



**LEGALINK**  
INTERNATIONAL BUT PERSONAL

# EQUITY CROWDFUNDING & PEER-TO-PEER LENDING

2019 1ST EDITION



## 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 Ekelmans & 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

Paulo Câmara  
Managing Partner of Sérvulo & Associados  
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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?

Equity crowdfunding, also referred to as crowd investing, is relatively newly discovered territory in the Czech Republic. In 2014, there were only four existing platforms operating on the Czech financial market, and five in 2015. Legislators have, therefore, not yet been able to cover the area as a whole and implement relevant legislation. That applies mostly to Czech legislation; the EU has already processed and issued certain laws regulating equity crowdfunding which were partially implemented into Czech legislation.

Equity crowdfunding is, however, regulated through other already effective laws and regulations, i.e. the Capital Market Act, Payment System Act, Banks Act or Czech National Bank Act.

Relevant legislation can be further divided into five main areas:

#### Anti-Money Laundering

- a) Act no. 253/2008 Coll. (AML)

#### Consumer Laws

- a) Act no.89/2012 Coll. (Civil Code)
- b) Act no. 257/2016 Coll. (Consumer Credit Agreement Act)

#### Collecting funds from public

- a) Act no. 256/2004 Coll. (Capital Market Business Act)
- b) Act no.370/2017 Coll. (Payment System Act)
- c) Act no.6/1993 Coll. (Czech National Bank Act)
- d) Act no. 21/1992 Coll. (Banks Act)
- e) Act no. 229/2009 Coll. (Financial Arbitrator Act)
- f) Act no. 480/2004 Coll. (Act on Informational Services)
- g) Act no. 240/2013 Coll. (Investment Companies and Funds Act)
- h) Act no. 64/1986 Coll. (Czech Trade Inspection Authority (CTIA))

#### Personal Data Protection

- a) Act no.101/2002 Coll. (Data Protection Act)

#### EU legislation (please note that this list is not exhaustive)

- a) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market
- b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

- c) Regulation (EU) No575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms
- d) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading
- e) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
- f) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms
- g) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers
- h) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property
- i) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions
- j) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market
- k) Regulation (EU) No345/2013 of the European Parliament and of the Council of 17April 2013 on European venture capital funds
- l) Regulation (EU) No346/2013 of the European Parliament and of the Council of 17April 2013 on European social entrepreneurship funds
- m) Directive 2013/11/EU of the European Parliament and of the Council of 21May 2013 on alternative dispute resolution for consumer disputes
- n) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

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

The only agency supervising the financial market and the only authority responsible for licensing and approval proceedings in the Czech Republic is the Czech National Bank.

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

Generally, there are no limits on the amounts that can be raised; some platforms may set up such limits themselves. Nevertheless, according to some, it is more about the project than the actual money as equity crowdfunding is only a type of crowdfunding.

Some use crowdfunding platforms to 'find their audience' and often ask for less money than they actually need.

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

There are certain restrictions, or rather requirements, mostly depending on the nature of a purchaser. Each investor must register on the platform he/she wants to use in order to invest into various projects

(start-ups mostly) in exchange for convertible certificates or shares. Some platforms require specific numbers of professional investors to participate, i.e. some of them only allow specific numbers of ordinary investors to participate and the rest must be professionals or the other way around. The nature of the investors and the variety is the decisive factor on what type of information must be disclosed to those investors. (Further discussed in par.5).

As an authorised holder of a licence granted by the Czech National Bank (licensing further discussed in par.6) and according to the AML provisions, platforms are obliged to do the initial checks on each investor/purchaser before allowing them to register and then to invest.

Depending on the amount invested, the platform will do the following:

- Transaction exceeding €1,000 - the platform must identify the client BEFORE the actual operation/purchase (i.e. ID check); actual presence is not necessary; everything is being checked online;
- Transaction exceeding €15,000 - the platform must also check client's intentions, the nature of the operation, and source of income or assets.

## **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?**

Naturally, no investor (legal entity nor natural person) would want to invest into a project without knowing anything about the actual business plan. Each platform, therefore, publishes relevant information concerning particular projects. As those are often sensitive, private or might even contain the actual trade secret, all purchasers/investors usually have to register in order to be granted access to such information.

What information will be disclosed to potential purchasers depends on their very nature.

1. Firstly, according to legislation (specifically according to the provisions of the Capital Market Business Act and the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published where securities are offered to the public or admitted to trading), information presented to potential purchasers must be issued in the form of a Prospectus, with 'Prospectus' being a document describing financial security or prosperity to potential buyers. The prospectus must be approved by the Czech National Bank.

There are certain exceptions based on which project owners do not have to publish the prospectus, i.e. where the buyers are all professional investors.

Note: Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published where securities are offered to the public or admitted to trading will be replaced by regulation with direct effect in July 2019.

2. Secondly, no matter what type of purchasers the platform focuses on or what purchaser participates on each one of them (either general public or professional investors), the platform must always ensure that a 'Key information' document for each project is issued before allowing anyone to participate. Such a document shall be drawn up as a short summary (up to three pages long) and should not contain any promotional materials.

## **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?**

Depending on the type of services the platform provides, the crowdfunding company must undergo a licensing and approval procedure conducted by the Czech National Bank. Each platform will then, most likely, hold some kind of licence in order to operate on the Czech financial market depending on what particular services (subscribing shares, investment consulting, and payment services) it offers to the public.

In order to be able to operate on the financial market (specifically on the securities market), platforms have the following options. They may apply for a security broker/dealer licence, an investment intermediary licence or an agent licence. The best option is to apply and be granted a licence as a security dealer/broker, as that is the only licence that allows an entity or an individual to trade securities on the financial market.

No matter what kind of licence a platform holds, it must be at least linked to a security broker/dealer, otherwise it cannot deal with securities. If a platform does not have a relevant licence or a link to an entity that has such a licence, it cannot, under any circumstances, operate on the market.

More about licensing proceedings conducted by the Czech National Bank available here: [https://www.cnb.cz/en/supervision\\_financial\\_market/conduct\\_of\\_supervision/licensing\\_approval\\_proceedings/index.html](https://www.cnb.cz/en/supervision_financial_market/conduct_of_supervision/licensing_approval_proceedings/index.html).

The Czech National Bank maintains Regulated institutions and registered financial market entities lists.

**Note:** Platforms registered in other EU member states cannot trade cross-border unless given an exception.

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

In 2018, there was only one platform providing financial crowdfunding services – a company called Fundlift s.r.o., with its registered office at 838/9 Nové Město, Post Code 11000, Praha 1. This particular company operates through another entity - Roklen360 a.s. - registered security broker and holder of special licence from the Czech National Bank.

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

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## Peer-to-Peer Lending

For the purposes of the following, 'peer-to-peer lending' means lending by individuals to businesses or other individuals where an online platform is used to match lenders with borrowers.

### **1 Has your country introduced specific legislation or regulations governing peer-to-peer lending, or is it regulated under generally applicable laws?**

Decentralised banking or peer-to-peer lending has a very similar regime to equity crowdfunding; comprehensive legislation does not exist yet, and most applicable provisions are sourced from EU legislation or already existing laws. (For list of relevant legislation please see question 1 - Equity Crowdfunding).

What is, however, worth mentioning is the Consumer Credit Agreement Act (CCA). As most customers or clients will be also consumers, such lending will be considered to be a consumer agreement and certain requirements will then apply to the platform.

### **2 If your country regulates peer-to-peer lending, what are the names of the government agencies responsible for regulating it?**

The only agency supervising the financial market and the authority responsible for licensing and approval proceedings in the Czech Republic is again the Czech National Bank.

Another administrative government institution is the Czech Trade Inspection Authority (CTIA), which supervises whether relevant and sufficient information is presented to consumers. Their website is in the English language; anyone can contact them or call their advisory helpline in case of disputes or demands.

### **3 Are there any limits on the amounts that can be lent?**

There are currently no restrictions on the amount that can be lent.

### **4 Are there any restrictions on the types of persons who can lend and/or borrow, or restrictions on the rate of interest that can be charged?**

#### **1. on the types of persons who can lend;**

As P2P platforms or other entities linked to platforms offer credit to those who would not succeed when applying for bank loans, such platforms will then be very unlikely to apply for a bank licence in order to become a bank. They will rather fit in as non-banking entities and will be regulated mostly by the CCA. In accordance with the CCA, such entities must meet certain conditions in order to be granted a licence and to be able to operate on the financial market.

When the conditions set out below are met, a non-banking entity may apply for a licence granted by the Czech National Bank (please note that the application can only be filed online and takes up to four months):

- the only acceptable legal form is either joint stock company or limited liability company,
- a supervisory body has to be established



- a demonstrable level of competence
- minimum registered capital CZK 20,000,000

## **2. or borrow:**

Either platform or investor must perform a creditworthiness check at any time before granting a loan and other initial checks – banking and non-banking registry illustration, insolvency register, search in register of enforcement etc.

The platform also usually formulates some kind of a ratings scheme on both the investor (the credit provider) and the individuals (“scoring”) in order to ensure that both parties are aware of the initial evaluation which they would have to do anyway.

## **3. or restrictions on the rate of interest that can be charged?**

Rates of interest are limited as per the type of borrower.

There are no restrictions when lending to a legal entity/company.

There are, however, restrictions when lending to a private individual. Even though the interest rates seem to be very high sometimes (e.g. platform Zonky.cz offers between 4% and 45% interest rate p.a.), the interest rate cannot exceed the official interest rate issued by the Czech National Bank for each month multiplied by four). Higher interest will be against “good morals” and such a loan may be considered to be usury.

When it comes to interest rates and generally all issues arising from credit agreements or other banking/non-banking transactions, the institution to reach out to before approaching a court is the Financial Arbitrator of the Czech Republic.

## **5 Is there any requirement for the online platform and/or the lenders to be licensed or registered or to comply with any particular rules?**

Yes, the procedure is very similar and sometimes the same as that described in the equity crowdfunding section. The platform either has to be granted a specific licence by the Czech National Bank itself, or has to operate in connection with an entity that is an authorised licence holder. (Please see question 6).

Generally, the second option is more common, as platforms mostly work on the basis of commission or fees and do not want to invest or rather take responsibility in case of dispute.

## **6 Are there any requirements applicable to marketing and promotional documents and activities?**

There are no specific requirements. However, all marketing and promotional documents must comply with valid legislation, and especially with all consumer-related provisions (please see examples in question 7). Advertising cannot be misleading and must not deceive consumers under any circumstances, either by actions or omissions.

## **7 Are there any particular consumer protection provisions that apply?**

According to valid legislation, consumers are heavily protected. It is reflected in the Civil Code, Consumer Credit Agreement Act, Consumer Act, Financial Arbitrator, Data Protection and many more.

The EU operates with the term “weaker party”, and consumers certainly fall within this category. As the EU passes legislation mostly in the form of regulations (direct effect) and directives, Czech national laws are under an obligation to

implement them. The consumer protection provisions within the EU may then be very similar.

**8 Please provide any additional information you feel is important to understanding the regulation of peer-to-peer lending in your country.**

It is important to realise that platforms operating on the financial market are often just agents and provide borrowers and lenders only with additional information, ratings and a P2P environment. It is then complicated to seek help or recognise who to approach in case of dispute.

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

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