



## Research Article

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# The Regulation of Equity Crowdfunding in United Kingdom and Malaysia: A Comparative Study

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## Abstract

*Equity Crowdfunding is a novel method for small and medium enterprises to raise fund from the public through an Internet platform operated by a third-party intermediary or platform operator. As an advanced equity Crowdfunding market in the world, United Kingdom regulation on equity crowdfunding is frequently used as a significant ingredient in its development, so it functions as a model for other legislations. Despite there is positive sign of equity crowdfunding market in Malaysia in terms of funds raised by platform operator, still the performance is pale in comparison with the achievement done by United Kingdom. This article analyses the approaches to ECF adopted in United Kingdom and Malaysia in light of the potential for cross-jurisdictional use of the framework. This qualitative research utilizes the secondary data gained from scientific database analysis and library research including documents and precedents on equity crowdfunding and analysed this data by legal interpretation and comparative assessment. The study finds key features of each jurisdiction as well as notable similarities and differences in terms of the obligations of platform operator, issuer and investor. This article recommends for issuer in Malaysia which requires small amount of funds to be exempted on the disclosure requirements and to provide tax incentive for retail investors in order to encourage public to utilize equity crowdfunding.*

**Keywords:** ECF, FCA, Securities Commission, ECF Platform operators, Investors, Issuers

## 1. Introduction

Crowdfunding has risen to the top of government reform agendas around the world as a form of alternative financing and owe much of its success to the failure of traditional banks to fulfill the demand of small and medium enterprises (SMEs) to financially support them (Caldwell, 2013). Prior to the crowdfunding appearance in the United Kingdom (UK), there was a dispute that the financial industry faced too little competition due to the lack of few alternative options to meet business needs. Ridley (2015) added that the lack of variety has contributed to the funding gaps, without which, companies may sustain even when the country face a financial crisis.

Today, crowdfunding has gained popularity in both UK and Malaysia. This may be proven from the finding of The Americas Alternative Finance Industry Report (2017), which stated that the UK has been recognized as third largest crowdfunding economies in the world with USD4.33 billion total raised amount after the United States (USD100.2 billion) and China (USD28.4 billion). The raised amount is definitely high for a country that start regulates Peer-to-Peer (P2P) crowdfunding and several types of crowdfunding on 1<sup>st</sup> April 2014 if compared to Malaysia, which is relatively small with MYR261.52 million as of December 2018 for both P2P and equity crowdfunding (ECF) since Securities Commission officially regulates it in 2015 (Securities Commission Annual Report, 2018).

In addition, among the 15 other European countries, UK recorded the highest number of active crowdfunding *startup* platforms with a total of 96 platforms by the end of 2014 (Gary, 2016). Such number left Malaysia behind with only 21 registered crowdfunding platform as of May 2019. The outstanding growth of crowdfunding practices over the years has made the UK as a leading crowdfunding industry, which incorporating digital economy with the mainstream banking and financial markets (Paul, 2016). Despite there is positive sign of equity crowdfunding (ECF) market in Malaysia in terms of raised funds, still the performance is pale in comparison with the achievement done by United Kingdom.

The article analyses the approaches to ECF adopted in United Kingdom and Malaysia in light of the potential for cross - jurisdictional use of the framework and proceeds as follows. Part 2 and 3 of the article defines ECF and examine the ECF market in the UK and Malaysia. Next, the article discusses on the need for regulation of ECF in both jurisdictions and further explores on how they regulate ECF platform operators, investors and issuers. The article concludes by offering some observations on the similarities and differences key features of ECF regulation in both jurisdictions as well providing recommendation on how ECF market in Malaysia can be more acceptable. This qualitative research utilizes the secondary data gained from scientific database analysis and library research including documents and precedents on equity crowdfunding and analysed this data by legal interpretation and comparative assessment

## 2. Defining Crowdfunding

Cambridge Advance Learner Dictionary (2003) defines crowdfunding as the practice of getting a large number of people to each give small amounts of money in order to provide the finance for a business project, typically using the internet. There are several types of crowdfunding such as reward, donation and P2P crowdfunding but for the focus of this article, it will only discuss on ECF. Vulkan *et al* (2016) differentiate ECF with other types of crowdfunding as through ECF investment, investors' takes an equity stake in the business in much the similar way venture capital funding works. Ahlers *et al* (2015) completely defined ECF as a form of financing in which entrepreneurs (issuers) make an open call to sell a specified amount of equity in a company on the Internet, wishing to attract a large group of investors. In ECF, a third party intermediary leverages the Internet to offer a forum whereby investors and issuers are able to assemble to finance profitable enterprise.

## 3. ECF Market in the UK and Malaysia

The UK has an advanced ECF market, both in quantity and the size offered. Xavier (2018) estimates that 20% of all initial equity investments took place through the ECF platform in 2015. Among its success factor, similar to the other entrepreneurial financing markets, is the most advanced Venture Capital and Private Equity (VCPE) sector. As shown on figure 1 below, statistics from the Annual Report of the Global VCPE Country Attractiveness Index (2018) has placed the UK in second place worldwide after the United States. Besides, Steinhoff (2015) stated that ECF regulation in the UK is often used as an important ingredient in its development, so it serves as a model for other laws.



Country	Rank/Trend	Score
United States	1 -	100.0
United Kingdom	2 -	94.4
Canada	3 -	92.6
Hong Kong	4 ↑	91.2
Japan	5 ↑	91.2
Singapore	6 ↓	90.7
Australia	7 -	90.2
Germany	8 -	87.7
New Zealand	9 -	87.2
Denmark	10 ↑	84.3
Sweden	11 -	83.3
Netherlands	12 ↑	83.3
Malaysia	13 ↑	83.1

**Figure 1:** VCPE Country Attractiveness Index Ranking in 2018

**Source:** Annual Report of the Global VCPE Country Attractiveness Index 2018

While the UK is the only European country among the top five, Malaysia listed in 13<sup>th</sup> place and became the first country in Asia Pacific to legislate ECF in 2015. Referring to the Pitchin 2018 Annual Report, at the end of 2017, RM23.3 million was raised through ECF platform and 22 projects, which utilises the ECF, have succeeded in achieving its target collection. However, it is worth to highlight that Malaysian ECF industry experienced tough market conditions in 2018. The number of successful campaigns dropped to 14 in 2018 and the amount raised also plunged to RM18 million in 2018. As of May 2019, there were 13 operators ECF platform operators in Malaysia regulated by Securities Commission.

This performance is pale in comparison with ECF achievement in UK as the second largest crowdfunding market after P2P. As of 2015, this type of crowdfunding is worth GBP332 million, compare to GBP84 million in 2014 (Zhang *et al*, 2016). The University of Cambridge (2017) further added that the ECF market in the UK continued to be the world's leading in total new equity has been raised amounting to GBP272 million by 2016. By July 2017, there were about 13 ECF platforms operating in the UK (Saul, *et al*, 2017).

Crowdcube is the largest ECF platform in the UK that was set up in 2011 (Crowdcube, nd(a). Silvio (2018) points out Crowdcube platform achievement in raising GBP340 million from 430,000 investors from more than 100 countries until February 2017. Among its best achievements is 'Revolut', the first British digital banking that is in Crowdcube platform in July 2016. The business has hit gold when the shares climb over 19 times from their original investment. In April 2018, Revolut received a USD250 million investment led by DST Global, and the company is now worth as high as GBP1.2 billion (Crowdcube, 2018).

In Malaysia, in terms of fund raised, Pitchin platform is the most successful ECF platform compare to the others with 75% of the total funds raised through this platform in 2018. Among all 14 successful campaigns from various platforms, Pitchin recorded success rate up to 55% on the same year and set up Malaysia Book of Record for largest funded deal (Pitchin ECF Report, 2018). Nevertheless, as of August 2019, there is no data available on return of investment from any issuers which utilize ECF.

#### 4. The Need for ECF Regulation in UK and Malaysia

Despite huge attention, crowdfunding regulation has not been at its best in line with the developments in industry. Such weaknesses have been taken advantage frequently by ECF platform operators. The UK Consultative Paper released in October 2013 pointed out the platform operator's often neglect to explain the high investment risk of ECF to the investors, and instead highlighting only its benefits. Plus, the tendency to use high-potential returns as major sales, which in fact the returns are actually much lower, justifies the ECF's regulation (Financial Conduct Authority, 2013).

Therefore, the Financial Conduct Authority (FCA) and Securities Commission has warned prospective investors that they may lose all of their invested money, especially when they invest in start-up business that rely largely on stocks or debt securities. In Malaysia, a study by Ahmad and Seet (2009) has found that the SMEs in Malaysia face high-risk of failure with estimated failure rates up to 60%. Nur Adiana, Rohani and Halim (2015) further added that equity investments in SMEs are at risk of failure due to SME entrepreneurs' dependence on debt and the lack of efficiency.

UK also faced a similar problem. Anderson (2014) shows statistics proving that in the UK, over 50% of start-ups fail in the fifth year of their operations. AltFi Data and law firms Nabarro too have conducted a comprehensive study and have found that one in five companies funded by the ECF platform between 2011 and 2013 has ended and caused losses to their investors (Dunkley, 2016). This is among other reasons why FCA did not see the need to expand the scope of the Financial Services Compensation Scheme (FSCS) to protect investors who suffered losses in ECF investments.

The failure of Rebus is a good example. Rebus is said to be the largest failure ever occurred in ECF operations in the UK. Initially, Rebus Group managed to raise GBP816,790 from 100 investors through the ECF Crowdcube platform in March 2015. This is to finance the expansion of the company aimed at delivering returns to investors up to 10-fold in three years. However, they have lost between GBP5,000 to GBP135,000 worth of investment. Palin & Williams (2016) adds that the investors are not eligible for compensation through the FSCS.

Since ECF platform operators have the authority to choose which project to host on its platform and what investment opportunities are available to investors, so it is important for them to attract only potential projects because low quality projects will negatively affect their profits in form of commissions. Additionally, Heminway (2013) believes that if the ECF platform operators improve its reputation as a reliable platform, the investors will have no hesitation to utilise the platform repeatedly, which in turn potentially attract new investors to it, as they believe the platform promotes viable projects only.

#### 5. ECF Regulation in the UK and Malaysia

Based on the issue above, there is a need to maintain legitimacy of the ECF transaction in order to protect investors especially vulnerable retail investors. The fundamental regulatory argument concerning ECF tends to focus on the most appropriate balance between the necessities to protect vulnerable retail investors versus crafting a regulatory framework to encourage fundraising for a significant economic sector. The next paragraph investigates how the UK and Malaysia have each navigated this balance, with an emphasis on regulation of the key players in the process: ECF platform operators, investors and issuers.

##### 5.1 *Obligation imposed on ECF Platform Operators*

###### 5.1.1 *Licensing requirement*

Generally, the ECF regulation in the UK is governed by the Companies Act 2006, Financial Services Market Act 2000 (FSMA), Prospectus Regulation, Financial Conduct Authority Handbook, Markets in Financial Instruments Directive and Conduct of Business Sourcebook (COBS). These

rules are complement with each other and do not affect or limit the applicability of one another (Paragraph 4.20 FCA Policy Statement).

FSMA is a law regulating all types of securities activities in the UK, but the regulations were amended in April 2014 to facilitate the development of crowdfunding (Financial Conduct Authority, 2015). As an independent organization funded exclusively by the fees it charges on regulated firms, FCA is a financial regulatory body created under section 6 Financial Services Act of 2012. FCA's role includes protecting consumers, and ensuring the industry remains stable as well as promoting healthy competition between financial service providers.

ECF is included in the scope of regulation by the FCA as there are activities in ECF operations as follows:

1. bringing about transactions in investments issued by the party seeking funding [Article 25 (1) FSMA (Regulated Activities) Order (RAO) 2001];
2. making arrangements with a view to transactions in investments (which captures referral arrangements even where a specific issuer or investment is not identified) (Article 25 (2) FSMA RAO); or
3. safeguarding and administering investments (custody).

Consequently, ECF's offer, due to its transferable character, is therefore been included in the definition of 'financial instruments'. In other words, if the crowdfunding platform has a service that allows a company to raise money by arranging for sale of unquoted equity or unlisted debt securities, or units in unregulated collective investment schemes, this may be considered investment-based crowdfunding or ECF that must be regulated by the FCA.

Tanja (2013) explains that most of the content in Crowdfunding website is comprised of financial promotion elements, then, it is a requirement for ECF platform operators to be authorized by FCA or ECF platform operators must ensure that the FCA-authorized firm approves financial promotions, unless an exemption is available as discussed in 5.3.1(i). These requirements are based on European Union law: under Article 5 (1) (requirement for authorization), Art 4 (1) (2) and Annex I, Section A (investment services and activities) Market in Financial Instruments Directive (MiFID), which requires all issuers involved in the business of accepting and delivering orders related to financial instruments, to be authorized by the competent national authority.

For ECF regulation, the FCA does not establish a new regulatory regime, instead, the FCA refined the existing security framework (ie FSMA) after a two-month public consultation in 2013. The amended regulations with effect from April 1<sup>st</sup> 2014 resulted from the belief by the FCA that investments should only be promoted and sold to those who understand, or who have financial ability to cope with any potential loss (Financial Conduct Authority, 2014).

In Malaysia, Securities Commission has introduced new rules for registration of the ECF platform operators and the provision of good governance for such ECF platform operators through Section 377 of Capital Market Services Act 2007 (CMSA) read together with CMSA Subdivision 4 Division 2 Part II and the publication of Guidelines on Recognized Market (GRM) (Item 1.01 GRM). Section 15 (g) of the Securities Commission Act 1993 clarifies that the functions of these regulations are to regulate ECF's activities and protect the interests of the parties involved, especially investors. ECF platform operators need to satisfy the criteria set out in the GRM before Securities Commission can issue ECF licenses (Item 2.01 GRM).

### 5.1.2 Due Diligence

The due diligence issue always become main concern in UK as FCA did not outline the due diligence processes issuer should follow. This has increased the potential failure of businesses due to the lack of filtering skill by ECF platform operators. FCA in his defense stated that there is a need to create a proportionate framework that balances regulatory costs against benefits. Thus, FCA is not prescribing how issuers should address or disclose the relevant risks (Paragraph 4.24 FCA Policy Statement). Nonetheless, Robins (2016) argues that these costs should easily be outweighed by the superior returns for investors that follow.

Different than UK, Securities Commission has outlined the requirement for ECF platform operators in Malaysia to carry out due diligence process to the prospective issuer by listing down

the information that need to be disclosed as stipulated under item 6.01(j) GRM which including-

- a) all necessary risk warning statements, including all risk factors that users may require in making a decision to participate on the platform;
- b) information on rights of investors relating to investing or trading in a recognised market;
- c) criteria for access to the recognised market;
- d) education materials, including comparative information where necessary;
- e) fees, charges and other expenses that it may charge, impose on issuer or investor;;
- f) information about complaints handling or dispute resolution and its procedures; and
- g) information on processes and contingency arrangement in the event the ECF operator is unable to carry out its operations or cessation of business.

## 5.2 Obligations Imposed on Investors

### 5.2.1 Type of Investors

Both UK and Malaysia include regulations that are expressly directed at the goal of protecting investors especially retail investors. In Malaysia, there are 3 types of investors which are sophisticated investors, who have total net personal assets exceeds MYR3 million, angel investor who have gross annual income of MYR180, 000 and above individually or gross annual income of MYR250, 000 and above with spouse as well as retail investor who are not like the other two.

Unlike Malaysia, UK places greater restrictions on investors that invest through ECF. There is a rule requiring issuers promoting unlisted securities through the crowdfunding platform to deliver direct promotions offer to several types of investors (Paragraph 4.7 COBS). These include:

- a) professional investors; or
- b) retail investors who confirm that, in relation to the promoted investment, they will receive investment regulatory advice from authorized persons; or
- c) retail investors who have relation in venture capital or corporate finance; or
- d) certified retail investors or self-certified sophisticated investors; or
- e) retail investors certified as high-net worth investors; or
- f) restricted investors who are subjected to the investment ceiling as shown in paragraph 5.2.2.

For item (d), a certified "sophisticated investor" is an individual who has a written certificate signed within the last 36 months by an issuer confirming he has been assessed by that issuer as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in non-mainstream pooled investments (Paragraph 4.12.7 COBS). In addition, they also need to sign a sophisticated investor statement within the past 12 months, confirming that they understand the risks associated with any investment they make (Paragraph 4.12.7 COBS).

Meanwhile a self-certified sophisticated investor is someone who has no confirmation from the issuer. Instead, they must meet one of four requirements as stipulated under paragraph 4.12.8 COBS:

- 1) they are a network member or a business angel syndicate and have been there for at least six months prior to the signature date;
- 2) have made more than one investment in an unlisted company in the two years prior to the signature date;
- 3) have worked professionally in the private equity sector or in the provision of finance for SMEs; or
- 4) is a director of the company with an annual turnover of at least GBP1 million.

For item (e), to be certified as a "high net worth investor", two conditions must be met. A person must have an annual income of more than GBP100,000 in the preceding 12 months, or hold (in that year) a net asset of GBP250,000 or more (Paragraph 4.12.6 COBS). It is also important to note that "net assets" excludes property, which is the principal residence (or any money raised through a secured loan on the property) or any benefit due to termination of service, death, or retirement. (Paragraph 4.12.6 COBS).

For item (b), when the customer receives the advice, the suitability rules will apply (Paragraph

4.9 COBS), and no promotion restrictions apply when advice is given (Paragraph 4.7.8R COBS). It should be noted that, conducting due diligence assessments and explaining these financial promotions are not sufficiently considered as advising. When issuers deliver financial promotions to such retail investors, the FCA regulations require them to be considered as an issuer 'client' (Paragraph 3.2.1R (3) COBS).

In accordance with the provisions of MiFID, prior to arranging transactions in complex financial instruments for retail customers who do not receive advice, issuers are required to assess whether the client has the necessary experience and knowledge to understand the risks involved (Paragraph 4.24 FCA Policy Statement). In practice, the ECF platform operators requires investors to answer a simple automated test questions on ECF's investment characteristics, in which the guidance has been provided. The FCA has applied core consumer protection requirements to issuers operating in this market, for instance, client money must be protected and issuers must adhere to minimum capital standards (Anu Arora & Ewan, 2017).

The same protection applies for ECF platform operators in Malaysia as well. The investor's money must be properly protected from any improper use by its officers by requiring ECF platform operators to set up systems and controls to ensure that the funds they hold are accurate and up-to-date (item 13.06 GRM). To elaborate, one or more trust accounts for funds raised by the issuer hosting on its platform should be established and maintained at licensed institutions and ECF platform operators may only able to release the funds to the issuer after the conditions as specified in item 13.08 GRM are met:

- a) the amount targeted by the issuer has been met;
- b) no material changes relating to the offer during the offer period. Among the material changes in relation to publishers include:
  - i. The discovery of a false or misleading statement in the disclosure document in relation to the offer;
  - ii. The discovery of a material omission of information required to be included in the disclosure document; or
  - iii. There is a material change or development in the circumstances relating to the offering or the issuer.
- c) the cooling off period of at least six business days has been completed.

The six-day cooling-off period is not only aimed at giving investors the opportunity to assess thoroughly before finalizing their investment, but it also gives issuers or entrepreneurs an opportunity to choose investors based on their preference. Andrew (2017) emphasizes that it is vital to prevent hidden competitors known to the issuer who may benefit from the issuer business and access to the intellectual property belonging to the issuer.

### 5.2.2 Investment ceiling

Since FCA considers ECF as a high-risk investment, sophisticated retail investors / sophisticated investors who do not receive investment advice, have to confirm that in 12 months before the investment, they do not spend more than 10% of their net assets in securities that are non-readily realized, and will not do so for the next 12 months (Paragraph 4.7.10 COBS & The Americas Alternative Finance Industry Report, 2017).

Similar application applied to the restricted investor in UK. They need to ensure that they will not invest more than 10% of their net assets in unlisted equity and debt securities and will not do so in the 12 months succeeding. They must confirm that they will only invest money that does not affect their primary home, pension and life protection) (Paragraph COBS 4.7.10).

The investment limit is applied in Malaysia too. Retail investors can invest on ECF platform operators with a maximum amount of MYR5,000.00 per issuer and MYR50,000.00 within 12 months. Angel investor however may invest up to a maximum of MYR500, 000.00 for a period of 12 months, while no restrictions apply to sophisticated investors (Item 13.24 (a) (b) & (c) of GRM). The specified investment limit also applies to local and foreign investors (Item 13.25 GRM).

It is worth mentioning that tax incentives provided by the government can attract public to invest in ECF. Cumming et al (2019) justifies by saying that it might stimulate the substantial

amounts of savings instead of keeping it in savings accounts. Not to mention, the capital that is infused into the economy in this manner may distribute as a strong facilitator for entrepreneurship. These tax relief incentives are already in practice in the UK. The two tax incentive programs called Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) are in fact overlapping and specifically for ECF investors. EIS provides a tax deduction of 30 percent of the cost of shares (up to GBP1,000,000 in one year of tax return) purchased at qualified private companies, with a maximum tax benefit of GBP300,000 (Andrea & Silvio, nd). SEIS provided additional incentives by excluding GBP150,000 worth of capital gains tax. This amount is set to be the standard issue sought by UK crowdfunding platforms such as Seedrs and Crowdcube, with the exception being granted only to publishers who submit "attractive proposals" subject to platform approval.

EIS incentives are provided individually, so spouses can invest up to GBP2 million in tax yearly assessments and qualify for income tax relief. In addition, EIS and SEIS are subject to a minimum retention period of three years, with a withdrawal if the stock is disposed earlier. This could be one way to retain investors from ECF platform (Crowdcube, nd(b)). With regard to policy implications, the data highlights the fact that issuers benefiting from tax incentives face a 2.9 times higher probability of earning additional capital in Seasoned Equity Offerings, while failure rates are 76% lower (Andrea & Silvio, nd).

Unlike UK, the tax incentives applied only for angel and sophisticated investors for venture capital investments in selected priority sectors coordinated by the Securities Commission. Therefore, research needs to be done to determine whether tax incentives to support ECF market development in Malaysia should be practised, given the benefits they can offer.

### 5.3 *Obligation imposed on Issuer*

Stock offers or securities are generally considered as financial promotions, in other words, there is an inducement to engage in investment activity. However, section 755 (1) (a) of the UK Companies Act 2006 and section 43 of the Malaysia Companies Act 2016 prohibits private companies from offering shares to the public. To be able to do so requires an approval, which can cause burdens and unnecessary administrative costs. Thus, a clear crowdfunding platform dealing in stocks and dividends needs to be structured in certain circumstances to reduce the risk of breaching the regulation. Nevertheless, financial promotions may still be made if the promotion is approved in advance by a firm authorized by the FCA for UK.

In Malaysia, only locally incorporated private companies and limited liability partnerships (excluding exempt private companies) will be allowed to be hosted on the ECF platform. (Item 13.14 GRM).

#### 5.3.1 *UK Prospectus Regulation Requirements*

It is worth to note that FCA-approved prospectus is required if any public offering made through ECF (Section 85 (1) FSMA 2000). Prospectus shall contain all information pertaining to the issuer and securities offered, which enables investors to evaluate information on assets and liabilities, financial position, profit and loss, and the prospect of the issuer and any guarantor, and the rights attached to the securities. (Article 5(1) Prospectus Directive).

On June 29<sup>th</sup> 2018, FSMA 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 has been issued. The European Parliament and the Council has adopted the Prospectus Regulation replacing the Prospectus Directive (Ahern *et al*, 2018). This Prospective Regulation make significant alterations to the FSMA to implement part of regulation of the European Parliament and the Council (Regulation (EU) 2017/1129) on June 30<sup>th</sup> 2017 applicable from July 21<sup>st</sup> 2018. Prospectus Regulation applies directly to the member states, thus not requiring it to be enforced by member states (Prospectus Regulation, 2018). In other words, unlike the Prospectus Directive, Prospectus Regulation is implemented directly into UK law through FCA and FSMA. However, consequential amendments need to be made to FSMA for its implementation. The Prospectus Regulation objective is to improve the prospectus regime, especially by making it

cheaper and easier for small companies to access capital while maintaining its objective to protect investors. Majority of Prospectus Regulation will not be fully applied until July 21, 2019. However, part of the Prospectus Regulation concerning with the securities offering threshold to the public in the European Union starts to apply on July 21<sup>st</sup> 2018 (Prospectus Regulation, 2018).

(i) Exceptions

Although public offerings made through the ECF must be accompanied by FCA-approved prospectuses, there are still certain exceptions provided if the offer is less than GBP8 million (or equivalent) for a period of 12 months. Before the amendment was made, the amount of exception was less than GBP5 million, which slow down the investment in the platform (Article 3(2) Prospectus Regulation 2018). In addition, Article 1(3) Prospectus Regulation exempts from the entire scope of the regime all offers of securities to the public with a total consideration within the European Union of less than GBP1 million, calculated over a period of 12 months. This amount increases from GBP100, 000 under the existing regime.

Furthermore, prior to the amendment, securities already admitted to trading on the same regulated market were permitted to increase their further shares without issuing prospectuses provided that they represent over a period of 12 months less than 10% of the same class that has been traded. This amount is now increasing to 20% representing less than 20% of the same class (over 12 months) (Article 1 (5) (a) Prospectus Regulation 2018). If the exception is not available, the contents in the financial promotion website's must comply with the requirements as stipulated under Chapter 4 of the FCA's COBS to ensure that they are clear, fair and not misleading. Paragraph 4.22 FCA Policy Statement (2014) defines clear, fair and not misleading is adhering to rules on financial promotions and disclosure requirements. The FCA expects issuers to provide accurate and sufficient informations to their prospective investors, which includes but not limited to the extent of their investment risk over the issued capital, the shortage of the secondary market and lack of access to FSCS.

### 5.3.2 Malaysia Disclosure Requirements

Similar to the UK, which requires issuer to issue prospectus as a requirement upon the issuer, ECF regulation in Malaysia put the responsibility on the issuer to fulfill disclosure requirements as well. The issuer shall disclose to the prospective investors any material information they need to reasonably know to enable them to make informed decisions about whether it is necessary to invest in the company or otherwise.

Not only that, the issuer shall, according to item 13.22 GRM, prior to submitting relevant information to the ECF platform operator, ensure that all information submitted or disclosed to ECF platform operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission. List of informations to be disclosed pursuant to item 13.21 GRM includes:

- a) information that explains key characteristics of the company;
- b) information that explains the purpose of the fund raising and the targeted offering amount;
- c) information relating to the business plan of the company; and
- d) financial information relating to the company.

Although the issuer has the right to determine the amount to be collected via ECF platform, the audited financial statements still need to be prepared for an offer below and above MYR500,000.00 if the company has been established for at least 12 months (Item 13.21 (d) (i) (a) GRM). If the company is currently established and the financial statements are not yet available, item 13.21 (d) (i) (b) GRM requires the financial statements or information to be certified by the issuer management.

## 6. Conclusion and Recommendations

The government of UK and Malaysia committed to encourage economic growth of start-ups and SMEs by relaxing the regulation of ECF that will allow this alternative financing to flourish. On the same year Malaysia legislate ECF, Securities Commission has approved an ECF platform operator

name 'Eureeca', which is in fact a FCA-authorized platform, as an effort to allow businesses to raise capital from a large number of investors from both regimes in exchange for equity.

It is not surprising as both jurisdictions have closer bilateral trade relation and long established business connections. MATRADE (2016) revealed that Malaysia's total trade with the UK climbed by 9.4% to reach RM16.45 billion in 2015 with exports expanded by 17.6% to RM9.32 billion, while imports were valued at RM7.13 billion, thus making the UK as one of Malaysia's top trading partners in Europe. Besides, in 2016, there was an exchange of Memorandum of Understanding (MoU) between SME International Trade Association (SMITA) and Finpoint Limited, which is a regulated finance platform and one-stop-shop for SME, seeking to obtain finance from its lender panel. The MoU is on project funding assistance for Malaysian SME seeking greater market access in the UK.

A closer look suggests that the basic principles underlying both ECF regimes may be similar; still, there is significant dissimilarity in terms of the disclosure requirements impose to the issuers in Malaysia. Unlike the UK, there is no exception available for issuers in Malaysia to be exempted on the disclosure requirements despite the finance they seek to raise from the investor through ECF Platform are small. Furthermore, the absent of tax incentive for retail investors in Malaysia should be taken note as well. The lack of facilities may act as an obstacle to SMEs and start-up to improve the chances of small deals and crowdfunding projects to keep growing especially when Malaysian ECF industry experienced unsatisfactory performance in total fund collections in 2018. Nonetheless, at the most basic level, both regulations are intended to ensure prospective investors receive clear and accurate information on potential investment and understand the risks involved as well as ensuring the investors money to be utilised properly by the issuer in the efforts to gain satisfactory return on investment.

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