
Equity Crowdfunding Vs Cybercrime: A Legal Protection

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Abstract

Equity Crowdfunding (ECF) is a type of financial support that enables a start-up to acquire principal to run a companies by way of small equity investments by using online portals to advertise and promote such proposals to public shareholders. Since the modus operandi of ECF is using Internet platform, such fundraising therefore, it is not immune to fraud. The article aim is to evaluate the legal protection of cybercrime to the issuers, platform distributors and ECF business investors in Malaysia. For this study, doctrinal legal investigation has been employed by scrutinizing the legislations governing ECF in Malaysia particularly Capital Market and Services Act 2007 (Act 671) (CMSA 2007) and Securities Commission's Guidelines on Recognized Markets 2020 (GRM 2020). Whether the existing legislations are appropriate in respect to ECF to combat cybercrime? The study found that there are numerous legal problems concerning ECF Company in Malaysia; Issuers and Recognized Market Operator contracts, privacy and personal data protection, cybercrime, compliance with public offering rules and guidelines, and registration procedures and their challenges. Even while the CMSA 2007 and GRM 2020 govern ECF commerce, other related regulations like CCA 1997, CMA 1998, and others also apply to cybercrimes committed in the ECF market. Some provisions pertaining to ECF cybercrime have gaps in them. The current legal framework should place more emphasis on addressing fraud and the possibility of intellectual theft by other parties.

Keywords: Crowdfunding, Equity Crowdfunding, Cybercrime, Cybersecurity, Industry Security Law.

1. INTRODUCTION

Today, there are new approaches to access principal or capital, of which crowdfunding is one of them. Crowdfunding is one of the way to raise money not only for people, but also businesses and charities. It operates by way of individuals or by way of organizations who invest in (or donate to) crowdfunding projects for a potential profit or incentive. However, investing this way has potential risks although it calculates some benefits as well. Crowdfunding can offer many benefits for micro small medium entrepreneurs (SMEs), but it is not suitable for everyone. Although this type of business is exciting, some might find it time consuming in profiling a project, securing supporters and then implementing ideas.

According to Bradford (2012), crowdfunding is a approach how to increase fund through simple assistances from a large group of investors by employing the Internet framework. Kiva, Kickstater and IndieGoGo are the examples of crwdfunding sites have flourished in the United States where just in few years, the sum of money generated has expanded to billions of dollars (Bradford, 2012). Schvienbacher and Larralde (2010) and Mollick (2014) stated that this fund raising mechanism is considered as an innovative way for financing a diversity of new business endeavors, allowing individual inventors of for-profit, cultural, or social initiatives to solicit funding from a large number of people, frequently in exchange for future products or equity, typically by exploiting the capabilities provided by the internet.

In Malaysia, Equity Croowdfunding (ECF) is a recent type of fundraising that enabling a start-up or micro businesses to raise money through modest equity investments by advertising and facilitating such offers to crowd investors online (Securities Commission Malaysia, 2020). Therefore, this novel method, is a structure that facilitates start-ups and SMEs to get through market-based lending using a website that is certified with the

Malaysian Securities Commission (SC). Alix Global Sdn Bhd, Netrove Ventures Group, and ATA PLUS Sdn Bhd are the leading Malaysian businesses participating in ECF. As of 31 December 2019, Malaysia's ECF data indicate the division by funding amount Malaysian Ringgit 500,000 and below is 50%, > Malaysian Ringgit 500,000 and up to Malaysian Ringgit 1.5 million is 27% and > Malaysian Ringgit 1.5 million and up to Malaysian Ringgit 3 million is 23%. It has 77 great issuers and 80 successful campaigns that raised a total of 73.74 million Malaysian Ringgit (Securities Commission Malaysia, 2020). It demonstrates how ECF organizations are one of Malaysia's newest forms of investment.

Cyber security is one of the agenda in the Malaysia National Policy on Industry 4.0. According the Malaysia Ministry of Science, Technology and Information (MOSTI), The following are the crucial areas where new and additional R&D is required to improve the defense of the national information infrastructure: (a) Secure communication: to help safeguard the confidentiality and integrity of information during transmission and storage; (b) High availability systems: to guarantee the continuous and uninterrupted operation of critical ICT systems; (c) Network monitoring, response, and recovery: As part of proactive management of ICT systems, network monitoring is necessary to spot anomalous activity, respond to the issue, and recover from the incident to prevent system disruption; (d) Relationships based on trust: interactions between users and ICT systems to handle non-repudiation concerns; (e) Secure access: Guards against unauthorized access to the ICT system (f) System integrity controls: Ensure that a system's data aren't improperly altered or tampered with by harmful code.

Therefore, looking at the nature of ECF where online platforms is the main medium of transaction by parties involved, the issues of safety and protection to investors is main focus of this paper. Whether the CMSA 2007 and guideline are competent to combat cybercrime in relation to ECF. Businesses that select to get funds through crowdfunding especially ECF, sell a share of their company to investors. Some investors anticipate having a say in how the company is run as part of this ownership. This can be helpful to groups looking for knowledgeable direction and counsel, but it can also be restricting if it slows down progress or steers the company away from what the original owners had in mind. Fraud is not immune from crowdfunding. Scammers are constantly looking for new ways to con people online. Fake websites are mushrooming online, and projects, particularly in the nonprofit sector and the ECF, are being replicated while money is being misdirected to scammers. Whether the offences as stated in the CMSA 2007 covered the *modus operandi* used by scammers to manipulate and exercise fraudulent act in the ECF markets? Whether the provisions in the Securities Commission's Guidelines on Recognized Markets 2020 (GRM 2020) is sufficient to protect the players of the ECF?

2. LITERATURE REVIEW

Nowadays, crowdfunding has growing and gaining popularity among the public as an alternative way of financing for various business ventures. At the initial stage, this alternative fundraising may seem as a trend adopted only by start-ups a newly established business seeking for cash for their capital. The youth for example, this alternative fundraising mechanism is capable to assist them as their pre-start-up capitals (Mokhtarrudin, Masrurah & Muhamad, 2017).

In general, ECF can be categorized into different types namely donation, reward, lending and equity (Mohd Thas Thaker & Pitchay, 2018). Equity-based crowdfunding facilitates the funders to get return from the fundraiser's equity-based or revenue-based, or profit-sharing relationships. In the arrangement of lending-based crowdfunding, the funders normally will receive regular, fixed income and assume for reimbursement of the first capital investment. Meanwhile, in applying the donation-based, the funders give contributions without expecting to obtain nothing. Finally the reward-based crowdfunding, where the funders contribute to a project to obtain a non-financial reward (Abdullah & Oseni, 2017). Despite being the first country of ASEAN region to have its own legal framework to govern and regulate the crowdfunding, Malaysia focusses merely on equity-based crowdfunding (Mokhtarrudin, Masrurah & Muhamad, 2017).

Sullivan and Ma (2012) in their works highlighted their concern for fraud and the risk of the idea being taken by others particularly better funded investors or by other large corporations. Therefore, the regulator should consider legal protection to prevent future disputes in this area. In this regard, Galwin (2012) and Sigar (2012) also shared the same opinion. Meanwhile Gobble (2012) opines that, loosens regulatory requirements for small businesses in numerous ways contributes for fraud by way of crowdfunding. In addition, some businesses might even be established as fraud. In this regard, companies can be set up for the purpose of to take funding, then using the fund

to pay it all as salary and then close the business.

In addition, Sgar (2012) states his opinion that whilst executing rules, the regulatory bodies should prudently consider the mechanism to protect investors, especially vulnerable ones, who lack “financial sophistication”. According to him;

“Weaker investor protection and potential for fraud is considered as a weakness, because, the ongoing legislative changes are solely subject to crowdfunding, they are not applicable to other means of raising capital”.

Valanciene and Jegeviciute (2013) in their work using SWOT analysis highlighted the strength, weakness, opportunities and threat pertaining to crowdfunding. They discovered that among the benefits of crowdfunding are that it gives business owners more access to finance, gives them more power over decision-making, and gives them a way to evaluate their products' viability. As for the negative points, they include difficulties with administration, governance, and accounting; a lack of guidance or support from funders; idea theft; inadequate investment protection; and the possibility of fraud. They also identify the opportunities of crowdfunding including the prevalence of an information society, and addressing of a funding gap. Finally, the current legal restrictions and the risky nature of small businesses were identified as threats.

3. RESEARCH METHODOLOGY

This is a doctrinal research where the predictable legal way is adopted. In order to achieve the objective, two techniques under critical and logical method have been employed in this work. The sections relevant to crowdfunding legislations were first examined using the method of statutory interpretation, which includes the mischief rule, golden rule, literal rule, and purposeful approach. In this study, cases connected to ECF in Malaysia have been examined using the judicial precedent doctrine. The laws that are covered by this research in the context of Malaysia include CMSA 2007, GRM 2020, the Companies Act 2016 and other pertinent laws.

This study used the legal primary and secondary data. The essential facts are the statutes, rules, regulations, recommendations, and cases pertaining to crowdfunding. Books, legal files, and articles from periodicals and internet resources make up the secondary data for this study. Using web databases and library research is how the data for this study were gathered. Typically, content analysis was used to investigate both the primary and secondary data. Specifically, the ECF-related sections of the Companies Act of 2016 and other pertinent laws, such as the GRM 2020 and the CMSA 2007. The idea of judicial precedent was used to analyze court cases involving ECF.

The descriptive investigation is performed by researchers with the determination of uttering the rules and principles of the law governing ECF. Meanwhile analytical investigation is employed to scrutinize deeply, and assess every feature of the accurate data in the examination. This is crucial for the researchers where they are able to criticize, revise and suggest or propose amendments as a mechanism to improve the law, regulations and policies relating to ECF.

4. FINDINGS AND DISCUSSION

In Malaysia, there are numerous legal concerns with regard to ECF business, including registration procedures and their challenges, privacy and the protection of personal information, cybercrime, public offering rules and regulations, and agreements between issuers and investors as well as between issuers and recognized market operator. This article's primary concern is the legal defense of ECF players against cybercrime.

According to Britannica Dictionary, cybercrime can be defined as:

“The use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Cybercrime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government.”

Meanwhile, cybercrime according to dictionary of Merriam-Webster is defined as:

“Criminal activity (such as fraud, theft, or distribution of child pornography) committed using a computer especially to illegally access, transmit, or manipulate data.”

In Malaysia, “the legal framework which is related to cybercrimes and threats consists of the Communication and Multimedia Act 1998 (CMA 1998), the Defamation Act 1957 (DA 1957), the Sedition Act 1948 (SA 1948), Computer Crimes Act 1997 (CCA 1997), Penal Code, Personal Data Protection Act 2010 (PDPA 2010), Copyright Act 1987 (CA 1987) and Strategic Trade Act 2010 (STA 2010)”. The substantive law governing ECF business in Malaysia are the CMSA 2007, GRM 2020 and the Companies Act 2016. In regards to the legal protection for participants (issuers, ECF operators and investors) of ECF in Malaysia are stipulated under various statutes and guideline i.e. the CMSA 2007, Companies Act 2016, SCA 1993 and GRM 2020.

In addition to the previously listed bad actions, there has been a growing trend of cyber threats and attacks over time. The typical types of cyberattacks that have been in the news recently include phishing, malware, ransomware, hacking, and denial-of-service attacks. These dangers could directly affect Malaysian businesses and society (Mackenzies, 2017).

With respect to cybercrimes that are related to media, there appears no comprehensive definition of cybercrimes. It can be generally understood as illegal application of ICT devices to do criminal activities using electronic networks. Cybercrime can be divided into three types. With respect to these categories, Cyber Security Malaysia (2019) has stated “The first is when information and communications technology (ICT) systems and intellectual property become targets of exploitation, intrusion, identity and information theft. The second is when ICT devices are used as means to commit crimes. For example, computers at home are used to run malicious programs to intrude other computers to steal money, identity and passwords. The third category is where the ICT devices are used as mediums of committing crimes. For example, sedition, disharmony or unrest, slandering and instigating at higher scale come under this category”.

According to CMSA 2007's section 377, the Malaysian SC has implemented new regulations for ECF that relate to platform registration. The same is true for providing effective governance. Such provision 377 should be read in conjunction with Subdivision 4, Division 2, Part II of CMSA 2007 and the release of GRM 2020 (Item 1.01 GRM). The CMSA 2007's Section 377 specifies:

“377. (1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.

(2) The Commission may revoke, vary, revise or amend the whole or any part of any, guidelines and practice notes issued under this section.

(3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.

(4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit.”

The above provision grants the power to the SC to issue guidelines and practice notes in relation to ECF. The SC may take necessary action including to revoke, to vary, to revise or to amend the issued guidelines and practice notes wholly or partly. The parties involved should always comply with the provision. SC has right to take any one or more legal action to those fail to comply to such guideline or practice note as set out in sections 354, 355 (only for derivatives exchange and clearing house) and 356.

In discussing the protection to players of ECF from cybercrime, it can be divided to four elements: (i) requirement of registration; (ii) specification of duties and responsibilities; and (iii) penalty and remedy.

4.1 Registration

The basic requirements regarding the business entity of the ECF operator is that the company must be established in Malaysia. This is in accordance with GRM 2020. Similarly, the issuer must be a registered entity under the Companies Act 2016. According to GRM 2020:

“Only locally incorporated private companies and limited liability partnerships (excluding exempt private companies) are allowed to be hosted on the ECF platform.”

“The following entities are prohibited from raising funds through an ECF platform;

- (a) Commercially or financially complex structures (i.e. investment fund companies or financial institutions);
- (b) Public-listed companies and their subsidiaries;
- (c) Companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool);
- (d) Companies other than a micro fund that propose to use the funds raised to provide loans or make investment in other entities;
- (e) Companies other than a micro fund with paid-up share capital exceeding Ringgit Malaysia 5 million;
- (f) Any other type of entity that is specified by the SC.”

As for ECF operator, new requirements for the purpose of registration has been inserted to section 34 of the CMSA 2007. The same pertaining to governance arrangement for the operators of such platforms as follow:

“34. (1) For the purposes of paragraph 7(1)(e), the Commission may upon application by a person, register the person as a recognized market operator subject to any terms and conditions as the Commission considers necessary.

(2) The Commission may, from time to time, add, vary, amend or revoke any terms and conditions imposed under subsection (1).”

Section 36 of the CMSA 2007 provides on the duties of ECF operator. It states that a ECF operator shall:

“36. A recognized market operator shall-

- (a) comply with any direction issued by the Commission, whether of a general or specific nature, and the recognized market operator shall give effect to such directions; and
- (b) provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires.”

While section 36A provides on the withdrawal of registration. The provision states that:

“36A. (1) Subject to subsection (4), where the Commission is satisfied that it is appropriate to do so in the interest of the investors, in the public interest or for the maintenance of an orderly and fair market, the Commission may, by notice in writing, withdraw the registration with effect from a date that is specified in the notice.

(2) Such notice referred to in subsection (1) shall state the grounds in support of the withdrawal.

(3) Notwithstanding the withdrawal under subsection (1), the Commission may permit the person to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of- (a) closing down the operations of the recognized market to which the withdrawal relates; or (b) protecting the interest of the investors or the public interest.

(4) Where the Commission has granted a permission to a person under subsection (3), the person shall not, by reason of its carrying on the activities in accordance with the permission, be regarded as having contravened section 34.

(5) The Commission shall not exercise its power under subsection (1) in relation to a recognized market operator that has been registered under subsection 34(1) unless it has given the recognized market operator an opportunity to be heard.

(6) Any withdrawal of registration made under this section shall not operate so as to—

(a) avoid or affect any agreement, transaction or arrangement entered into by the recognized market operator whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.”

There is also power of SC to appoint statutory manager under section 40D to deal with mitigating and managing systematic risk. In this regard, CMSA 2007 stipulates that:

“40D. (1) Without prejudice to any provision in this Part, for the purposes of mitigating and managing systemic risk in the capital market or where the Commission considers it is—

(a) in the public interest;

(b) for the protection of investors;

(c) for the proper regulation of a relevant person; or

(d) necessary in the exercise of its powers under section 30, the Commission may appoint a statutory manager.

(2) The Commission may—

(a) in the case of a recognized market; or

(b) with the prior approval of Minister, in the case of a stock exchange, a derivatives exchange, an approved clearing house and a central depository,

appoint a statutory manager to—

(A) exercise, perform and discharge with respect to the relevant person, all the powers, duties and functions conferred or imposed on, or assigned to, the relevant person, by or under any written law or the articles of association of the relevant person; and

(B) take possession of, and use any such movable or immovable property as was used by the relevant person, for the purpose of carrying on the business or operations of the relevant person.

(3) Where the Commission has appointed a statutory manager under subsection (2), the Commission may make all or any of the following orders in writing to—

(a) grant access to the property of the relevant person to a statutory manager;

(b) transfer control of the whole or part of the business or affairs of the relevant person and management of the whole or such part of the business and affairs of the relevant person, to a statutory manager; or

(c) issue any direction to any person including a statutory manager in relation to the management of the whole or part of the business or affairs of the relevant person.

(4) Every such exercise, performance and discharge of such powers, duties and functions by the statutory manager under subsection (2) shall be as valid and effectual as if it were an exercise, performance and discharge by the relevant person.

(5) The Commission may, during the period an order under this section is in force, suspend the functions, rights and privileges of any directors, chief executive officer or senior officer of the relevant person, and for such period, as the Commission may determine.

(6) Where an order is made under this section, the Commission shall, as soon as may be practicable, give a copy of the order, to the principal officer of the relevant person to which the order relates and to such members of the governing body thereof, if any, as the Commission may consider appropriate in the circumstances.

(7) Where an order has been made under this section, the Commission shall cause the order to be published in at least one national language daily newspaper and one English language daily newspaper.

(8) An order made under this section takes effect on the date specified in the order.”

Additionally, section 49 of the Capital Markets and Services (Amendment) Act 2015 emphasis on the registered electronic facility deemed to be recognized market. The section states that:

“(1) an electronic facility registered under subsection 34(1) of the principal Act before the effective date shall, from that date, be deemed to be a recognized market under the CMSA 2007;
(2) any condition or restriction imposed on such electronic facility shall be deemed to be a condition or restriction to its registration under subsection 34(1) as introduced by the CMSA 2007; and
(3) unless otherwise notified in writing by the SC, an application for registration as an electronic facility that is pending immediately before the effective date shall be deemed to be an application for a registration as a recognized market operator.”

The writers are of opinion that the registration requirement for the issuer and ECF operator as a protection to the investors who invest their money in the ECF business. The SC can easily trace these entities if the act of cybercrime is committed by them. As for registration of ECF operator will also benefit the issuer because the ECF operator must fulfil the standard requirement of the CMSA 2007 and GRM 2020 before been approved as an ECF operator by the SC.

4.2 Duties and Responsibilities

The second element of protection is the statutory duties and responsibilities of the players of ECF i.e. ECF operator, issuer and investor. The operator's board of directors must meet the requirements of GRM 2020 and be qualified to run a fair, orderly, and transparent market. The GRM charge the operator with responsibility to ensure issuers abide by platform regulations because the operator is essential in maintaining confidence in the ECF platform. If the operator believes that the issuer or the planned offering is unfit to be hosted on the platform, it may refuse access to the platform to the issuer. The operator must also make sure that any money received from investors is kept in a trust. The GRM 2020 provides the obligations of ECF operator, operation of trust account, managing conflict of interest, permitted or non-permitted issuers, limitation to fund raised on ECF platform, disclosure requirements and investment limits.

An ECF operator is required to perform due diligence on potential issuers who intend to use its platform, make sure the issuer's disclosure document filed with the ECF operator is verified for accuracy and made accessible to investors through the ECF platform, notify investors of any materially negative changes to the issuer's proposal, make sure the fundraising limits imposed on the issuer are not violated, and make sure the investment limits imposed on the investor are met. The scope of the due diligence exercise by an ECF operator shall include taking reasonable steps to conduct background checks on the issuer to ensure fit and properness of the issuer, its directors, senior management and controller; and verify the business proposition of the issuer.

A system for maintaining accurate and up-to-date records of investors' monies held must be established by ECF operator. The ECF operator is responsible for making sure that investor funds are securely protected from theft or improper use by its officers. Additionally, the ECF operator must create and maintain one or more trust accounts for the money raised by an issuer using its platform. Additionally, the operator is required to make sure that an independent registered trustee is in charge of the trust accounts and to only release cash to the issuer when specific requirements are satisfied. With the well-organised technology system, cybercrime activities can be detected effectively by the authority in charge.

For example, there should be no material adverse change relating to the offer during the offer period. A material adverse change concerning the issuer, may include the discovery of a false or misleading statement in any disclosures in relation to the offer; and the discovery of a material omission of information required to be disclosed in relation to the offer.

If an ECF operator pays any referrer or introducer or receives money in any form, including payment in the form of shares, in connection with an issuer hosted on its platform, it must make this information publicly available on its platform. It is forbidden to give direct or indirect financial aid to investors to purchase shares of an issuer hosted on an ECF operator's platform, and an ECF operator's stake in any of the issuers hosted on its platform may not exceed 30%.

Next layer of protection is the requirement to be observed by an issuer. According to paragraph 13.19 of

GRM 2020 stated that:

“An issuer may only raise, collectively, a maximum amount of Ringgit Malaysia 10 million through ECF platforms in its lifetime, excluding the issuer’s own capital contribution or any funding obtained through a private placement exercise.”

This requirement is not applied to a microfund hosted on an ECF platform. The limit of fund raising value is a good mechanism where any abnormality activities in this context can be spotted by the authority.

The ECF operator must receive the pertinent information from an issuer who wants to be hosted on an ECF platform, including information outlining the company’s core qualities, the reason for the fund raising, the desired offering amount, and the company’s business plan; and financial information relating to the company for example audited financial statements of the company or certified financial statements or information by the issuer’s management where applicable. Every piece of information that an issuer submits or discloses to an ECF operator must be accurate and true; it cannot contain any information or a statement that is deceptive, inaccurate, or from which there is a significant omission.

In Malaysia there are three types of ECF investors – First, sophisticated investor refers to any person who falls within the categories of investors set out in Part 1, Schedules 6 and 7 of the CMSA 2007. Second is the angel investor refers to an investor that is accredited by the Malaysian Business Angels Network as an angel investor. And third, retail investor refers to persons who are not sophisticated investors (Securities Commission, 2020). There are no investment amount restrictions for sophisticated investors, but there is a cap of RM500,000 each 12-month period for angel investors. Retail investors are only allowed to invest a maximum of RM5,000 per issuer and RM50,000 total each calendar year. According to paragraph 13.26 of GRM 2015, the investment limits as above are applicable to local and foreign investors. The category of registered investors as specified in the GRM 2020, can prevent unregistered or the criminal of cybercrime to manipulate the markets of ECF.

4.3 Penalty and Remedy

The third protection is in relation to the penalty and remedy. According to section 354 of CMSA 2007, the SC has power to take action against the person who has committed a breach of guideline and practice note. Such provision stipulates:

“354. (1) Where a person–

- (a) contravenes the provisions of this Act other than the provisions of Part V and Division 2 of Part VI or any securities laws; or
- (b) fails to comply with, observe, enforce or give effect to–
 - (i) the rules of a stock exchange, approved clearing house or central depository;
 - (ii) any written notice, guidelines issued or condition imposed, by the Commission; or
 - (iii) any rule of a recognized self-regulatory organization, in circumstances where the person is under an obligation to comply with, observe, enforce or give effect to such rules, written notice, guidelines or conditions,

that person has committed a breach.

(2) ...

(3) If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

- (a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding five hundred thousand ringgit;

- (c) reprimand the person in breach; 337
- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;
- (e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;
- (f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e) above, the following actions may be taken by the Commission:
- (i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or
- (ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest."

In this context, based on the above provision, any breach of GRM 2020 under this section enable the SC to take any one or more action of the following, i.e. direct the person in breach to comply or observe the GRM 2020; impose penalty in proportion to the severity or gravity of the breach on the person in breach but not exceeding one million ringgit; to remedy or mitigate including making restitution to any other person aggrieved by such breach; refusal to consider any submission and in the case of promoter or director of the company, impose a moratorium or issue a public statement. Further SC can take any one or more actions against the person who breach the conditions of licence granted by the SC as clearly stated in the following provision:

"356 (2) If a licensed person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that licensed person, the Commission may take any one or more of the following actions:

- (a) direct the person in breach to comply with, observe, enforce or give effect to any requirement or provision of this Act, any securities laws, any guidelines, written notice, any condition of, or restriction on, a licence granted under or pursuant to this Act, as the case may be;
- (b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but which in any event shall not exceed five hundred thousand ringgit;
- (c) reprimand the person in breach;
- (d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach."

Based on the above legal sanction, we can summarize that, the types of actions in section 356(2) are; direct the person in breach to comply or observe the GRM; impose penalty based on severity of the breach not exceeding one million; reprimand; and to remedy or mitigate including making restitution to any other person aggrieved by such breach. The determination of whether restitution is to be made by a person in breach based on the: (i) gains that have accrued to the violating party; (ii) whether any other party has suffered loss or been otherwise harmed as a result of the violation..

The study's amazing findings indicate that violating any GRM 2020 rule relating to ECF may result in a number of actions as specified in sections 354 and 356 of the CMSA 2007. These two parts are located in Part XI of the Administrative and Civil Actions. Despite the fact that the ECF trading uses an internet platform, there are no rules in the GRM 2020 that identify the offences of cybercrimes. Although the CMSA 2007, Part V contains rules addressing market misconduct and illegal conduct, these laws only apply to recognised markets where business entities are publicly traded firms. Future research will be done to determine whether recognised markets, such as the ECF markets, which only let locally formed private firms and limited liability partnerships (excluding exempt private entities) to be hosted on the ECF platform, are covered by Part V.

Additionally, section 15(g) of Malaysia SCA 1993 clarifies that the function of these regulations is to regulate the ECF's activities and protect the interests of the parties involved, especially investors.

“15. Functions of the Securities

(g) to take all reasonable measures to maintain the confidence of investors in the securities and derivatives markets by ensuring adequate protection for such investors;”

Operators of ECF platforms must meet the requirements in the GRM before SC can provide ECF licences (GRM 2020, Item 2.01). Since the implementation of ECF regulations, SC and a certified ECF platform have worked tirelessly to inform the public and business owners about the company's alternative financing options, according to Liz (2015)..

In ensuring the market integrity, the GRM 2020 specify the provisions in relation to trading operations (paragraph 13.32). Similarly with promoting the market transparency, paragraph 13.33, it is the requirement for the ECF operator to:

- “(a) ensure trading information, both pre-trade and post-trade, is made publicly available on a timely or real-time basis, as the case may be;
- (b) make available in a comprehensive manner and on a timely basis, material information or changes to the tradable securities;
- (c) ensure all information relating to the trading arrangements and circumstances arising thereof where relevant, are made publicly available; and
- (d) ensure timely and accurate disclosure of all material information necessary for informed investing and take reasonable steps to ensure that all investors enjoy equal access to such information.”

The ECF market integrity and transparency policy drafted by the SC will ensure that trading operations conducted by the ECF operator following the prescribed guideline and can curb the cybercrime activities in the markets.

Despite the fact that Malaysia has the specific law and guideline to govern the ECF business, but the unethical and illegal conduct still happening in the market. The criminal by using the similar *modus operandi* of ECF, they collect money from the public for specific business project and promises benefits/profits to the investors without register themselves with the right authority. It was reported by Malaysian SC on December 2018, in Kota Kinabalu, a “Musang King” investment plan which has resulted in over 155 people being cheated because of promises attractive returns with low deposits and it involved more than RM3.1 million of losses. The investment scheme promises that a person who choose to invest between RM350 and RM 6,000 will get more than double the amount in returns over 66 days. The scammerpromoted the said investment widely in social media such as Facebook and WhatsApp from August 2018 until September 2018 where it became very active. A victim lodged a report on November 28, stating he has been scammed in the investment from a person in Malacca. The investment plan consists of four simple packages for investors as shown in Table 1.0 below:

Table 1: Plan of Investment

Plan	Investment Volume (RM)	Returns per day (RM)	Total Returns (66 days)
Plan 1	350.00	12.25	808.50
Plan 2	1,250.00	50.00	3,300.00
Plan 3	3,000.00	135.00	8,910.00
Plan 4	6,000.00	300.00	19,800

Based on the report on November 28, investigations were executed to track down the suspects where five local men aged between 25 and 36 were caught between November 30 and December 6, four of whom were arrested in Kota Kinabalu and one in Selangor (Securities Commission, 2019)

In an interesting case of *Groupon Sdn Bhd v Tribunal Tuntutan Pengguna & Anor* (Kuala Lumpur High Court Judicial Review Application No. 25-332-12/2015) relating to a company, Groupon (an e-commerce marketplace). Here, a Groupon user from Malaysia bought a tour package from a travel agency that is one of the site's merchants. However, the aforementioned travel agency cancelled the tour package and did not issue

the consumer a refund. But Groupon gave the buyer a refund. The consumer demanded that Groupon compensate for the purchase he had made to Groupon's merchant, the travel agency, because he was unhappy with the amount. Customer filed a complaint with the Consumer Tribunal after Groupon ignored their requests. The customer was successful in the Consumer Tribunal. According to the Tribunal, Groupon was responsible for the money that the consumer paid to the travel agency, one of its merchants. After that, Groupon submitted a request for judicial review of the Consumer Tribunal's judgement. Groupon noted in its terms and conditions - as acknowledged by the consumer - that it is only an online marketing platform and never an agent of the travel firm in the application, among other things. With regard to the Consumer Tribunal's ruling, the High Court disagreed. But no judgement grounds had been made public. However, it is assumed that an online marketing platform is not always accountable for the conduct of its merchants. Despite the fact that Groupon's case is not an ECF case, the company's business model is very similar to that of an ECF business. As a result, having an agreement between all parties involved in online trading is essential.

5. CONCLUSION

The SC and the Malaysian government view the creation of an ECF statute and set of guidelines as a wise move that is essential. This will safeguard the ECF industry's participants and support the growth of small and medium-sized firms. Nowadays, the e-business and e-services model entices many investors, particularly Gen Y investors, to join in investing their money. However, there are certain gaps in the law's and guidelines' provisions. It is suggested that the GRM 2020 include the definition, components, and prohibited behaviour in ECF, including threats and cybercrimes. Despite the fact that CCA 1997 and CMA 1998 exist and can be used to identify criminals, tailoring it to the ECF business is more pertinent. While dealing in securities has its own unique characteristics, the provisions in both acts are broad in nature. It is also suggested that the CMSA 2007 should cover cybercrimes and threats, and that Part V should apply to ECF markets as well. The current rules in Malaysia should be improved to better protect investors from cybercrimes. Therefore, the regulator should consider legal protection to prevent future disputes in this area.

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