



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?

Equity crowdfunding is regulated by the Malta Financial Services Authority (MFSA) under the Investment Services Act (Chapter 370 of the Laws of Malta) as investment business crowdfunding through the 'Requirements regarding applications for a licence to carry out Investment-based Crowdfunding under the Investment Services Act' (the Requirements).

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

Malta's single regulator for financial services, the MFSA, is responsible for regulating the crowdfunding platform.

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

Crowdfunding companies are to apply with respect to issuers and investors, as the case may be, a limit on the maximum allowable investable amount per individual investor, as well as a limit on maximum project size in terms of total value of securities issued.

Specifically, an investor cannot invest more than €5,000 over a period of 12 months in any issuer listed on an investment-based crowdfunding platform or more than 20% of their net annual income through an investment-based crowdfunding platform over a period of 12 months. Such restrictions would not apply to professional clients in terms of MiFID.

Offers of securities made on an investment-based crowdfunding platform cannot exceed a value of €1 million over a period of 12 months, whilst an issuer shall only be allowed to list a project on one crowdfunding platform.

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

The Requirements also seek to adopt a proportional approach by distinguishing between investment opportunities offered to retail and professional investors respectively, as outlined above.

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?

Potential purchasers must be made aware that the proposed crowdfunding platform will be subject to minimum disclosure requirements tailored to investments of this nature. In cases where the offer triggers the applicability of the Regulation (EU) 2017/1129 (the Prospectus Regulation), the general requirements in this regard would be applicable. Information provided should be directly available on the platform's website.

As such, the purchaser is to have access to a platform with information containing full details on the identity of the issuer, including full contact details, as well as all the relevant information on the business activity of the issuer, the project in relation to which the investment offer is being made as well as the potential risks and rewards associated with it.

The information document should contain information to help the purchaser understand the specific type of instrument that is being offered and make investment decisions on an informed basis. The information disclosed must be meaningful, comprehensive and sufficient enough to enable an informed investment decision. The information document must in addition disclose that the document has neither been verified nor approved by the MFSA.

Potential purchasers are to be informed whether and to what extent the service providers' activities are covered by the Investor Compensation Scheme and/or by the Depositor Compensation Scheme. Furthermore, the provider is to disclose to potential purchasers the name of the entity which will be entrusted with the safekeeping of their invested funds and the manner and timing in which these funds will be transferred.

The service provider is expected to display, at all times and in a prominent place on the homepage of its website, general risk warnings in relation to the nature of the investment and the risks involved, including the fact that the platform does not undertake any responsibility regarding the feasibility of the project as presented, as well as a section on the services offered by the licence holder in relation to the instrument on offer, including the nature and risks of the investment service to be provided and the total amount to be charged to the investor.

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?

In order to provide investment-based crowdfunding services, a platform shall apply for a licence under the Investment Services Act. The latter should take into consideration the conditions of the Requirements. The nature of the licence required will depend on the range of activities provided by the prospective licence holder, either on a stand-alone basis or as a part of a group of providers.

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

N/A

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?

The Maltese legislature has not introduced any specific legislation or regulations governing peer-to-peer lending, as it is regulated under generally applicable laws. These include but are not limited to the Civil Code (Chapter 16 of the Laws of Malta), the Banking Act (Chapter 371 of the Laws of Malta), and the Financial Institutions Act (Chapter 376 of the Laws of Malta).

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

All financial services in Malta are regulated by the MFSA.

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

There are no limits on the amounts that can be lent under generally applicable laws.

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?

Lenders may grant loans to Maltese borrowers provided that such lenders are regulated banking or financial institutions (or equivalent qualifying lenders). Foreign lenders within the European Economic Area (EEA) may grant loans to Maltese borrowers provided that they are regulated and have passported their services to Malta or, in the case of unregulated foreign lenders, provided that the lending is not undertaken on a regular basis.

However, where the foreign lender is not regulated as a bank or financial institution within an EEA jurisdiction, but can provide a loan in terms of the laws of its home state, regular or habitual lending by that lender to Malta-based borrowers triggers regulatory restrictions requiring the foreign lender to be duly licensed in Malta by the MFSA. There are no restrictions on the types of persons who can lend and/or borrow, however, such applies insofar as the lending is not regular or habitual.

There are restrictions on the rate of interest that can be charged, with a maximum of 8% per annum. However, the Interest Rate (Exemption) Regulations (L.N. 142 of 2009), as amended by L.N. 107 of 2013 and act LII of 2016, provide specific exceptions to that general rule, placing banking institutions and other specific financing vehicles and defined transactions outside the scope of the restriction, and thus allowing interest rates of more than 8% per annum.

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?

If the lender is a regular or habitual lender, then regulatory restrictions take force, requiring the lender to be duly licensed in Malta by the Malta Financial Services Authority. As stated above, lenders may grant loans to Maltese borrowers provided that such lenders are regulated banking or financial institutions (or equivalent qualifying lenders). Foreign lenders within the European Economic Area

(EEA) may grant loans to Maltese borrowers provided that they are regulated and have passported their services to Malta.

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

The MFSA's Banking Notice on Advertising for Deposits by Credit Institutions Authorised Under the Banking Act 1994 deems advertising for deposits and similar services to be crucial to the industry. However, it is fundamental to point out that advertising by licensed institutions ensures that the customer is informed of all the financial and legal implications related to the deposits, whilst also ensuring that the legal responsibilities of the providers, and their liabilities, are clearly expressed.

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

The Depositor Compensation Scheme is a rescue fund for depositors of failed banks which are licensed by the MFSA. Compensation is paid if a bank is unable to meet its obligations towards depositors or if the bank has suspended payment. The Scheme limits compensation to €100,000 per depositor per credit institution. The Scheme is based on the EU Directive 2014/49/EU on deposit guarantee schemes.

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

N/A

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

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