



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, Liechtenstein has not implemented a law specifically addressing crowdfunding. Thus, equity-based crowdfunding and its permissibility will have to be assessed under general laws, e.g. the Liechtenstein Persons and Companies Act (PGR) and from a regulatory perspective in particular under the Liechtenstein Prospectus Act (WPPG), the law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMA) and the Liechtenstein Banking Act (BA). Furthermore, general regulatory aspects must be taken into account.

It is expected that the regulator will enact specific rules with regard to blockchain-based crowdfunding in Liechtenstein in 2019.

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

Liechtenstein law does not specifically regulate equity crowdfunding. The Liechtenstein Financial Market Authority (FMA), being the relevant regulatory body for financial market regulation and supervision, is the competent authority with respect to potential licensable activities.

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

Due to the fact that crowdfunding will be assessed under general law, there is no limit on the amount that can be raised by way of crowdfunding. If applicable, the respective thresholds set out by the WPPG have to be taken into account with regard to the obligation to draw up a securities prospectus.

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

In the absence of specific regulation, there are no specific provisions addressing equity-based crowdfunding and the types of eligible purchasers. Depending on the specific business model and setup, specific regulation may be applicable and may provide for such restrictions (e.g. AIFMA). Further, Liechtenstein has implemented MiFID II and the respective provisions on investor protection, e.g. suitability, are applicable to entities conducting MiFID II regulated activities.

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?

Whenever the WPPG is applicable to the security issue, the entity planning to raise funds through crowdfunding will have to comply with the respective provisions and draw up a full prospectus, which subsequently will have to be approved by the FMA. If the WPPG should not be applicable, e.g. because

securities in the amount of less than €5 million are offered during a period of 12 months, no specific rules on information disclosure apply directly to the issuing entity itself. However, if the respective securities, being financial instruments, are marketed through regulated entities, these will have to fulfil their investor information obligations, and thus the entity seeking to raise money via crowdfunding will have to provide the necessary information. Further specific rules may be enacted with regard to blockchain-based crowdfunding in Liechtenstein.

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?

As outlined above, there is no law specifically addressing crowdfunding as a fundraising model. Each and every service provided by a crowdfunding platform must be assessed from a regulatory perspective on a service-by-service basis. Experience shows that crowdfunding platforms often provide regulated services of some kind and are thus subject to licensing requirements and financial regulation. Further, the applicability of general securities laws as well as prospectus requirements must be considered.

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

Briefly summarised, no specific law addressing equity crowdfunding exists in Liechtenstein. Companies planning on raising funds through crowdfunding should seek local legal advice and, if necessary, discuss their business model with the Liechtenstein FMA before providing services. Experience shows that engaging with local counsel and the regulator is crucial for a successful business model.

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

With regard to equity crowdfunding enquiries, our banking and financial markets law team led by Dr Hannes Arnold, M.B.L.-HSG, hannes.arnold@gasserpartner.com, being one of the most experienced and responsive corporate and finance teams in Liechtenstein, is your point of contact.

CONTACT

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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?

No, Liechtenstein has not enacted any law specifically addressing and regulating peer-to-peer lending. Thus, every business model must be analysed individually from a general regulatory perspective and services provided should be assessed on a case-by-case basis. It should in particular be assessed whether or not the services are to be considered services regulated under the Liechtenstein Banking Act (BA) or the law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMA) and thus trigger licence requirements.

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

Liechtenstein law does not specifically regulate peer-to-peer lending. The Liechtenstein Financial Market Authority (FMA), being the relevant regulatory body for financial market regulation and supervision, is the competent authority with respect to potential licensable activities.

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

No, as there is no law specifically regulating peer-to-peer lending, no amount limit has been imposed.

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 specific restrictions in this regard. However, the possibilities to freely agree on a rate of interest are of course subject to the confines set out by case law with regard to the violation of moral principles.

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 there is no regulation specifically addressing peer-to-peer lending, this question cannot be answered with general validity. In principle, granting a loan does not automatically trigger licensing requirements. However, depending on the services provided and their extent, it is possible that the involved parties provide regulated services and are thus required to obtain a licence.

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

Whenever regulated services are concerned, these may only be marketed and promoted if the respective licence has been obtained.

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

As there is no law directly aiming to regulate peer-to-peer lending, no specific consumer protection provisions apply. However, depending on the circumstances, laws such as the Consumer Credit Act may be applicable.

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

We note that peer-to-peer lending is not per se regulated in Liechtenstein. However, this does not entail that the involved parties do not provide services regulated under general regulatory law and are thus required to obtain a licence. Against this background, we recommend engaging local counsel with in-depth knowledge of financial markets and banking law in order to assess the envisaged business model from a regulatory perspective and prevent a violation of statutory provisions or licensing requirements.

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

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