



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 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
Leader of the Legalink FinTech Forum

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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?

The Italian regulation on equity crowdfunding was introduced in 2012 for financing start-ups. Later on, in 2015 and in 2017 the legislation was amended, and finally extended equity crowdfunding for financing small and medium-sized companies (even if not start-ups). The provisions on equity crowdfunding are contained in the law on financial activity, so-called TUF (Legislative Decree 58/1998).

After that, the Italian Finance Act has been amended several times with regards to equity crowdfunding regulation. However, such act (and its subsequent amendments) remains the reference point for equity crowdfunding regulation in Italy.

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

The Italian government agency for listed companies and financial activity (called CONSOB) is the one indicated for supervising and regulating equity crowdfunding operations in Italy.

In 2013, CONSOB issued a resolution containing the regulation on capital raising through online portals (which is equivalent to equity crowdfunding). The regulation was updated in 2016 and in 2018. Among other things, the regulation provides for the duty for providers to be listed in a specific registry, informative disclosure to be done by providers to clients, and some rules regarding the content of the terms of the offer.

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

In Italy, the maximum amount that can be raised with a single crowdfunding operation is €8 million.

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

There are no restrictions regarding the type of purchaser. However, please consider that, if the purchaser is not a professional investor, he/she cannot buy more than the 95% of the total amount set out as the target of the operation.

Furthermore, the provider has to establish that purchasers are aware of the risks of the equity crowdfunding operation by asking questions regarding comprehension of the risks.

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?

The information to be disclosed to the purchasers is contained in the CONSOB regulation on

crowdfunding at annex 3. In general, such information shall comprise:

- the characteristics and risks of the offer,
- the identity of the offeror;
- the modalities of the purchase;
- the modalities for buyers to withdraw from the operation (the provision of such a facility is mandatory).

The documentation containing the information to be provided to buyers does not have to be approved by CONSOB or by any other authority. In fact, every offer submitted to the public has to contain a disclaimer indicating that the information provided by the provider has not been approved by CONSOB.

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?

CONSOB regulation on crowdfunding provides a list of requirements for operators of equity crowdfunding platforms in order to be enlisted in a specific register held by CONSOB, which also handles the procedure for the listing of the operators.

Such requirements pertain both to the financial status of the operators and to their good reputation. Under the first profile, operators need to have in place proper guarantees to secure reimbursement of the users' amounts managed by operators.

With regards to the good reputation, the individuals who own the shares of the operator company or run it shall not have any record with regards to certain criminal offences.

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

When the equity crowdfunding regulation was implemented in Italy in 2013, it was not successful because it was applicable only to a few companies having certain tight requirements. However, since the most recent amendments to such regulation have extended the realm of equity crowdfunding, such operations appear to have increased in number and importance.

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?

Peer-to-peer lending in Italy is not regulated by any ad hoc law provision.

However, peer-to-peer lending falls into the general set of rules provided by the Italian Civil Code on loans between private entities or individuals (article 1813 of the Italian Civil Code), and into the provisions on moneylending contained in the Legislative Decree 385/1993 (so-called TUB, the Italian Bank Act). The application of TUB to peer-to-peer lending was confirmed by the Bank of Italy in its decision 584/2016.

An authorisation for moneylending in general is required under Italian law.

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

Moneylending is an activity monitored by the Bank of Italy.

In its role of national supervisory authority on banking and financing, such authority has the duty to ensure prudent management of intermediaries, the overall stability and efficiency of the financial system, and compliance with the rules and regulations of those subject to supervision.

Under this profile, in 2009 Bank of Italy suspended the activity of a company lending money because the company did not respect the necessary requirements.

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

There is no provision regarding the maximum lendable amount. Therefore, there is no limit for peer-to-peer lending.

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?

Under this profile the Italian Bank Act provides that banking and financial transactions with the public at large should be carried out only by authorised entities (i.e. banks or other financial institutions). Such provisions apply also to online portal providers and to borrowers, who de facto deal with the savings of the public at large.

The Bank of Italy, in its abovementioned decision 584/2016, stated that that peer-to-peer lending activity does not fall into gathering savings of the public at large, when such activity is carried out by specific categories of entities or with specific modalities, i.e. payment institution, electronic money institution or financial intermediary (which are nonetheless subject to a prior authorisation by Bank of Italy, and which are subject to specific rules contained in the Italian Banking Act).

With regards to borrowers, the rules on banking and financial transactions with the public at large do

not apply if the borrowing is preceded by a negotiation between lender and borrower. If this is not the case, the activity of the borrowers has to be considered as activity of gathering savings of the public at large, for which specific requirements and authorisations are necessary.

With regards to the limitation of the rate of interest, the regulation against the use of usury rates applies also to money borrowed through peer-to-peer lending (Italian act n. 108/1996). Such limit is calculated and issued quarterly by the Bank of Italy.

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 above written, an authorisation by the Bank of Italy is needed regardless of the money being lent by a peer-to-peer institution or any other subject providing for peer-to-peer lending

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

Limitations and prescriptions are set forth for moneylending in general.

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

Since peer-to-peer lending agreements are executed through online portals, they have to be considered as distance contracts.

Pursuant to Italian Consumer Code (Italian Legislative Decree n. 206/2005), distance contracts executed with consumers should fall into the regulation of the Consumer Code, which is favourable to consumers.

In fact, such regulation provides, for distance contracts regarding the purchasing of financial services, (i) the right of the consumers to receive a list of information provided by the law, and (ii) the right to withdrawal from the agreement within 14 days from the execution of it.

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

The foregoing recaps the main characteristics of peer-to-peer lending in Italy so far.

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

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