



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
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?

No. A draft crowdfunding law was introduced in September 2017 and now is in a review process.

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

After crowdfunding law comes into force, the Financial and Capital Market Commission will be the responsible agency supervising compliance with the law.

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

The limit set in the draft law is €100,000 for 12 months if an investor invests funds in debt or equity securities issued by the beneficiary as a legal entity for the implementation of the project it has applied for.

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

There are no special restrictions in the draft law. Crowdfunding service providers shall, before or during the conclusion of the agreement, assess if the crowdfunding services offered are appropriate for the prospective investors.

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 draft law provides that, prior to the conclusion of a specific crowdfunding service contract with an investor, the crowdfunding service provider shall provide an investor with at least the following information:

1. information about the beneficiary:

- (a) in case the beneficiary is a business - name, registration number, registered office, type of economic activity and previous business experience; in case the beneficiary is a natural person - nationality, sex, age, level of education and occupation, and previous business experience;
- (b) the risk rating according to publicly agreed criteria of the crowdfunding service provider;
- (c) the project applied for, its nature and profitability information, the deadline for implementation, the purpose of the loan to be issued and the planned use of the financing;
- (d) financial indicators and information on the reported solvency assessment results of the project;
- (e) the total amount of financing and the schedule and terms of its repayment;
- (f) all costs associated with the planned crowdfunding service;
- (g) the amount of co-financing by the project applicant;

- 2) identified risks associated with the particular crowdfunding service;
- 3) security of the liabilities and the procedure for its realisation, if the obligations are not fulfilled, the beneficiary (secured creditor) and value (assessment of the certified appraiser, if any);
- 4) debt collection procedure, performer and costs related to debt collection;
- 5) the procedure for handling complaints (disputes);
- 6) information on the possible relationship between the crowdfunding service provider and the beneficiary and the restrictive measures taken to address specific conflicts of interest.

The draft law does not provide that offer documents or marketing materials should be registered or approved by the Financial and Capital Market Commission.

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?

According to the draft law, crowdfunding platforms shall not be registered or comply with any specific requirements. Crowdfunding service providers are subject to registration.

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

Only the draft law is introduced at this point, therefore the final regulation is not clear yet.

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?

Companies that provide peer-to-peer lending services are operating under generally applicable laws. The draft crowdfunding law referred to in the crowdfunding section of this questionnaire will apply to peer-to-peer lending as well.

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

After the crowdfunding law comes into force, the Financial and Capital Market Commission will be the responsible agency supervising compliance with the law. If peer-to-peer lending falls under the regulations of consumer credits, the responsible agency is the Consumer Rights Protection Centre.

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

In Latvia there are no specific regulations that limit the amount that can be lent through peer-to-peer lending. Limits apply in the case of consumer loans (see answer to question 8).

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?

In case of peer-to-peer lending there are no specific restrictions. Restrictions apply in the case of consumer loans (see answer to question 8).

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?

No. This might change, however, with the introduction of crowdfunding law. Consumer loan providers must obtain a licence issued by the Consumer Rights Protection Centre (see answer to question 8).

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

There is no specific regulation to promote peer-to-peer lending sites. Restrictions apply in the case of consumer loans (see answer to question 8).

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

Only for consumer loans (see answer to question 8). If the lending service does not fall under the regulations applied to consumer loans, then there are no consumer protection provisions that peer-to-peer lending providers should be compliant with.

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

Only the draft law is introduced at this point, therefore the final regulation is not clear yet.

In some circumstances peer-to-peer lending can fall under regulation regarding consumer loans, for example, where the loans are issued regularly. Therefore, prior consultation with the Consumer Rights Protection Centre is recommended.

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

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