



LEGALINK
INTERNATIONAL BUT PERSONAL

EQUITY CROWDFUNDING & PEER-TO-PEER LENDING

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INTRODUCTION

Crowdfunding has already an established and proven recognition worldwide as a powerful alternative financing tool. Three main points should be signaled in this respect. On the one hand, the volume of the crowdfunding market keeps increasing sharply at global level. On the other hand, the crowdfunding market is very dynamic as new crowdfunding platforms have recently started to operate. Finally, the projects to be financed through crowdfunding platforms are more and more diverse.

In this context, at a time when crowdfunding regulation is subject to discussion around the globe (namely in the context of the Proposal for a EU Crowdfunding Regulation), it seems important to assess the legal responses from various relevant jurisdictions, in respect to Equity Crowdfunding and Peer to Peer Lending. Such is the purpose of this publication.

This book is dedicated to the memory of Georg Van Daal, Former Deputy Head of Legalink FinTech Forum. Georg was a brilliant lawyer and a partner at Ekemans & Meijer from 2014 to 2018. He was key to the structuring and to the development of this project but unfortunately could not live to see its final form. He is dearly missed.

October 2019

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Equity Crowdfunding

For the purposes of the following, 'equity crowdfunding' means raising capital in an offering of shares (or instruments convertible into shares) through an online platform

1. Has your country introduced specific laws or regulations governing equity crowdfunding, or is it regulated under general securities or other laws?

There is a specific regulation governing equity crowdfunding; namely, Law No. 27,349 and Resolution No. 717/17 issued by the Argentine Securities Commission.

2. If your country regulates equity crowdfunding, what are the names of the government agencies responsible for regulating it?

The main government agencies responsible for regulating equity crowdfunding are the Secretariat of Entrepreneurs and of the Small and Medium Companies of the Ministry of Labour and Production, and the Argentine Securities Commission.

3. Are there limits on the amounts that can be raised by crowdfunding companies?

Yes, the amount of all the instruments issued under each project may not exceed the sum of ARS20 million during a 12-month period.

4. Are there restrictions on the types of purchasers to whom shares can be offered?

Yes. In the case of companies, it can be in the form of shares or loans convertible into shares. In the case of trusts, it can be in the form of trust participations.

5. What information needs to be disclosed to potential purchasers, and are offer documents or marketing materials required to be registered or approved by your country's regulators?

If the equity crowdfunding is structured as a public offering, then it falls within the category of the collective financial system and it shall be organised in the form of a collective financial platform (the Crowdfunding Platform).

In connection with the public offering, the Crowdfunding Platform must disclose, among other things, the following:

- the procedures and risk management manual applicable to the Crowdfunding Platform;
- a clear warning to investors and entrepreneurs about the risks involved in crowdfunding projects;
- a guide describing the methods the Crowdfunding Platform utilises to select crowdfunding projects;
- the procedure and means used to carry out the sale of the instruments being publicly offered in the Crowdfunding Platform;
- the procedure and means used for the filing of complaints and/or claims from clients and the methods to solve them;
- the measures adopted to avoid conflicts of interest;

- if appropriate, the identity of the company that provides the payment service to the Crowdfunding Platform; and
- information on the historical performance of the Crowdfunding Platform, with statistics on the number or percentage of non-compliance, as well as the default rate.

Documents regarding the offer or marketing materials do not need to be approved by the regulator.

Likewise and in connection with each investment project, the Crowdfunding Platform shall be obliged to gather the following information, among others:

- the company's bylaws with their respective amendments, tax ID, address, website, list of shareholders and capital structure;
- the name of the members of the administrative body, legal representative and control body, organisational chart, time in office, experience in the business of the last three years, or since its incorporation in case of having a shorter existence.
- a description of the project and its business plan.
- the total number of employees, if any;
- a general explanation of the general investment risks;
- the issuance's amount and the subscription deadline, including a statement that if the requested sum is not reached there will be no issue and the funds collected will be returned;
- the possibility of entrepreneurs to accept offers exceeding the amount to be subscribed and, if so, the maximum amount of oversubscription (which may never exceed 25% of the original amount) and the mechanism of how oversubscription will be allocated;
- a reasonably detailed description of how the funds resulting from the subscription shall be utilised; and
- a description of the type and class of instruments being offered.

6. Is there any requirement for an equity crowdfunding platform and/or its operator, or a crowdfunding company, to be licensed or registered or to comply with any particular rules?

Crowdfunding Platforms need to be registered and authorised by the Secretariat of Entrepreneurs and the Small and Medium Companies of the Ministry of Labour and Production, and the Argentine Securities Commission, for public offerings.

Also, Crowdfunding Platforms must appoint a compliance responsible officer to be registered at the National Securities Commission.

In addition, said Crowdfunding Platforms need to be registered at the Public Registry of Commerce, at the tax authorities and at the Argentine Financial Information Unit (for money laundering purposes).

7. Please provide any additional information you feel is important to understanding the regulation of equity crowdfunding in your country.

Be informed that investors cannot:

- invest or acquire in instruments offered by the Crowdfunding Platform for more than 20% of their

annual gross income (within a year); and

- participate in more than 5% of the shares issued on each Crowdfunding Project or in an amount higher than ARS 20,000, whichever is lower. The aforementioned limit of ARS 20,000 does not apply if the investor is eligible as a qualified investor pursuant to Argentine Securities Commission regulation.

8. Please identify a point of contact at your firm for equity crowdfunding-related enquiries.

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9. Please identify a point of contact at your firm for enquiries related to peer-to-peer lending.

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