or how many times or rounds they can invest per year. <p>Furthermore, we have defined CORPORATE INSTITUTIONS as:</p> <ul style="list-style-type: none"> • Institutions willing to invest a minimum of Ksh. 1,000,000 		<p>Adopted.</p> <p>This will now be covered under the amended definition of sophisticated investor.</p> <p>See explanation above.</p>

10.	2 on definition of crowdfunding platform	<ul style="list-style-type: none"> Institutions must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment 	
	<p>In conformity with the taxation principle of certainty, the Regulations should within the provisions on obligations on the crowdfunding regulations, should include a Clause 29A, the following: <i>Remit all taxes due and payable on operation of the crowdfunding platform.</i></p>	<p>The Finance Act 2020 highlights the application of the Digital Services Tax, on transactions conducted through digital marketplaces under section 12E(1).¹</p> <p>The definition of the crowdfunding platform creates a deemed permanent establishment which would have the effect of bringing crowdfunding operations within the purview of the Kenya Revenue Authority. The Digital Services Tax is levied on the supply of goods and services on an online marketplace. The facilitation of crowdfunding on a digital platform would constitute the supply of a service within the meaning of the Digital Services Tax (DST) and the crowdfunding operators will be</p>	<p>Not adopted.</p> <p>DST is not within the scope of the Authority and thus cannot be expressly provided for under the Regulations.</p> <p>If such platform are covered within DST, platform operators will have to comply as required under Tax laws in the same way other licensees meet their tax and other legal obligations as required under the relevant laws applicable to them.</p>

¹ 12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital market place: Provided that a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.

			liable to pay the DST at the rate prescribed in regulation.	
11.	Regulation 2 Definition of crowdfunding	The definition satisfies the elements of crowdfunding in the CGAP definition		Positive feedback. Definition amended further to make it more simple and clear.
12.	Definition of crowdfunding platform	The regulations create a gap in the law. Although they define a crowdfunding platform, it does not clarify whether both debt-based and investment-based platform operators will be required to obtain a license to operate.	Consider revising to include 'investment based.'	Adopted. Definition amended to remove ambiguity.
13.	Definition of cooling off period.	We propose to remove this definition and implication from the regulations	We believe that the ability to remove funds after the issuer has been funded directly puts the platform in a liquidity risk position, where they either have to have stand-by funds to refund the investor or have to coerce the issuer to return funds they have received, which will not be done in a convenient timeline	Partially adopted. This is best practice as seen in other crowdfunding frameworks worldwide. It gives the investors an option to withdraw before committing their funds into the issue. The definition has however been amended to provide more clarity. Reg. 21(5) also amended to provide clarity on the

14.	Suggested definitions for inclusion	Venture Capital list/Venture Capital Fund	Since these are also sophisticated investors who can participate as lead investors in Crowdfunding platforms, they offer a higher degree of credibility for retail investor to invest alongside them in a specific start up. (can be defined as in Act/ and expanded as part of definition of sophisticated investor.	applicability on the cooling off period.
		Angel Investor – this can be included/expanded as part of definition of sophisticated investor	Adopted. These groups are now covered by the amended definition of sophisticated investor which may be interpreted to include such investors who may qualify as such.	
		Syndicate – Consider including in the regulations, the option of a crowdfunding platform allowing for creation of syndicates lead by	Syndicates are a great way of qualifying quality deal flows of scalable and high growth startups. Check	Not adopted. This is not the policy intention of crowdfunding. However,
				Ibid, see response above.

		<p>Angels/Venture capitals in which a special purpose vehicle (SPV) is created and further the SPV can be offered to retail investor.</p>	<p>https://www.angellist.com/syndicates for more info</p>	<p>syndications may be applicable within the context of the proposed Capital Markets (Collective Investment Schemes)(Alternative Investment Funds) Regulations, 2021.</p>
		<p>Secondary Market – since investments in crowdfunding platforms will mostly be illiquid, it would be prudent to allow for there to be other crowdfunding platforms that specializes in offering a secondary market for equities bought in a primary crowdfunding platform. A secondary market investment crowdfunding platform provides investors a way of liquidating their illiquid investments.</p>		<p>This may be allowable if the requirements of the trading platform are met.</p>
		<p>Special Purpose Vehicle- vehicle created by a syndicate for purposed of investing in startups through a lead investor. Lead investor in a Syndicate may collect a management fee and performance fee from the SPV.</p>		<p>Adopted. This is now covered by the amended definition of sophisticated investor. Please see new definition.</p>

		<p>Trustee/Trust Agent/Nominee-introduction of Trust Account (Sec 30) may require that bought securities are held in trust by a Trustee/Trust Agent for the investors to protect their interests and ensure monies raised are used for purposes intended. Further the Trust Agent can be responsible for things such as collecting dividends, collecting votes from investors during voting process and updating investors in Issuer company developments. Since retail investors can be quite many while the ownership stake for these retail investor small, using a nominee/trustee company to represent their interest can be easy for administration purposes in the platform. I.e. this would be good for managing conflicts and block voting of minority interest.</p> <p>LPO financing, Supply chain financing, Invoice financing, Expense Financing, Revenue Financing – (this applies to</p>		<p>Adopted. It will be the duty of the crowdfunding operator to ensure there are custodial arrangements in place.</p> <p>See the new regulations 26(2)(a) on duties as read with reg. 31.</p>
			<p>Not adopted. The regulations only focus on and define key terms, which have been used in regulations.</p>	

	<p>Kenyan companies such as Pezeshka), so defining these terms is important for distinguishing them from direct debt/equity issues by entities in crowdfunding platform. This is because most of these financing options are materially different from debt/equity issues and generally have some level of security which will make them attractive to retail investors. Most importantly LPO financing, Supply chain financing, Invoice financing, Expense Financing, and Revenue Financing have a repayment term of one year or less.</p>		<p>Where such models are applicable, the details will be set out under the offering document in the light of the proposed transaction.</p>
	<p>Debt financing – financing through debt issue by issuing company. The term can be more than one year which may indicate a higher default risk than the above type of financing.</p>		<p><i>Ibid</i>, see response above.</p>
	<p>Equity financing- financing through issue of shares in issuing company</p>		<p><i>Ibid</i>, see response above.</p>

		Convertible debt – debt financing with option of conversion into equity in the future at a trigger event or date.		<i>Ibid</i> , see response above.
		Trigger event- future fundraising by the company or on a liquidation event (company being acquired by another company). Future fundraise may trigger a convertible debt to convert to equities/share at a discount valuation of the company which makes it attractive to early investors. IPOs can also be trigger event.		<i>Ibid</i> , see response above.
		Start-up” means an entity that is less than ten years and established for the sole purpose of developing a unique and scalable product or service to benefit the market.		Adopted. Definition amended to remove ambiguity and to make it practical. See new definition.
15.	3(i) Application	Consider reducing the definition The scope of the regulation’s application should also include those crowdfunding platforms that were in operation before the Regulation thus it should be these regulations shall apply to an investment based crowdfunding platform established, maintained,	Ensure Clarity and avoid vagueness	Adopted. Transitional clause included to provide guidance to companies approved as platform operators prior to the commencement of these regulations. See reg. 38.

		or operated in Kenya including those that were established before these regulations		
16.	3(1) Application	The Regulation has only factored the investment-based crowdfunding under the ambit of the regulations This is not exhaustive as it has omitted lending-based crowdfunding which is also a financial service	Amend to 3 (1o) to read: These Regulations shall apply to an investment and lending-based crowdfunding platforms established, maintained or operated in Kenya. For clarity and also consistent with the EU best practice that brings both investment and lending-based crowdfunding under regulations requiring the use of a passport.	Not adopted. Peer to peer lending is the only crowdfunding models that falls within the scope of the Authority. Lending based crowdfunding is not within our purview. NB: EU best practices makes a case for the wider financial services sector given their twin peak or related models of regulation. In our context, the Authority's mandate is only limited to the securities space as provided for under section 11 of CAP 485A. Accordingly, the regulations will only be applicable to crowdfunding activities within the context of the capital markets. Other crowdfunding activities like lending falls outside that mandate.

17.	3 (5)(b) Application of the Regulation	This only takes into account email marketing. Overlooking marketing through social media, or the traditional methods of advertising such as TV and Radio, these mediums have been highly abused and there is need to include them in the Regulations.		Adopted. The entire regulation 3 amended to remove ambiguity on the applicability of the regulations.
18.	3 on application	The extra-territoriality provision (particularly 2c) are in my view correctly framed and I have no comments.		Positive feedback
19.	Regulation 3 on application.	Although Regulation 3(5) provides for considerations that may be made by the Authority in reaching a decision as to whether there is direct or indirect promotion, these seem limited to direct promotion, with no clarity as to what direct or indirect solicitation through agents would entail.	There is a need to clarify what would amount to direct or indirect promotion of crowdfunding activity. In the instance of indirect promotion, this casts a wide net from an interpretation perspective and might capture any promotion of crowdfunding activity that is visible in Kenya, and outside the control of the crowdfunding platform operator. This is particularly important as actively targeting investors in Kenya requires licensing by the Authority, and would create ambiguity as to when a crowdfunding platform operator located outside Kenya would need to be licensed by the Authority.	Not adopted. The provision are intentionally meant to be broad to capture various means of solicitation including those that may be introduced by emerging technologies. Accordingly, direct and direct promotion will be construed from a case-by-case basis in light of the facts at hand.
	The crowdfunding platform			

23.	7 Requirement Licensing	for		operator as defined under the Regulations.
		<p>The crowdfunding regulations establish that for a crowdfunding platform operator to be eligible for a license, it must be a company limited by shares with a paid-up capital of Kenya shillings ten million. It is however not clear why the capital condition is applied and why it is set at that amount. Will this lock out operators willing to seek the relevant license but do not have the required capital? Will those with a lower capital receive a registration decline? Perhaps the regulations can consider providing some level of exclusions or graduated scale if this condition is not met. The key concern for these provisions is as follows.</p> <ol style="list-style-type: none"> I. Crowdfunding platform operators are the intermediaries that link the funders (investors) with the fundraisers (investor). Their earning is from fees collected from each contribution (fund). 		<p>Not adopted.</p> <p>The capital requirements are necessary and they are meant to ensure that the platform operators have enough capacity to provide the service, mitigate the associated risk and have capacity to comply with the obligations under the regulations.</p>

		II. This condition may lock out local crowdfunding platform operators that do not meet this capital requirement		
24.	7 on requirement for licensing	I have no view on the amount of KSh10m. I think you need to consider, however, to what extent this buys you and the firm enough time to effect an orderly run-off if need be.		Adopted. The regulations now require liquid capital as opposed to paid up as that comes in more handy in mitigating liquidity risks.
25.	7 on requirement for licensing	A Crowdfunding platform does not need to have a paid-up capital this high primarily because it is not using this paid-up capital in lending out to the borrowers.	Ksh. 5,000,000.00 paid up Capital would be sufficient.	Partially adopted The regulations now require liquid capital as opposed to paid up as that comes in more handy in mitigating liquidity risks. The capital requirements are necessary and they are meant to ensure that the platform operators have enough capacity to provide the service, mitigate the associated risk and have capacity to comply with the obligations under the regulations. The proposed capital requirements were

26.	8 Application for a license	The Application should also be accompanied by a policy designed to ensure that projects on the crowdfunding operator platforms are selected in a professional, transparent, and fair way and that the crowd funding services are provided in the same manner	To ensure investor protection, minimize risk and enhance fair treatment of all users of the platform	benchmarked to our licensees versus the risk element. Adopted This will be contained under rules governing its operation. Please see new reg. 9 on rules of operation of business.
27.	8(b) Application for a License	This requirement should be more specific to say "latest copy of audited accounts or statement of affairs signed by its auditors and management accounts for the last two years"		Adopted. Provision amended to remove ambiguity.
28.	8 (g) Application for a License	The requirement should be for an up and running website and not screen shots of a planned website		Adopted. Provisions amended to remove ambiguity. See new clause 7(g).
29.	8 Additional requirements for a Application for a License	1. Sworn undertaking to promptly furnish the Authority with copies of any amendments to its by-laws, company structure such as change in directors, rules, or codes		Adopted. This has been captured under the operator's general obligations. See 26 (2) (f).

	<p>II. Requirement that the Operator's board, Chief Executive, and any person who is primarily responsible for the operations or financial management of the Crowdfunding portal, are fit and proper persons who have not:</p> <ul style="list-style-type: none"> a) Been convicted, whether within or outside Kenya, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly b) Been convicted for an offence under the Act or any other law relating to the Capital Markets c) Been blacklisted by a professional body 		<p>ii) This requirement has already been provided for under the previous regulation 8(1) (b) now reg. 8(c). The cross referenced section 24A of the Act contains robust provisions on fit and proper requirements.</p>
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		<p>which he belongs to</p> <p>d) Been subjected to any disciplinary process or action by the Authority</p> <p>e) Contravened any provision made by or under any written law, whether within or outside Kenya appearing to the Authority to be enacted for protecting members of the Public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies, or against financial loss due to the conduct of</p>		
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		<p>discharged or undischarged bankrupts</p> <p>f) Engaged in any unlawful business practice</p> <p>g) Engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement or:</p> <p>h) Engaged in or has been associated with any conduct that cast doubt on his ability to act in the best interest of investors, having regard to his reputation, character, financial integrity and reliability</p>	
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30.	8 Application for a License	Amongst the information that should be provided by the Crowdfunding platform operators are the data protection, money laundering and cyber security measures in place in compliance of and informed by the relevant statutes	Adopted. Included under current reg. 7(n and o). This has also been provided for under Regulation 33 and 37
31.	8 Application for a License	The requirements for application of a license are not exhaustive as they have omitted a crucial requirement on tax compliance.	Not adopted. Tax obligations do not directly fall within the scope of the Authority and thus cannot be expressly provided for under the Regulations. However, as companies, the operators will still be required to comply with other obligations under law include Tax laws.
32.	8 on application for a license	I think clauses c d and l will require further guidance (in a separate document presumably). In particular, the CMA should provide some hints as to what it sees as the more important elements of the business model and platform operation, so that the explanations you receive are useful.	Adopted. This has been included under the criteria for licensing and rules and under schedule 3 on minimum disclosures. Specific details on the business model will be dependent on the peculiarity of the business model. See the new reg. 7(c) and 9.

	<p>E.g.</p> <ul style="list-style-type: none"> a) where does your income come from and what would be a representative distribution of income by source? b) is there a secondary market and if so how are assets on it valued, and how often if at all are they revalued? c) who do you expect your key customers to be and what need will you meet for them? <p>You will receive the information you want either way but you want to give the firms a chance to get it right the first time round rather than use your resources clarifying the original input.</p>		
33.	Licensing requirements	<p>The draft sets out blanket requirements for demonstration of financial adequacy without going into specifics.</p> <p>Consider detailed requirements e.g. demonstrate finance adequacy, copies of audited accounts and statement of affairs dating back 9 months.</p>	<p>Adopted. Regulation 8(b) (now reg. 7(b)) amended to provide general guidance on the expectations.</p>
34.		<p>Clause 9 needs some tweaking. The operator can't show you an up-and-running platform, they</p>	<p>Adopted.</p>

		<p>would need a license to run it. 'suitably advanced stage including a test site or application' is the best approach here. If you want something that is ready to run, then you can specify the platform must be either ready to operate or be in a 'suitably advanced stage', so that it could at least be piloted. It's important you are not shown a platform that misrepresents the products and services the platform intends to make available to customers when it launches, or misrepresents the way in which consumers will interact with the platform. The firm should also submit to you its product and technology roadmap for at least the first 12 months so that they cannot suddenly make massive changes behind your back once authorized.</p>		<p>Provision amended to remove ambiguity and provide on the actual expectation. See new reg. 7(g).</p>
35.	8(i) on adequate risk management framework with details of its fraud detection and prevention measures.	Amend to 'adequate enterprise risk management framework with detail of its fraud detection and prevention measures.'	<p>We believe every participating platform should demonstrate capacity to handle 4 major risk factors</p> <ol style="list-style-type: none"> 1. Credit risk 2. Market risk 3. Operational risk 4. Liquidity risk 	<p>Adopted. Provisions amended to make it more inclusive on the main risks that must be discussed. See new reg. 7(l).</p>

			These should be expressed in an Enterprise Risk Management document and should be an important document to apply for a license.	
36.	8(1) (a) on criteria for licensing	Amend to 'has demonstrated the capacity to operate an orderly, fair and transparent market in relation to the securities or investment instruments issued through its electronic platform....'		Not adopted. Usage of the word 'demonstrated' might be construed to mean that platform operators may be allowed to operate as such before licensing. The regulations require compliance with all requirements before licensing.
37.	8(1) (e)	Amend to 'the Authority shall license an applicant as a crowdfunding platform operator if it is satisfied that the applicant has robust operational rules in place...'		Adopted Provision amended to provide more clarity. See new reg. 8(g).
38.	8 (k) on 'any other additional documents...'	Delete the provision and instead be clear and list all go documents they require as opposed to leaving it to subjectivity. The same applies to the issuer.	The goal should be to make the process seamless and clear for all.	Not adopted. The regulation enables the Authority to be more adaptive to changing circumstances in light of the market needs. However, the list contains most of the documents that will be required to facilitate the licensing process.

	Addition comments on criteria for licensing	We have included an additional criteria for licensing <i>Has operated the investment platform for at least 24 months, without litigation nor material investor complaint</i>		Not adopted. Usage of the words 'has operated' might be construed to mean that platform operators may be allowed to operate as such before licensing. The spirit of the regulation requires authorization before operations.
		The regulation should limit the Issuer to one platform during fundraising, and not allow it to raise on another platform for one year after initial funding. This should also apply to selling/transfer of shares.		Adopted. This has been provided under the new reg. 24(2). The restriction is necessary to mitigate the associated risks.
		The liability should be limited to the investor and the issuer. The platform provider should be left out.		Not adopted. As our licensee, the platform should assume liability as the licensed entity.
39.	9(i) Grant of a license	The words to operate have been repeated. Delete one There is a repetition of 'to operate'	Correcting a typographical error	Amended.
40.	9 on rules of operation of the business.	In relation to (g) (h) (i), I think the CMA might need to provide guidance as to some indicative scenarios it wants to intercept. Eg. Platforms need to have policies in		Adopted. Rules amended to include requirements on managing conflict of interest to address

	<p>relation to transparency of corporate ownership, and specifically in relation to transactions by and with related parties – which in my view should cover at least the following scenarios</p> <ul style="list-style-type: none"> • The operator’s staff, directors etc. investing in firms raising funds for their businesses on the platform or bringing issuers to the platform wherein they have a financial stake. • The issuer bringing related parties such as friends and family onto the platform as investors • Entrepreneurs raising funds for their companies, failing, and then returning to the market with a different issuer. <p>The platform needs to also explain its own liability - what it is and is not responsible for specifically in relation to due diligence; although</p>	<p>such and other issues that may arise. See new reg. 9(i)</p>
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41.	10 (2) Denial of grant of a license	I can see this is discussed further down the document. Can we specify a specific time within which the Authority should communicate the decision to an aggrieved applicant? maybe 7 days?	To enhance efficiency	Adopted. Provision amended to provide guidance on time. Decision is to be communicated within 14 days. The period has the aligned to mirror the standard in the existing frameworks.
42.	11 Suspension, restriction or revocation of license.	The authority should also revoke or suspend a license if a crowdfunding platform operator is found to be paying or receiving remuneration, discounts or non-monetary benefits for routing investors' orders to a particular offer made on their crowdfunding platform	This particular provision has not been listed under sec 26 of the act and it is significant for fairness and equality purposes.	Not adopted. Grave non-compliance with the provision of the regulations will fall under the offences and the provisions of the Act will suffice as grounds to suspend, restrict or revoke a license.
43.	12 On penalty	The word commit does not have an (s) at the end and the word 'and' is missing between regulations and is. Add an s and the word and	Correcting a typographical error	Amended
44.	13 On cessation of business	it's worth keeping in mind platforms can fail quickly, particularly after some high-profile case of poor performance or fraud. So this obligation probably needs to be complemented by a requirement		Adopted. This has been included under general obligations (see new reg. 26(2) (f) to help manage this risk.

		to notify the CMA if the board considers there is a material risk of the firm failing or exiting the market		
45.	Regulation 13 on cessation of business	There is a need to clarify what would amount to prior adequate notice. We propose that prior adequate notice should not be less than six (6) months, with the Authority at its discretion having the power to extend the period before which the platform operator may cease to operate in its terms and conditions, having in mind the scale of operations of the platform operator.		Partially adopted. The notice period has been left open given the peculiarities that may be applicable in different scenarios. However, under general obligations the new reg. 26(2) (f) now includes a duty to notify the Authority immediately of any material change that may affect an operator's authorization to conduct business.
Crowdfunding Participants				
46.	14 (1) and (2) Eligible issuers	This requirement should be more specific on the requirements from the eligible issuer and start up as proposed below: I. Business registration certificate II. Business License or Permit III. KRA Pin and Tax Compliance Certificates IV. Requisite certification by a professional body or		Not adopted. The responsibility to vet issuers is placed on the crowdfunding platform operator. Procedures for vetting issuers will however be contained in the platform operator's rules to be submitted at the point of licensing. In this case, the Authority will be able to guide

		<p>Authority for the business of the Directors or Manager</p> <p>V. A CR12 form as proof who the company shareholders are. Audited accounts records for the 2 years the business has been in operation</p>		<p>on what they should be depending on the objective on the platform operator.</p>
47.	14 Eligible issuers	<p>The regulations indicate that a participant/issuer could be a micro or small enterprise that has been in operation for a minimum of two years. It is proposed that the period to be extended to 3-5 years</p>	<p>It is noted that this is a limited time for the Authority to establish a sound corporate Governance period.</p>	<p>Not adopted.</p> <p>Two years is sufficient and it does not veer so much away from the proposed 3 years.</p>
48.	14 on eligible issuers	<p>What is the rationale for limiting eligibility to (1) SMEs (para. 14(1)) and (2) start-ups (para. 14(2))?</p> <p>Under the current language, mid-sized companies are only eligible when considered a start-up (i.e., less than two years old)? As a practical matter, this distinction may limit access to capital for growth stage companies.</p>		<p><i>ibid</i>, see response above.</p>
49.	Eligible issuers	<p>The application of the Regulations extends past MSMEs to include startup businesses, going further</p>		<p>Adopted.</p>

		to define who a startup business is. MSMEs must be incorporated in Kenya with no express provision for startups.		Definition for startups amended to include 'incorporation in Kenya.' See new definition
50.	Eligible issuers	Reduce the minimum operating years from two to one.		Not adopted. Two years is sufficient and it does not veer so much away from the proposed one year.
		Define the term 'good corporate governance.' We propose the following definition " <i>the Company has not been in regulatory headwinds in the past i.e. failure to pay taxes, file company returns etc.</i> "		Adopted. This will be disclosed in the offering document. The regulations have also introduced a third schedule on details of the disclosures.
51.	14(2) on startups	We recommend that the Authority define the term 'Startup.' The Act should promote Start-up and Fintech to provide the service, and eliminate fund of funds or asset managers.		Definition already provided. Not adopted. The regulations are meant to be more inclusive and their main objective is to focus on alternative financing. Accordingly, any Start-up, which fits within that definition and qualifies to raise funds through crowdfunding, will be permitted to raise funds.

52.	Regulation 14 on eligible issuers	<p>Expand provisions to include the following due diligence/disclosures after qualifying an entity to be listed on their platform:</p> <ul style="list-style-type: none"> i. Business model - How does the startup/enterprise make or intend to make money? How much can it make? ii. Impact- How big is their impact and how will they fulfill their mission? iii. Market- How large or disruptive can this business be? What advantages do they have over their competitors? iv. Technology- How is technology being used to solve the problem? Is it unique or difficult to replicate? v. Team -Founder experience, and beyond the founders, does the team have the right people in the appropriate roles—including experienced advisors? 		<p>Adopted. The regulations has introduced a third schedule on the required minimum disclosures to be contained in the offer document.</p>
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	<p>vi. Fact checking -Is the information presented in the company pitch true? Verify key facts, contracts, and investments.</p>		
	<p>vii. Terms -Is the valuation of the company reasonable and other terms appropriate given the startup's current stage and traction?</p>		
	<p>viii. Runway -Does the startup have enough runway to survive without funding? Are the funding goals reasonable for the startup's runway? If the company raising debt, will it be a convertible debt if they have poor cash flow in the early stage.</p>		
	<p>ix. Eligibility -Does the startup meet the legal criteria for a regulated crowdfunding offering? Platform provider should do a thorough financial and legal review, and run background checks on</p>		

53.	14 (2)	<p>founders and officers on the companies to be listed.</p> <p>The regulations are not clear whether non-Kenyan companies can be listed in an approved Crowdfunding platform.</p> <p>Does this refer only to Kenyan Startups?</p>	<p>The regulations should be made flexible to allow for international crowdfunding platforms with quality deal flows to apply to be approved by CMA to operate in Kenya so that investor in Kenya can invest in their platforms.</p> <p>Platforms like (Republic.co, Indiegogo, Seed invest) generally have higher volume of deal flow than in emerging markets.</p>	<p>Not adopted</p> <p>The policy intention is to support SMEs and startups in Kenya. International participants may only plug in as investors or platform operator if they meet the requirements for licensing as such.</p>
54.	15 Fundraising Limit	<p>The Institute is of the considered view that the annual cap for the respective categories will deter companies and projects looking to raise more than 100 million shillings.</p> <p>The crowdfunding should be made more attractive to the SMEs and other start-ups especially the domains of real estate that can raise more than 500 million shillings</p>	<p>Amend the respective categories to read as follows:</p> <ol style="list-style-type: none"> Kenya shillings five hundred million for medium enterprises; Kenya Shillings one hundred million for small enterprises; and Kenya Shillings fifty million for micro enterprises. <p>This would ensure that crowdfunding is more attractive to many more companies for enhanced access to capital.</p> <p>However, strict compliance with the necessary safeguards must be</p>	<p>Partially adopted.</p> <p>The clause has been amended to set new limits to make it more flexible for prospective issuers. Further, sub-reg. (2) can be invoked where an issuer seeks to raise more than the set limit.</p>

			guaranteed if this threshold is reviewed upwards	
55.	15 on fundraising limits	I think this is fairly balanced but I would propose the law specify that the CMA can make its no-objection letter conditional on specific changes by the operator.		Adopted. This is a good proposal. Subsection (3) inserted.
56.	16 Prohibited issuers	The list should include saccos, building societies and land buying societies	Saccos, building societies, land buying societies have been notorious in misappropriation of funds raised in acts that border crowdfunding activities. Saccos should engage in membership recruitment drives and invest as guided by the Act and not engaging in acts that border crowdfunding activities.	Not adopted. Other methods outside investment-based crowdfunding as defined in the regulations will not fall within the scope of the Act. Further, where a licensing regime of a financial institution (or any entity) is restrictive, such persons shall not qualify by operation of the law in which they were licensed. NB: The Sacco Societies Act already provides for this restriction under its section 31. Which provides 'a Sacco society shall engage only in

57.	16 (c) on prohibited issuers	We recommend to switch the provision here to ' <i>...Entities whose core business is to provide loans or invest in other entities.</i> '		such business as the Authority shall prescribe.'
58.	Regulation 16 on prohibited issuers	<p>What would amount to a poor governance record is not elaborated on.</p> <p>There is a need to expound on what is meant by a poor governance record to ensure that there is no arbitrary standard when it comes to compliance.</p>		<p>Not adopted.</p> <p>The regulations cannot set out definite criteria on what would amount to poor governance record. This will be determined at the point of licensing by interrogating the documents submitted to satisfy sound corporate governance requirements. However, best practice on matters corporate governance would apply.</p>
59.	17 Eligible investors	The crowdfunding regulations have established stringent rules on where one can collect money. Crowdfunding plans are mainly restricted to sophisticated investors or individual retail		<p>Adopted.</p> <p>Definition of sophisticated investor amended to expand its scope.</p>

		investors. Collection from individual investors is restricted to less than Kshs 100,000. The question is how to draw the line between the two. The criterion for identifying a sophisticated investor needs to be clear		
60.	17 (b) on limit on retail investors	Best practice dictates that crowdfunding platforms assess the sophistication of investors, paying attention to their knowledge and experience by considering factors such as, their previous investments, and whether they are a director of a company with a reasonable turnover.	Noting this and the presence of risk mitigation provisions under the proposed law, we recommend the review of the KSH. 100,000 limit for retail investors to a limit of 10% of their net investible portfolio upon assessment by the crowdfunding platform. This will encourage the acceptance of crowdfunding as an alternative form of investment while protecting the investors' interests.	Not adopted The percentage proposition cannot work for our market. As it is, most individuals find it difficult to define their actual net worth.
61.	Regulation 17 on eligible investors	This should also include (or be reworded to) Angel Investors, Venture Capital Fund (i.e. Sophisticated Investors), High Net worth Individual and Retail Investor who may at their volition receive investment advice on the investment. In my view, Retail investor capital requirement should be reworded to read:		<i>Ibid.</i> : see explanation above.

		<p>"Individual retail investors subject to investment limits prescribed by the Platform Operator up to a maximum of Kenya Shillings one hundred thousand or <u>ten percent of the retail investor net worth, whichever is a higher.</u>"</p>		
62.	18 on permitted investment instruments	<p>I note a route for approval of additional financing instruments. Somewhere down the line you may want to set out in guidance how you might consider this.</p>		This is noted and can be considered in future.
Crowdfunding transaction				
63.	19 on requirement for issuers	<p>Even though I agree with the intent, this is tricky because it means every investor needs to come through a platform. I think this should</p> <p>a) be limited to the specific funding round carried out using crowdfunding</p> <p>b) limited to the type of instrument offered via a platform (so eg. an issuer can take out a loan from a bank AND use a platform to raise equity in the same funding round).</p> <p>For b) it might make sense to make it possible for an issuer to use only one crowdfunding</p>		<p>Partially adopted.</p> <p>On a) the comments seems like a misinterpretation of the provisions.</p> <p>On b) the provision is open to allow both equity and debt based crowdfunding in the same financing round.</p> <p>Reg. 24(2) introduced to limit issuers to one platform for each issue to mitigate the risk involved in using multiple platforms for one funding round.</p>

		platform for each funding round, so e.g. they can borrow from a bank and raise equity on a platform but not raise equity and issue bonds on a platform.		
64.	19 on requirement for issuers	We recommend including an extra obligation for the issuer under this provision: <i>The issuer will qualify based on the validated investment criteria by the crowdfunding operator.</i>		Adopted. The regulations has introduced a third schedule on the minimum disclosures to be contained in the information memorandum.
65.	20 (b) requirements for investors	This is a difficult provision because its implication is that platforms will have to over-subscribe every one of their funding rounds. This is because if a firm needs say 10m shillings, then it needs 10m worth. But if it gets offers worth 10m and then 0.5m worth of investors withdraw after the bid is closed, it has no means of obtaining the remaining 0.5m. So the platform and the issuer will try to secure enough excess demand so that any investors who withdraw can be replaced. E.g. the issuer needs 10m but would purposefully aim for 11m to ensure they don't get into trouble. I don't think this is a healthy market		Adopted. Provision amended and merged with reg. 21 on crowdfunding transaction to remove ambiguity. See new reg. 21.

66.	20 (b) on Requirements for Investors - Cooling Off Period	<p>outcome. I think the way to address this is to either:</p> <p>a) say that the cooling off period ends 3-4 days before the bid is closed, the pitch is adjusted to reflect any newly-released securities, and investors who pledge in the final 3-4 days get no cooling off period, or</p> <p>b) allow investors to pre-pledge the top amount they can contribute (e.g. I'm buying up to 500 shillings' worth but could end up getting just 400), then introduce a 'clearing' period in which any investors have a second chance to pick up securities released by their peers, up to their maximum pledge.</p>		
		We recommend changing the cooling-off period start date from the date of close of the offer to the date of investment subscription.		<i>Ibid.</i> see note above.

		In addition, Para. 22(4) appears to be redundant, effectively repeating the mandatory cooling-off period in Para. 20(b).		
67.	20 (b) on requirement for investors	Cooling period to be specific. Investors shall have a cooling off period of one month from the date of close of the within which they may withdraw their investment.		Not adopted. The proposed period is too long in the light of what that contractual right is meant to achieve.
68.	Regulation 20 (b) on requirements for investors	This clause gives investors 48 hours to withdraw to consider to withdraw their offer which is a short time. The clause may be reworded to read: "Investors may withdraw their subscription to an offer in a platform at any time PROVIDED it shall be before 48 hours to the end or close of the offer." The Issuer can also be given the discretion or option to decline a subscription from a hostile investor. The Issuer may also at their discretion refund an investor after the close of the offer by		Partially adopted. This was considered and it was agreed that the discretion can be disadvantageous to the issuers if investors are allowed to withdraw very close to the end of the offer. However the previous reg. 19 (2) was amended to ensure that investors are given sufficient time before the offer opens to undertake due diligence of the offer. See new reg. 19 and 21

69.	Regulation 20 on requirement for investors as read with regulation 22 (3) on making funds available	<p>considering the investors request, however it is not mandatory for the refund to happen after the close.</p> <p>The release of funds to the issuer within twenty-four (24) hours contradicts the cooling off period.</p> <p>We recommend that the release of funds to the issuer be made after forty-eight (48) hours following the close of the offer, but within twenty-four (24) hours after the close of the forty-eight-hour cooling-off period.</p>		<p>Adopted.</p> <p>Provision amended and merged with reg. 21 on crowdfunding transaction to make it clearer.</p> <p>See new reg. 21.</p>
70.	21 The offering document	<p>Additional information that should be obtained include the nature and sector of investment</p>		<p>Adopted.</p> <p>Included under the licensing requirement new reg. 7(m) on submission of a standard offer document.</p> <p>Also included under the third schedule on disclosure requirements.</p>
71.	21(1)(d) on the offering document	<p>This is a challenging piece of language because 'misrepresentation' means slightly different things for backward- and forward-looking statements. For forward-looking statements (being ignorant of</p>		<p>Adopted.</p> <p>Provision amended. See new section 19(4).</p> <p>Also, robust disclosures to be contained under the offering document are listed in the third schedule, which includes</p>

		<p>Kenyan law), I would imagine that statements which later turn out to be false may not be misrepresentations if they were made on a reasonable basis and reflected the genuine belief of the issuers, and these two points can be very hard to establish ex-post. I think there will be a need for some guidance on this, possibly with the CMA reviewing the legal precedent on misrepresentation re forward-looking statements.</p> <p>It is also challenging because it should be clearer who is liable for misrepresentations. As the law is written, it seems that the platform operator, not the issuer, is liable. This may be a big disincentive for platform operators – if they are lied to and they miss it, the issuer gets away with it but they are liable.</p>		<p>warning to investors and their rights.</p>
72.	21 (1) (e) on offering document.	<p>We propose deletion of the requirement of 'Two years audited financial statements.'</p>	<p>We believe the target issuer market for this regulation are entities who will not have the corporate structure to own an audited financial statement, we recommend that this condition be</p>	<p>Adopted. Reg. 19 amended to make it more clear.</p>

	Regulation 21 (e) on the offering documents	Two years audited financial statements	<p>Inclusion of a provision for a maximum fundraise level for an ANGEL/SEED ROUND investment for Start-ups just starting out without requiring submission of audited accounts to the Crowdfunding Platform Operator. This can be: A start up can fundraise from a platform up to a maximum of Ksh 5 million or Ksh 10 million without audited accounts, above this amount, they will need to have audited accounts.</p> <p>ANGEL/SEED ROUND investment are an important way for investor to get a significant stake in potentially high growth start up at an early stage of the company. Requiring audited accounts for startups at early stage for them to qualify for listing in a crowdfunding platform will be counterintuitive.</p> <p>instead of requiring audited accounts for startups that are less</p>	<p>limited to statutory documents, e.g. Business permits and KRA pin</p> <p>Making audited accounts mandatory locks out Start-up that a seeking Angels and Seed Round Investments. These can be Companies that a less than two years in existence add have not audited their accounts but have some revenue traction.</p> <p>There are also startups that seek to fundraise with just a proof of market concept or to use fund to develop the minimum viable product (prototype), these startups are often aged one year or less.</p>	<p>Adopted.</p> <p>Provision deleted.</p> <p>Relevant financial disclosures shall be as contained in the third schedule.</p>
					Adopted.

		<p>than two years old, consider including a provision that any company listing in platform without audited accounts must disclose as part of their narration/presentation in the platform/website; their minimum viable product traction (Pitch), any runway (cash in the bank till their next fundraise) or recurring revenue metrics as this is a measure of longevity and future existence of the company and going concern. (The Platform Operator should be required, through due diligence of the Start Up, to present these figures/items if audited accounts are not available.)</p>		<p>The comment has been adopted and proposal included in the schedule on disclosure requirements for issuers. See third schedule.</p>
73.	21 (3)	<p>I think this is mostly correct, I would simply check that this does not prevent a) issuers from showing their forward plans / projections to e.g. a bank just because they've published them on a crowdfunding platform b) investors discussing the issuers' business plans on e.g. an online forum.</p>		<p>Partially adopted. The provision has been amended to remove ambiguity. The offering document should only be available on the platform. See new reg. 19(3).</p>

74.	21 on offering document	The requirement for issuers to provide two years of audited financial statements (para. 21(1)(e)) would appear not to apply to eligible start-ups (para.14(2)) less than two years old.		Adopted. Provision deleted. Relevant financial disclosures shall be as contained in the third schedule.
75.	21 on disclosure requirements	<p>The offering disclosure should include information about investment-specific risks and highlight the key rights and obligations of the investor.</p> <p>In addition, we recommend requiring delivery of the disclosure document to the investor (rather than making the disclosure available upon request as currently stated in para. 21(2)).</p> <p>Further, we recommend requiring the investor to confirm receipt of the document. It is then fine to make the document available elsewhere if it is in addition to its availability on the platform.</p>		Adopted. This has been included under the third schedule on disclosures. Reg. 19 also been amended to provide more clarity. See new reg. 19-21.
76.	Regulation 22 Crowdfunding transactions	It provides that the crowd funding platform operator is obliged to refund the monies to the investors within 48 hours in the		Adopted. Regulations amended to include clause 8, which provides for sanctions.

		event the issuer does not meet the prescribed minimum threshold for the targeted amount. The regulations need to provide recourse for the investor in the event the operator does not refund the monies to the investor within the stipulated time.		<i>'... a platform operator who does not comply with the timelines provided in sub-regulations 5 will be liable to the penalties specified under section 25A of the Act.'</i> See new reg. 21(8).
77.	22 (1) on the crowdfunding transaction.	A crowdfunding offering shall not remain open for more than sixty days. We proposed giving a longer period between Ninety or One Hundred and Twenty days.	The time set here is rather short and some issuers may not be able to have secured enough investment.	Adopted. Regulation 21(1) amended to provide that the issuer shall determine and disclose in the offering memorandum the period in which the offer shall remain open. See new reg. 21(1).
78.	Crowdfunding transaction Regulation 22 (3) on the Crowdfunding Operator availing the funds within 24 hours after the close of the offer.	At what point is the transaction deemed successful? Is it after the required conditions are met or after meeting of the conditions coupled with the 48 hours cooling down period with respect to the last investor having lapsed? If it is considered successful on the meeting of the required	Consider making it clear that the transaction would only be closed and considered successful on the fulfillment of any set out requirements together with the lapse of the 48-hours cool down period from the investors who have taken up the offer.	Adopted. Provision amended to provide more clarity. See new reg. 21(4)
				<i>ibid.</i> see note above.

		<p>conditions, what happens once the conditions are met but the investor who are still within their contractual withdrawal period determine that they still wish to withdraw?</p> <p>Would the transaction still proceed if material changes are made?</p>		<p>Comment adopted New clause inserted to provide guidance on material changes</p>
79.	22(2) on the crowdfunding transaction	I think the law needs to state clearly whether the limits relate to repeat bids on the same platform or across platforms (hopefully it is the latter).		<p>Adopted. The regulations now includes a new sub section restricting offerings to one platform at a time</p>
80.	22 (4) on contractual right to withdraw.	We propose to remove this clause completely or where it is retained, we propose to have the terms being that the Investor can only withdraw their funds if they have not closed on the offer.	<p>Our reasoning is based on the effect of the Cooling off period, We believe it offers an asymmetric advantage to the investor to demand funds after granting consent for the funds to be used by signing the crowdfunding offer. Additionally, it opens the platform to liquidity risk, as the platform will need to have stand by liquidity for incidences requiring a cooling off period</p>	<p>Partially adopted. Regulation amended to remove ambiguity. See new reg. 21(5)</p>

81.	20(b) and 22(4)	<p>Might there be a conflict between this regulation and 20(b) and 22(4)?</p> <p><i>The 24-hour period may fall within the 48 hours cooling down period granted to investors (within which period they are allowed to withdraw an offer.</i></p>	<p>Adopted. See note above.</p>
82.	Regulation 23 Use of funds	<p>It envisages that the funds collected should be used for the stated purpose. The regulation is silent on the repercussions on both the issuer and the operator in the event the funds collected in the platform are not used for the stated purpose leading to loss of the investors' money. Do failure to use funds collected in the platform amounts to professional negligence on the part of the operator or the issuer. And if so, does the operator or the issuer compensate the investors for the loss suffered?</p>	<p>Adopted. The regulations now expressly criminalizes use of funds for any purposes to mitigate against such risk,</p>
83.	23 on Use of Funds	<p>What happens if the funds are not used for the stated purpose? As currently drafted, the provision is very vague, although it concerns one of the key risks involved. At</p>	<p>Adopted. See note above</p>

84.	Regulation 23 on use of funds	<p>minimum, the platform should ensure that the investors receive the instrument issued by the issuer and promoted by the platform.</p> <p>Consider using a Trustee, Trust Agent for this oversight role since the Platform Operator may be conflicted in performing this role and challenges of reporting to investors.</p>		<p>Adopted.</p> <p>The new reg. 26 on duties, which, expressly provides for custodial arrangements. The platform operator will be required to facilitate custodial arrangements with licensed institutions.</p>
85.	24(2)(d) on warning statement	<p>Seems a little problematic because if the lawmaker believes and states that it is not appropriate for sales of crowd-funded securities to be non-advised, then a) why allow non-advised sales at all? b) non-advised consumers can be shown to be negligent in not obtaining advice, which might limit their options for obtaining compensation later on if something goes wrong. I would remove 'and seek independent financial advice', and add a point 24(2)e that says 'Some investors may additionally wish to obtain</p>		<p>Adopted.</p> <p>Provision amended to remove the ambiguity.</p>

		financial advice before committing'		
86.	24 – 27 on Disclosure Requirements	We recommend consolidating these requirements into a single section or paragraph.		Adopted. Provisions rearranged to bring flow.
87.	25 Risk Acknowledgement Form	The Regulation excludes the investors from claiming from the Investor Compensation Fund on the basis that they are forewarned about the investment risks. This is notwithstanding the fact that they also contribute to the Compensation Fund. This appears to be unfair treatment of investors since all other entities under the ambit of the regulator are entitled to claim from the Investor Compensation Fund in case of pecuniary financial loss arising from the failure of a licensed broker or dealer to meet their contractual obligations	Amend by deleting clause Regulation (g) as follows; that they will not be entitled to claim from the Investor Compensation Fund. There is need to protect the investors from financial losses arising from non-compliance with the existing contractual obligations	Not adopted. Investors are not entitled for compensation under ICF because they do not contribute to the fund (see section 18 of the Act)
88.	25 (e) on risk acknowledgment form	should just say 'less disclosures, not 'no or less disclosures'. A state of no disclosure post-transaction is not something the law should encourage, and it will likely weaken firms' liability if this language is affirmed by consumers.		Adopted. Regulation amended to give more clarity

89.	25 on risk acknowledgment form	<p>Essentially, this would have the effect of the investor surrendering their ability to access the investor Compensation Fund run by the CMA.</p> <p>Further clarity is needed on this provision as consumer protection concerns could potentially arise as typically this fund is used to cover losses that arise because of investing on a closed investment bank or broker.</p>		<p>Not adopted.</p> <p>The ICF will not be applicable in this context. The European Union (EU) has adopted a similar approach on risk warnings and acceptance.</p>
90.	25 on Risk disclosure	<p>The proposed regulations require crowdfunding platforms to display a warning statement outlining the risks associated with investing through the platform and the ventures listed due to their novel and rapid nature.</p> <p>The draft regulations also require each investor to affirm a risk acknowledgement form prior to investment.</p> <p>The European Union (EU) has adopted a similar approach. The REGULATION (EU) 2020/1503 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL requires</p>	<p>The Lawyers Hub acknowledges the differences in investor culture in the jurisdictions mentioned above, and most importantly, the need to create legislation that caters to all classes of investors; whether sophisticated or retail. To this end, we recommend that;</p> <p>The Authority revise the provisions of Regulation 24 to require crowdfunding platforms to outline risks in simple and straightforward language that is understandable by both sophisticated and retail investors to ensure that they are adequately</p>	<p>Adopted.</p> <p>Clause (2) and (3) inserted under risk acknowledgment form.</p>

		platforms to issue risk warnings to non-sophisticated investors followed by express acknowledgement by investors in this category. The Regulations also provide for an optional reflection period allowing non-sophisticated investors to consider the risks before proceeding with the transaction.	informed, reducing risk associated with investment via such platforms.	
Duties of a crowdfunding platform operator				
91.	26 General Obligations	Include license details as granted by the Authority		Not adopted. Members of the public can confirm authenticity of the license by checking on the Authority's website, which provides a list of all licensees.
92.	26 on general obligations	Seems to confuse platform-wide disclosures (e.g. how we select issuers) with investment-specific disclosures. Ideally it should be clear which is which. Moreover, I think there is an opportunity here to require disclosure of the track record of the platform's investments. As a minimum this could cover how many businesses are still in operation and how many (if any) have issued publicly		Adopted. Duties separated to bring more clarity. See new reg: 21 and 26.

		<p>listed shares. E.g. 100 investments were concluded in 2021 and 50 in 2022. Of these 70 are still in business from the 2021 cohort, and 47 are still in business from the 2022 cohort. 1 from the 2021 cohort and 0 from the 2022 cohort have gone public.</p>		
93.	Regulation 27 on obligation on risk disclosures	<p>Might there be a duplication between this and regulation 24(2) on details to be contained in the warning statement.</p>	Deletion of regulation 27.	<p>Adopted. Provisions rearranged to bring flow.</p>
94.	28 Due diligence	<p>On the issue of due diligence another sub section should be introduced requiring the crowdfunding operator to ensure that the prospective issuers do not have past criminal records or have previously infringed on any national/international laws</p>	<p>To obtain sufficient information about the prospective issuers and protect the investor's interests</p>	<p>Not adopted. It is the operator's obligation to ensure that the issuer's key personnel are fit and proper. The rules have a provision on criteria for onboarding users. Regulation on due diligence also provides for fit and proper assessment.</p>
95.	28 Due diligence	<p>The due diligence to perform by the crowdfunding platform operator should be systematic aimed at ensuring the information provided is accurate and in line with relevant laws. The Consumer</p>		<p>Adopted. Please see 19 (4) which includes liability for misleading information under the information memorandum.</p>

		protection Act No 46 of 2012 for instance provides for protection against false or misleading representations		
96.	28 (2)(b) on due diligence	<p>Article 28(b) has the same problem as above. 'Accuracy' of a forward-looking statement can't be defined correctly. For both of these, consider the tests applicable in e.g. Canada:²</p> <p>A public document or oral statement containing forward-looking information [can be said to not contain misrepresentations] if:</p> <ol style="list-style-type: none"> 1. the document or statement contains: <ol style="list-style-type: none"> a) reasonable cautionary language identifying the forward-looking information and material risk factors that could cause the projection, forecast or conclusion of the forward-looking statement to differ materially; and 		<p>Adopted. Provision amended to bring in the aspect of 'reasonable test.'</p>

² <https://www.lexology.com/library/detail.aspx?g=bec96a50-ba6d-4cc9-994d-8b32e8f01d5f>

97.	29 Other obligations	<p>b) a statement of the material factors or assumptions that were applied in making the forward-looking statement;</p> <p>I. the risk factors and assumptions appear proximate to the forward-looking information; and</p> <p>II. there was a reasonable basis for drawing the conclusion or making the forecast or projection.</p>	<p>Introduce another sub section which obligates the Crowd funding operator to notify the Authority on any material changes that occur during operations which would affect their authorization and Licensing</p>	<p>For supervision purposes</p>	
98.	29 on other obligations	<p>in my opinion should expand.</p>	<p>So that platform operators do not simply make a record of users but also a record of all directors and all senior management team members of all companies that have issued securities on their platform.</p>	<p>Adopted. Good proposal. A new clause included. This will ensure that the Authority is informed on any material change at any time.</p>	
99.	30	<p>The Regulation has not explicitly and exhaustively highlighted the specific duties performed by the</p>	<p>Amend by including the following duties to be performed by the</p>	<p>Adopted New regulation on duties of the custodian introduced.</p>	

<p>Crowdfunding Platform Operator Crowdfunding Platform Operator Custodian</p>	<p>Crowdfunding Platform Operator custodian. The specific roles of the Crowdfunding Platform Operator custodian should be clear to provide clarity</p>	<p>Crowdfunding Platform Operator custodian; a. Opening an account in the name of each client for the exclusive benefit of such investment portfolio. b. Keeping in safe custody title documents, securities and cash amounts of the investment portfolio c. Transferring, exchanging or delivering securities held by the custodian upon receipt of proper instructions from the investment adviser or fund manager. d. Exercising subscription, purchase or other similar rights in accordance with the instructions received from the investment adviser or fund manager.</p> <p>Providing details of any corporate announcement affecting the securities including annual accounts, notices of meeting, proxies and other stockholder communications This will provide clarity and there will be avoidance of doubt.</p>	<p>Specific duty shall be as specified by both the Authority and Platform operator in light of the crowdfunding activities.</p>
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100.	31 on data protection and privacy	We recommend an introduction of a clause requiring crowdfunding platform operators to provide for detailed information on the data privacy rights of users and a description of the technical and organizational security measure taken to ensure integrity and confidentiality of the data.	This disclosure strengthens the consumer protection framework in line with the duty to notify as per the provisions on section 29 of the Data Protection Act aimed at promoting transparency between data controllers and data subjects.	Adopted Provision amended to include compliance with the Data Protection Act. See reg. 33.
101.	32 on continuous reporting	Suggested introduction: <i>Benefit to investors</i> 1. <i>The Authority shall have the duty to conduct regular reporting on the status of benefits to investors.</i> 2. <i>The reports by the Authority shall contain</i> <i>(i) The name of the investor</i> <i>(ii) The investor's portfolio including all ventures in which the investor has a stake</i> <i>(iii) The terms of the benefits accruing to the investor</i> <i>(iv) The status of the benefits and compliance status of the terms in (iii)</i> <i>(v) Any other item that the Authority shall consider fit in the exercise of its mandate under Cap 485A</i>		Partially adopted. These have mostly been included under the general obligations. See reg. 26.

		<p>3. The reports shall be conducted annually on the anniversary of the investor's subscription.</p> <p>4. A copy of the report shall be kept by the Authority and a copy sent to the office of the Auditor General within a month of conclusion of the generation of the status report.</p>		
102.	32 Continuous reporting	The Authority should consider providing a prescribed form to facilitate standardized reporting.	This will aid in systematic compilation of data/information and monitoring the industry trends and developments	Not adopted. The authority expects that the operator at an administrative level will develop this.
General provisions				
103.	33 – 35	no comments		
Schedules				
104.	1 st schedule on Applicant's Business	We propose an additional information needed for the applicant's business as below: "Describe validated risk capacity of the business over the last 24 months and board-approved risk appetite statement"		The risk management framework submitted should be sufficient within the context of the requirements under the regulations.
105.	1 st schedule	OWNERSHIP STRUCTURE, DIRECTORS AND OTHER KEY PERSONNEL Item Number 16: Profile of the Persons listed in Note 12		Typo corrected. Cross-referenced note should be note 12.

		Kindly clarify on this requirement		
106.	1 st schedule on question 22	Typo. The cross-referenced no. should be 21.		Typo corrected.
107.	2 nd schedule on fees.	We ask that Pezesha Africa be offered exemption for year one since we have the Letter of No Objection following successful exit from the sandbox program to validate the crowdfunding concept application in the Kenyan Market		Pezesha will be required to make an official request to the Authority.
108.	Fees	High cost of regulatory compliance: Such a high cost of compliance and entry into market could have the effect of deterring potential investors without high capital backing from investing in crowdfunding platforms, with the regulatory fees becoming an added burden on investments of this type that are known to require constant capital injection.	Noting the need for capacity of crowdfunding operators, we propose lowering of the regulatory fees to Ksh. 50,000 for at least the first year of entry into market by investors' crowdfunding platform.	The annual regulatory fee reduced to Ksh. 100,000
109.	Licensing fees	Application fees – 10,000 Licensing and annual regulatory fees – 200,000	Compared to Nigeria, we commend the Authority's efforts towards creating an enabling environment for these platforms by reducing the cost of compliance.	Positive feedback. The fees further reduced to Ksh. 100,000
	Proposed extra provisions			

110.	Extra Provision	There should be a provision for the establishment of a public and up-to-date register for all crowdfunding service providers who are authorized to operate in Kenya	To ensure transparency for investors	Not adopted. There is no need to include this in the regulation. The list of licensees will be available on the Authority's website.
111.	Extra Provision	There should be a specific provision that stipulates how to Manage Conflict of interest in that a Crowdfunding Service Operator should not be allowed to participate in the crowdfunding offers. Neither should their shareholders, managers and employees participate unless they fully disclose on the platform that they accept such persons as investors and that they are subjected to the same conditions as the other investors	For transparency and accountability purposes	Adopted. Rules amended to include a clause on providing disclosures and management of conflict of interest. See provision on rules
Additional comments/queries				
112.	General Comment	Timeliness of the regulation	It appreciates the alternative source of funding for start-ups and small and medium sized business and appreciates the development of financial technologies.	Positive feedback. This supports the case for regulating crowdfunding.
113.	General areas of Concern in the Regulation.	It will be prudent for the Authority to ensure the investors intending to invest in the	Critical for investor protection in the capital markets.	Pre-ante investor protection has been achieved through the rigorous licensing process.

114.	General comment	On investor protection, the regulation is not very clear whether the recourses in the capital markets act similarly applies to them mutatis mutandis.	investment-based crowd funding are adequately protected.	<p>Post licensing, investor are protected through mandatory disclosures in the following ways:</p> <ul style="list-style-type: none"> • Regulation on offer document detailing key parameters of the crowdfunding transactions. • Regulation on issuance of a warning statement. • Regulation on risk acknowledgment statement. • Regulation on duty of the platform operator to disclose material relevant information. • Regulation on continuous reporting. • Third schedule on required minimum disclosures.
				<p>Yes, the recourse will apply mutatis mutandis. Regulation 34 creates an offence for any contravention of the provisions thereunder. However, such persons when</p>

				proven guilty shall be liable to the general penalties spelled out under section 34A of the Act.
115.	Additional Comments	There is need for the draft regulations to make advertisers accountable, and in these adverts, they should put caveats on the riskiness of the invested money should be clearly seen or heard.	Most media houses will only advertise to pay bills without considering whether the fund raisers are legit or not.	The responsibility of the integrity of publication has been placed on the operator who is our licensee and the issuer as required under the previous regulation 19 (now reg. 20).
116.	Additional Comments	There is need to institute online fraud detection and measures. The Authority needs to set up a fraud reporting hotline and a whistle blower platform where citizens can report incidences of fraud, which the Authority can go ahead to investigate. The criminal cases against culprits or those who violate the regulations should be fast tracked, if it is money lost, and those who lost their money need to recover it soonest. Culprits and violators of these rules and regulations should		The Authority has a whistleblower mechanism on its website. Further Whistleblower regulations have also been developed to facilitate such reporting.

		be banned from participating in capital markets in future.		
117.	General	Further, we note that the regulations do not limit the participation of domestic firms in the operation of these platforms.		Positive feedback.
118.	General	To make fundraise in crowdfunding platforms successful there should be a minimum and maximum subscription level set during issue. The regulations should include this provision so that a company that is looking to raise a minimum of Ksh 10 Million and Maximum of Ksh 20 million will have the subscription unsuccessful if the minimum target is not achieved.	The current draft regulations do not provide for this, which may leave companies that require more capital raise less by just targeting a fixed amount.	Partially adopted. The issuer will set the minimum target amount based on what they intend to achieve through crowdfunding. See the disclosures under the third schedule.
119.		The regulations should give crowdfunding platform operator the right/discretion to discontinue or pause an offer on their platform upon the happening of certain qualifying event: e.g. if the majority shareholder of the issuing entity dies, if an event like covid-19 happens during the offer period, litigation of Issuer, force majeure events etc.	This is for purpose of protecting the investors funds until the entity returns to normalcy and remain a going concern.	This will fall under material changes, which has been addressed by a new inclusion. See new reg. 26(f).

120.	Additional comment Expanded scope of payment methods to be regulated	<p>With the increased popularity of cryptocurrency in recent times, especially in web-based platforms and fintech companies, which crowdfunding platforms generally fall under, the scope of the regulations should be expanded to govern novel payment methods such as cryptocurrencies.</p> <p>The expected increased uptake and reach of unregulated cryptocurrency, as a payment method, especially in web-based platforms could potentially open up these platforms to abuse as avenues for illicit financial activity in Kenya.</p> <p>In the regulations, no specific reference has been made to currency of payment, although where figures have been mentioned, the currency has been in Kenya shillings.</p>		<p>Not adopted. For now cryptocurrency is not recognized as a current by the Central Bank. This may however be considered in future once there is an agreed policy decision.</p>
121.	Additional comment. Introduction of tax incentives	<p>Crowdfunding as an approach for gaining capital through company's shares to different investors demands the need for tax. Its essence of widening</p>		<p>Not adopted, but noted for consideration. The regulation cannot include tax issues. However, this is positive feedback which the</p>

		<p>investment opportunities for small businesses and companies triggers the need for research and development on tax input. Analysts have suggested the need for tax incentives as most crowdfunding investors face high-income risks because the borrowers might be small businesses or firms that are encountering losses.</p> <p>Further, we would suggest that a duty ought to be imposed on the Authority to ensure regular reporting on the status of these incentives as well as a duty on the investors to ensure regular reporting and compliance with the incentive terms. This is in a bid to curb abuse of tax incentives as well as limiting illicit financial flows, which may be routed through crowdfunding tools.</p>		<p>Authority can progress through other avenues</p>
122.	General questions	<p>What would happen to an organization doing crowd funding activities, presumably they are free to be active, until the proposed regulations come into force</p>		<p>Adopted. Transitional clause included to guide approved institutions operating as crowdfunding platform operators within the context of the regulations.</p>

			See new reg. 38.
	Would it make sense for an organization doing crowd funding to apply to be part of the Sandbox mechanism and are there any costs incurred in reference to that application?		Currently, one can apply to the sandbox to test their crowdfunding product but once the regulation come into effect, applicants shall be required as provided for in the Regulations and testing will only be applicable where there is an innovation aspect outside the scope of the regulations. The application fee for the admission into the sandbox is Ksh.10, 000.
123.	When do you expect the regulations to come into force?		The regulations are expected to be submitted to the NT for facilitation of publication by December 2021.
124.	What is the discussion-feedback mechanism with the marketplace? There are a number of points on the draft which merit a rethink for instance the idea of a start up having to have existed for two years before it could be considered for crowdfunding		The Authority anticipates to have an online validation webinar to allow participants give additional comments if any during the discussion. Concerns/suggestions can also be shared via email.

	<p>If the paid-up capital requirement is Ksh. 10M could the paid-up capital of an institution already registered with CMA be applied to cover the amount?</p>	<p>Yes, it can. This said, the provision has been amended to only require for liquid capital requirement.</p>
125.	<p>Additional Comment</p> <p>The regulations need to be specific on how to curb for the loss of investor funds, for instance through online investment frauds, illegally pooled funds etc. thus the role of Communication Authority of Kenya and other agencies in ensuring cyber/online protection for the participants could be addressed and the role of insurance services to provide some element of deposit insurance.</p>	<p>Not adopted. Crowdfunding is an investment risk. Investors are however protected through the robust disclosure requirements under the regulations and duties of the operator.</p>
126.	<p>Additional Comment</p> <p>Consider introducing measurements that would establish the social and economic impacts of the investments made through the crowdfunding platforms. This entails ensuring the information provided to CMA is sufficient to do so</p>	<p>This will be included in the Regulatory Impact Assessment to be availed to the public.</p>
127.	<p>Additional Comment</p> <p>Crowdfunding platforms, during provision of their services have to deal with high compliance and operational costs. It is proposed</p>	<p>Adopted. Fees revised downwards to Ksh. 100,000 to facilitate ease of doing business.</p>

		that the annual fee of Kshs 200,000 should be revised downwards to Kshs 100,000 and especially to the locals noting that a key advantage of crowdfunding is its cost efficiency.		
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