



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?

New Zealand's Financial Markets Conduct Act 2013 (FMC Act) and regulations implemented thereunder specifically address equity crowdfunding.

As described in greater detail below, the FMC Act limits the total amount companies can raise through equity crowdfunding and requires equity crowdfunding to be conducted via a licensed crowdfunding service provider.

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

Equity crowdfunding is regulated primarily through the Financial Markets Authority (FMA), and crowdfunding service providers must be registered on the Financial Service Providers Register. As at April 2019, there are 8 approved crowdfunding platforms registered on the Financial Service Providers Register.

The Commerce Commission and Advertising Standards Authority may also investigate complaints about companies that raise money via crowdfunding.

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

Companies are limited to raising NZD 2 million in any 12-month period from equity crowdfunding.

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

New Zealand does not restrict the types of purchasers who can buy equity crowdfunding shares and there is no limit to the size of investments individuals can make.

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?

If companies are within the maximum fundraising limit and conduct the crowdfunding through a licensed crowdfunding service provider, they do not have to issue a Product Disclosure Statement (known under New Zealand's previous securities law regime as a Prospectus) or provide other information on the Disclose Register, as is usually required if a company wishes to offer shares in New Zealand.

The licensed crowdfunding service provider must ensure adequate disclosure arrangements so that investors have enough information to decide whether to acquire the shares. The FMA has issued

guidance on the minimum disclosures they expect crowdfunding service providers to make available to investors.

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?

Crowdfunding Service Providers

Crowdfunding service providers must be licensed by the FMA, registered on the Financial Service Providers Register and a member of a recognised dispute resolution scheme.

After obtaining a licence, crowdfunding service providers must comply with a number of ongoing obligations, including:

- notifying the FMA of certain events;
- complying with the fair dealing requirements set out in the FMC Act;
- filing an annual regulatory return; and
- maintaining an appropriate level of professional indemnity insurance cover.

Crowdfunding Companies

Companies that raise money through crowdfunding do not require a specific licence or registration themselves. However they must comply with the fair dealing requirements set out in the FMC Act. In particular, they must avoid misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations.

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

The New Zealand Takeovers Code is triggered when a New Zealand-registered company (a) has listed shares trading on an NZX market; or (b) has 50 or more voting shareholders and 50 or more parcels of shares (Code Company). The Takeovers Code subjects Code Companies to a number of onerous compliance obligations. Because of this, many offers on licensed crowdfunding platforms use non-voting shares which do not trigger the Takeovers Code requirements.

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

CONTACT

Mark Lowndes (Partner)
mark.lowndes@lowndeslaw.com

www.lowndeslaw.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?

New Zealand's Financial Markets Conduct Act 2013 (FMC Act) and regulations implemented thereunder specifically address peer-to-peer lending.

As described in greater detail below, the FMC Act limits the total amount borrowers can borrow through peer-to-peer lending and requires peer-to-peer lending to be conducted via a licensed service provider.

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

Peer-to-peer lending is regulated primarily through the Financial Markets Authority (FMA), and a peer-to-peer lending provider must be registered on the Financial Service Providers Register. The Commerce Commission and Advertising Standards Authority may also investigate complaints about peer-to-peer lending.

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

Borrowers can borrow a maximum of NZD 2 million in any 12-month period, although some services may only allow smaller loans.

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 is no legislation specific to peer-to-peer lending that limits who can lend/borrow or what interest rates can be charged (but see our comments at point 7 below regarding oppressive credit contracts). The loan must be for personal, charitable or small business purposes.

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?

Peer-to-peer lending providers must be licensed by the FMA, registered on the Financial Service Providers Register, and a member of a recognised dispute resolution scheme.

After obtaining a licence, peer-to-peer lending providers must comply with a number of ongoing obligations, including:

- notifying the FMA of certain events;
- complying with the fair dealing requirements set out in the FMC Act;
- filing an annual regulatory return;

- maintaining an appropriate level of professional indemnity insurance cover;
- having a written client agreement with lenders; and
- giving disclosure statements to retail lenders.

Neither lenders nor borrowers are required to be licensed or registered. However, they must comply with fair dealing requirements set out in the FMC Act as discussed below.

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

Peer-to-peer lenders are exempt from the requirement under the FMC Act to issue a Product Disclosure Statement (known under New Zealand's previous securities law regime as a Prospectus) and the requirements to provide other information on the Disclose Register. However, peer-to-peer lenders must still comply with fair dealing requirements set out in the FMC Act. In particular, they must avoid misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations.

The FMA has issued a detailed guidance note about fair dealing in advertising communications relating to peer-to-peer lending.

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

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) provides protections in connection with 'consumer credit contracts' – contracts where credit is to be used wholly or predominantly for personal, domestic, or household purposes. Some provisions of the CCCFA do not apply to peer-to-peer lending. For example, the obligation under the CCCFA to disclose certain loan information to lenders is relaxed in the context of peer-to-peer lending. However, other consumer protection provisions under the CCCFA continue to apply. For example, the CCCFA allows the courts to reopen a credit contract if it considers it to be 'oppressive'.

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

N/A

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

CONTACT

Mark Lowndes (Partner)
mark.lowndes@lowndeslaw.com

www.lowndeslaw.com