



**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 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

Paulo Câmara  
Managing Partner of Sérvulo & Associados  
Leader of the Legalink FinTech Forum

## INDEX

|                                   |     |
|-----------------------------------|-----|
| ARGENTINA.....                    | 04  |
| Nicholson Y Cano Abogados         |     |
| AUSTRALIA.....                    | 09  |
| Piper Alderman                    |     |
| CHILE.....                        | 14  |
| Grasty Quintana Majlis            |     |
| COLOMBIA.....                     | 18  |
| MTA                               |     |
| CZECH REPUBLIC.....               | 26  |
| Felix A Spol.attorneys At Law     |     |
| GERMANY.....                      | 33  |
| Rittershaus                       |     |
| HONG KONG.....                    | 41  |
| Charltons                         |     |
| ITALY.....                        | 48  |
| Cocuzza E Associati Studio Legale |     |
| LATVIA.....                       | 53  |
| Vilgerts                          |     |
| LIECHTENSTEIN.....                | 57  |
| Gasser Partner Rechtsanwälte      |     |
| MALAYSIA.....                     | 61  |
| Azman Davidson & Co.              |     |
| MALTA.....                        | 66  |
| DF Advocates                      |     |
| MEXICO.....                       | 71  |
| Ramos, Ripoll & Schuster          |     |
| NEW ZEALAND.....                  | 80  |
| Lowndes Law                       |     |
| POLAND.....                       | 85  |
| FKA Furtek Komosa Aleksandrowicz  |     |
| PORTUGAL.....                     | 99  |
| Sérvulo & Associados              |     |
| RUSSIA.....                       | 104 |
| Intellect                         |     |
| SOUTH AFRICA.....                 | 112 |
| Fluxmans Inc.                     |     |
| SOUTH KOREA.....                  | 118 |
| Barun Law                         |     |
| SPAIN.....                        | 124 |
| Ventura Garcés & López-Ibor       |     |
| SWEDEN.....                       | 128 |
| Hellström                         |     |
| TURKEY.....                       | 141 |
| Gun+Partners                      |     |
| UK.....                           | 146 |
| Mishcon De Reya                   |     |
| UNITED KINGDOM.....               | 151 |
| Weightmans                        |     |

## 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?

Hong Kong has not introduced a regulatory framework catering specifically for equity crowdfunding. Equity crowdfunding is, however, subject to Hong Kong's general securities laws and regulations including: (i) restrictions on public offers of company shares under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO) and the Securities and Futures Ordinance (Cap. 571) (SFO); and (ii) requirements for intermediaries marketing shares in Hong Kong to be licensed by the Securities and Futures Commission (SFC).

On 1 April 2019, the SFC granted its first licence to AngelHub Limited, an equity crowdfunding site operating in Hong Kong. The SFC has imposed controls on how the crowdfunder's business is operated through the imposition of a number of conditions, including a restriction to offering only to 'professional investors' as statutorily defined and the SFC's right to approve the number of projects the crowdfunding platform can manage at any one time.

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

The SFC.

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

Where company shares are publicly offered in Hong Kong, the company must prepare a prospectus which must be registered with the Hong Kong Registrar of Companies and comply with detailed contents requirements as specified in Schedule 3 to CWUMPO. In order to avoid having to produce a prospectus, an issuing company will typically seek to rely on one of the exemptions from the requirement which exist for:

- i. Offers made only to 'professional investors' as defined in the SFO and subsidiary legislation. Broadly, professional investors include:
  - a. institutional investors (banks, pension funds, licensed securities intermediaries, authorised funds etc.);
  - b. corporate investors (corporations with a portfolio of cash and securities of HK\$ 8 million or total assets of HK\$ 40 million); and
  - c. individual investors with a portfolio of cash and securities of HK\$ 8 million.
- ii. Private placements – offers to not more than 50 persons in Hong Kong;

iii. Small offers – where the total consideration payable for the shares offered in Hong Kong does not exceed HK\$ 5 million; and

iv. Offers where the minimum consideration payable for the offered shares or the minimum principal amount to be subscribed (for debentures) does not exceed HK\$ 500,000.

The amount a company can raise by way of equity crowdfunding is thus capped only if the company seeks to rely on the small offer exemption under paragraph (iii) above. However, that only limits the amount that can be raised from Hong Kong buyers and would not restrict the amount that could be raised offshore. In determining the HK\$ 5 million limit for Hong Kong, the company must include any other share offers made in the previous 12 months which also relied on the small offer exemption from CWUMPO's prospectus regime. Similarly, in determining the 50-offeree limit for the private placement exemption under paragraph (ii) above, the issuer must include offerees in any private placements made in Hong Kong within the previous 12 months. These anti-avoidance measures prevent companies from raising larger amounts, or increasing the number of investors, by staggering share offers.

In the context of equity crowdfunding, where the marketing and offer are typically conducted online, it will, however, be difficult to rely on the private placement exemption. This is because the 50-person limit applies to the number of persons to whom the shares are offered, which in the case of an online offer is potentially unlimited, and not to the number of persons who actually subscribe for the shares.

In the case of a professionals-only offer, there is case law to the effect that, provided the company only issues shares to professionals, then it does not matter that the online advertisement/offer can be viewed by non-professional investors (*Securities and Futures Commission v. Pacific Sun Advisors Ltd and Andrew Pieter Mantel*). The company must, however, obtain documentary proof that Hong Kong investors are 'professional investors' within the statutory definition.

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

As discussed in the answer to question 3 above, a company would only be restricted in terms of the type of investor to whom it offers its shares if it chooses to rely on the 'professional investor' exemption. Even then, the company would be able to offer its shares to up to a maximum of 50 non-professional investors in Hong Kong in addition to unlimited numbers of Hong Kong professional investors.

In the case of AngelHub, in addition to restricting investors in projects offered on its platform to professional investors, the SFC has also imposed a limit on the aggregate amount that can be raised from individual professional investors and from corporate professional investors with respect to whom it has not been able to make certain assessments required under the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC. Those required assessments include an assessment that the person or persons making investment decisions on behalf of the corporate professional investor has or have sufficient investment background and experience and are aware of the risks involved in investing in the product. The applicable limit is not specified in the licence terms and conditions but will be set by the SFC from time to time.

**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?**

A company wishing to offer its shares to the retail market in Hong Kong must prepare a prospectus which complies with the detailed requirements of Schedule 3 to CWUMPO. The prospectus must also be registered with the Hong Kong Registrar of Companies on or before the date of its publication.

Where an offering document is exempt from CWUMPO's prospectus requirements and any marketing documents issued in relation to the offering are exempt from the SFC's requirements under the SFO, the issuer will not be required to comply with the statutory requirements for those documents. A platform operator which is licensed by the SFC is, however, required to act with due skill, care and diligence when posting and monitoring information on its online platform.

**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?**

Where the operator of an equity crowdfunding platform offers or markets company shares in Hong Kong, it will need to be licensed by the SFC for regulated activity Type 1 (dealing in securities). A Type 4 licence for advising on securities can also be applied for as an add-on. There are very limited exemptions available. A licence is not required for dealing in the shares of Hong Kong private companies – i.e. companies whose articles restrict shareholders' rights to transfer their shares and limit the number of shareholders to 50. However, relying on this exemption is problematic in the context of a crowdfunding platform because private companies are prohibited from offering their shares to the Hong Kong public, which is generally considered to mean more than 50 persons in Hong Kong. Thus any crowdfunding activity in respect of a Hong Kong private company must be made on a private placement basis so that shares are offered to no more than 50 potential investors, and only to such number that, if all offers are accepted, will not result in the company having more than 50 shareholders in total. In terms of offering private company shares online, this would require access to the online offer to be restricted to a maximum of 50 persons in Hong Kong.

The operator of a crowdfunding platform will therefore typically need to be licensed as an intermediary under the SFO. All employees involved in the crowdfunding activities must also be licensed as representatives of the licensed entity, and at least two responsible officers must be appointed in respect of each licensed activity conducted. Licensed representatives and responsible officers must meet the SFC's requirements in terms of experience and having passed specified regulatory examinations. Licensed entities and their licensed staff are also required to comply with the SFC Code of Conduct. While this is non-statutory, breach can constitute grounds for the SFC considering the entity or its staff to not be 'fit and proper' for the purposes of licensing, and may result in the SFC revoking or suspending licences and/or making an order for the payment of compensation to any party who has suffered loss.

The recent grant of AngelHub's licence appears to demonstrate that the SFC is willing to treat licensing applications on a case-by-case basis and will impose restrictions it considers appropriate through conditions attached to the licence. A licensed platform operator will need to comply with the SFC Code of Conduct and the SFC's Guidelines on Online Distribution and Advisory Platforms.

The Code of Conduct requires know-your-client procedures to be implemented and performed, and

also obliges licensed employees to ensure that any solicitation or recommendation made with regard to an investment product is reasonably suitable for the particular client. In assessing suitability, they must consider the information about the particular client which they know or should know from conducting due diligence. Licensed entities must also comply with statutory requirements relating to capital maintenance, holding client money, issuing contract notes, and anti-money-laundering and counter-terrorist-financing procedures.

Where an SFC licence is restricted to offerings only to professional investors, the platform operator must ensure that investors meet the qualification requirements for professional investors, including, in the case of individual professional and corporate professional investors, that they meet the applicable assets or portfolio threshold to qualify. Records of the assessment process and the prescribed evidential documents set out in the Securities and Futures (Professional Investor) Rules must be kept for seven years.

Thus a crowdfunding platform which raises funds for start-ups and other companies must be licensed in Hong Kong by the SFC. Another possibility might be for a crowdfunding company itself (i.e. the company seeking to raise capital) to offer the shares online through its own website. This should not require any licence in Hong Kong since it should not be regarded as offering its shares in the course of a business of dealing in securities. If the company is offering its shares to the Hong Kong public, it will, however, need to prepare and register a CWUMPO-compliant prospectus, unless it can rely on an exemption under CWUMPO as described in the response to question 3 above. The options are essentially to offer only to 'professional investors' and obtain proof that each investor qualifies as such, or to offer shares to no more than 50 Hong Kong investors.

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

The Hong Kong regulators adopt a technology-neutral approach to regulation of securities offerings. The offering of company shares via an online platform is thus subject to the same restrictions as an offer made using paper documents. The recent licensing of online equity crowdfund platform AngelHub is encouraging, and this will hopefully lead to the licensing of similar platforms.

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

**CONTACT**

**Julia Charlton** (Principal Partner)  
juliacharlton@charltonslaw.com

**Kim Larkin** (Solicitor)  
kimlarkin@charltonslaw.com

[www.charltons.com](http://www.charltons.com)

## 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?**

Hong Kong has not implemented a regulatory framework to deal specifically with peer-to-peer lending. Peer-to-peer lending is, however, regulated under Hong Kong's general laws and will typically require lenders to obtain a moneylender's licence under Hong Kong's Money Lenders Ordinance (Cap. 163).

There are, however, no true peer-to-peer lending platforms operating in Hong Kong. The reason is that, in addition to the lending platform and/or its operator needing to be licensed, it is likely that individual lenders would also need to obtain a moneylender's licence. Online lending platforms in Hong Kong have therefore adopted other structures whereby the platform operator obtains a licence, but the requirement for individual lenders to be licensed is removed. Ways of achieving this include:

i. The online lender raises funds from its own investors – WeLend adopted this structure and is backed by a group of large corporate investors; and

ii. The online lender partners with a Type 9 licensed asset manager which raises funds from investors to be on-lent through the licensed money lender. Online lending platform MoneySQ has partnered with SFC-licensed fund manager Bridgeway Prime Fund, which is permitted to raise funds from professional investors for lending through MoneySQ's platform. The limitation to professional investors has the additional advantage of taking the offering document outside the prospectus regime of CWUMPO, and also taking any marketing materials outside the scope of the requirement for SFC authorisation and of the need for the fund itself to be approved under the SFO. It is worth noting that the SFC did not allow MoneySQ to describe itself as a 'peer-to-peer lender' because it does not facilitate loans directly between individual borrowers and lenders. It describes itself instead as an online lender since it lends indirectly from a pool of funds.

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

The Hong Kong Commissioner of Police is responsible for the licensing and supervision of online moneylenders in Hong Kong.

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

There is no limit on the amount a licensed moneylender can lend. Loans are, however, illegal if they provide directly or indirectly for the payment of compound interest; prohibit the repayment of the loan by instalments; or if the rate or amount of interest increases following a default in payment of any amount due.

### **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?**

There are no restrictions on the type of entity which can be licensed as a moneylender nor on who they



can lend to.

The Money Lenders Ordinance makes it an offence for any person (whether a moneylender or not) to lend or offer to lend money at an effective rate of interest exceeding 60% per annum; any such loan is unenforceable. In proceedings for the recovery of a loan or the enforcement of security, the courts are also entitled to reopen a loan with an effective rate of interest of over 48% and may make any order they consider fair to the parties.

**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?**

As discussed above, an online platform or its operator (i.e. the entity which is party to the loan agreement) will typically need to be licensed as a moneylender. True peer-to-peer online lending would likely also require individual lenders to be licensed, and this requirement is typically avoided by means of one of the structures outlined in the response to question 1 above. Licensed moneylenders must comply with the provisions of the Money Lenders Ordinance which require, among other things, that the loan agreement must be in writing and include the matters specified in the Ordinance, such as the requirement that the borrower must be permitted to repay early without payment of any penalty.

Online licensed moneylenders must additionally comply with the anti-money-laundering and counter-terrorist-financing obligations set out in the Companies Registry's 'Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders'.

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

Any advertisement or similar document published by a moneylender must include its name and the number of its moneylender's licence. Where the document indicates the rate of interest at which the moneylender will make loans, the proposed rate must be shown as a percentage rate per annum.

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

There are no consumer protection provisions that apply to online moneylending except those provisions under the Money Lenders Ordinance, some of which are discussed above.

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

The scope for conducting true peer-to-peer lending is extremely limited in Hong Kong. In practice, an entity considering moving into this space will need to explore alternative structures as highlighted above.

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

## CONTACT

**Julia Charlton** (Principal Partner)  
juliacharlton@charltonslaw.com

**Kim Larkin** (Solicitor)  
kimlarkin@charltonslaw.com

[www.charltons.com](http://www.charltons.com)