

Insights and Commentary from Dentons

The combination of Dentons and Adepetun Caxton-Martins Agbor & Segun offers our clients access to 12000+ lawyers in 203 locations and 80 countries around the world.

This document was authored by representatives of Adepetun Caxton-Martins Agbor & Segun prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

NEWSLETTER 22 APRIL, 2020

**RUNNING A CROWDFUNDING PORTAL/PLATFORM: KEY COMPLIANCE
OBLIGATIONS**



In our post of 15 April 2020¹, we commenced our series on crowdfunding business in Nigeria and specifically considered businesses that would be eligible to raise capital through crowdfunding - based on the proposed rules and regulations guiding crowdfunding activities in Nigeria (the “**Proposed Regulations**”) that were recently released by the Securities and Exchange Commission of Nigeria (“**SEC**”). While the Proposed Regulations are yet to become effective, we continue our crowdfunding series in this post by considering the compliance obligations that would apply to a company operating, providing or maintaining a crowdfunding portal/platform in Nigeria (“**Crowdfunding Portal**”) under the Proposed Regulations.

By the Proposed Regulations, an entity will be considered to be operating, providing or maintaining a Crowdfunding Portal in Nigeria if:

- a. the platform is operated, provided or maintained in Nigeria;
- b. the platform is located outside Nigeria but actively targets Nigerian investors;
or
- c. the component parts of the platform when taken together, are physically located in Nigeria even if any of its component parts, in isolation, is located outside Nigeria.

¹ <http://res.cloudinary.com/dq1zd0mue/image/upload/v1586983942/acas-law/obkaxh8t2f3ndnmufhrb.pdf>.

Disclosure Obligations – The Proposed Regulations seek to protect investors on crowdfunding portals regarding their investments and one of the ways to achieve this, is to ensure that the investors are provided with access to relevant information that would guide their investment decisions. In this regard, the Proposed Regulations mandate every Crowdfunding Portal to disclose and display prominently on its platform, any relevant information relating to the platform and its use. Such information includes those relating to issuers hosted on the platform, information on how the platform facilitates the investor’s investment and a general risk warning statement on participating in funding through the platform. Regarding the risk warning statement, the Crowdfunding Portal must ensure that every investor affirms to a risk acknowledgement form as prescribed under the Proposed Regulations.

Due Diligence – Given the risk involved in online investments and the fact that retail investors would most likely not conduct any due diligence on the issuer and/or its proposed project, the Proposed Regulations require a Crowdfunding Portal to conduct due diligence on prospective issuers intending to use its platform. The scope of the due diligence includes:

- (a) background checks on the issuer to ensure fitness and appropriateness of the issuer’s board of directors, officers and controlling shareholder(s);
- (b) verification of the business proposition of the issuer; and
- (c) compliance with all relevant KYC, and AML/CFT² regulations as stipulated by SEC.

In addition, a Crowdfunding Portal is required to be knowledgeable about the general structure, features and risks of securities and investment instruments presented on its platform; verify the financial conditions of issuers; take measures to reduce the risk of fraud and review information presented by issuers in order to ascertain that the information covers the general features and structure of the investment, the issuer-specific risks, the parties involved, any inherent conflicts of interest and the intended use of the funds.

The due diligence obligations placed on Crowdfunding Portals will ensure that crowdfunding offerings hosted on their platforms are used for suitable projects/businesses, lead to successful crowdfunding offerings and ultimately improve investor confidence.

Monitoring and Reporting – Since a Crowdfunding Portal acts as a ‘middleman’ for an issuer and an investor, it is required to monitor the activities of these market participants. A Crowdfunding Portal must ensure that the fundraising limits (imposed on the issuer) and the investment limits (imposed on the investors) are not breached. It must also ascertain the classification of prospective investors into relevant investor

² Anti-money Laundering/Combating the Financing of Terrorism.

categories. In addition to monitoring issuers and investors, a Crowdfunding Portal is also required to report prescribed information to the SEC monthly, quarterly or yearly, as the case may be.

Data Protection and Privacy – The issuance of the Nigeria Data Protection Regulation, 2019 by the National Information Technology Development Agency on 25 January 2019 (“NDPR”) ushered in a new regime for the management of data of natural persons in Nigeria. Pursuant to the NDPR, all public and private organisations in Nigeria that control the data of natural persons are required to adhere strictly to the requirements under the NDPR regarding the protection of data and privacy of persons. Such organisations are also required to hire a Data Protection Officer to ensure compliance with the NDPR. In addition to the obligations under the NDPR, the Proposed Regulations also prescribe certain data protection and privacy requirements that Crowdfunding Portals must comply with in their operations. They are required to, among others:

- a. establish appropriate safeguards to ensure the integrity of received and published information;
- b. ensure security and confidentiality of information collected from investors;
- c. maintain reliable and secure operating systems;
- d. identify the sources of operational risks and adopt adequate procedures and controls to avoid operational disruptions; and
- e. be adequately insured against portal failure or closure.

Trust Account – The Proposed Regulations also require every Crowdfunding Portal to appoint a custodian, who shall establish and maintain a separate trust account for each funding round on its platform with a financial institution registered by the SEC as a custodian.

Cautionary Publications – Crowdfunding Portals are mandated to prominently display warning statements to all visitors to the site on the home page of the portal, every investor on the subscription landing page for each issuer and on all application forms for investing through the portal.

Policies and Procedures – Crowdfunding Portals are also required to implement written policies and procedures relating to their operations that are reasonably designed to achieve compliance with the provisions of the Investments and Securities Act, 2007 and the rules and regulations made pursuant to it. We expect Crowdfunding Portals to maintain the following policies: business continuity plan, risk management framework, data protection policy, policy on anti-bribery and corruption, whistle-blowing policy and AML/CFT policy.

Records Keeping – The Proposed Regulations also impose record keeping obligations on Crowdfunding Portals. Records of issuers and investors are some of the type of information that are required to be kept by a Crowdfunding Portal. Other records include: records of communications and persons using communication channels on the platform, records of all written agreements (or copies thereof) entered into by such Crowdfunding Portal relating to its business, and records of all daily, monthly and quarterly summaries of transactions effected through the Crowdfunding Portal. These records are subject at any time to reasonable periodic, special, or other examination by the representatives of the SEC, as the SEC may deem necessary or appropriate in the public interest or for the protection of investors.

Ownership – As a way of ensuring transparency and protecting the integrity of the activities of a Crowdfunding Portal, the Proposed Regulations restrict cross ownership of interests. Accordingly, entities registered to facilitate transactions through a Crowdfunding Portal are prohibited from allowing an issuer to have access to the portal, if the portal or any of its officers, directors, significant shareholders or associated persons beneficially own or control more than 5% of the securities of that issuer.

Conclusion

As the world continues to hope that the COVID-19 pandemic will subside soon and that the global economy will start to pick up again, one of the ways businesses can stay ahead of the curve and prepare in anticipation of the resumption of full business operations, is to get familiar with proposed changes to their regulatory environment. Although the Proposed Regulations are not yet effective, they provide a clear indication of what operators of Crowdfunding Portals are to expect.

Qualifications

The contents herein are meant for the general information of our clients and friends and do not amount to legal advice. Adepetun Caxton-Martins Agbor & Segun accepts no responsibility for any loss or damage that may arise from reliance on information contained in this publication. All enquiries may be made to Chinedu Kema ckema@acas-law.com or Adeleke Alao aalao@acas-law.com

Adepetun Caxton-Martins Agbor & Segun by telephone (+234 1 462 2094), fax (+234 01 461 3140)

