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), is 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

[updated for Poland in June 2019]

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?

There are no specific regulations regarding equity crowdfunding in Poland. Crowdfunding can be construed under general provisions, including freedom to contract. The most significant regulations that may apply to crowdfunding are the provisions of the Polish Civil Code, the Act on Providing Electronic Services and the Act on the Public Offer and the Conditions for Introducing Financial Instruments to the Organised Trading System and Public Companies. Other acts such as the Act on the Protection of Personal Data, the Act on Copyright and Related Rights, the Act on Counteracting Unfair Market Practices and the Act on Competition and Consumer Protection also set out the legal framework for this kind of activity.

Depending on the adopted model of crowdfunding, other legal provisions will apply. The most common crowdfunding models in Poland include donation-based crowdfunding, rewards- based crowdfunding, pre-sales crowdfunding, crowd investing (equity) and crowdlending (referred to as P2P lending) - please see the answer to question 7.

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

Since there are no specific regulations regarding equity crowdfunding in Poland, no specific government agency was designated especially to supervise such actions. In most cases, the Financial Supervision Authority (KNF) will be responsible for supervising the activities connected with equity crowdfunding and fintech.

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

There are no limits regarding amounts that can be raised. However, there are financial thresholds that, when reached, oblige an issuer to file a prospectus with the Financial Supervision Authority.

There is an exemption from obligation to make the prospectus available to the public if: 1) it is addressed exclusively to investors each of whom acquires the securities with a value, as calculated according to their issue price or sale price, of not less than €100,000 as of the date of fixing the price but not more than €1 million; 2) it concerns securities with a nominal unit value of not less than €100,000 as of the date of fixing it.

A public offer means making available to at least 150 persons within the territory of one member state or to an unspecified offeree, in any form and manner, the information about securities and conditions

for the acquisition thereof (such information must give grounds for making a decision to acquire the securities).

Currently, work on a bill amending the Act on Public Offer is in progress. The purpose of the new regulations is to implement EU regulations and to ensure that the Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC will be correctly applied. The new regulations will come into force in July 2019. The new bill will change the current definition of the public offer and provisions on the information memorandum and a prospectus.

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

Every person or entity may purchase shares in Polish companies. There are no limitations regarding persons and entities to whom the shares may be offered (subject to certain limitations in case a company own a real estate and a buyer comes from outside the EU or a real estate is agricultural land).

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?

Current provisions
In the case of a joint-stock company that offers its shares or other securities through a public offer, it is obliged to prepare a prospectus and make it available to the public. The prospectus includes information regarding the issuer of the shares, the kind of securities which are offered, the economic and financial situation of the issuer, the development perspectives of the issuer, the entity securing receivables from issued shares, and the rights and obligations connected with offered shares.

The prospectus has to be approved by the Financial Supervision Authority. The prospectus does not have to be available to the public if, among other things:

1) predicted revenues based on the issue price or sales price of the shares or other securities to be achieved by the entity within the European Union are lower than €1 million; if the issue price or sales price is lower than €1 million but amounts to at least €100, 000, the issuer has to publish a document containing basic information about the issuer and conditions and rules regarding the offer; specifying the securities which are offered, the aims of the issuance achievement of which is going to be financed by issuance of securities, and important risk factors; and with a statement made by the issuer confirming his responsibility for information included in the document.
2) predicted revenues based on the issue price or sales price of the shares or other securities to be achieved by the entity within the European Union amount not less than €1 million but less than €2.5 million; in that case the issuer has to prepare an information memorandum and make it available to the public; shares in the company which is an issuer provided that offered shares constitute less than 10% of shares of the same kind in that company admitted to trading on a given regulated market and together with shares admitted to trading on that regulated market in that manner within last 12 months will neither reach nor exceed that value.

It is prohibited to make information available, in any form and in any manner, with the aim of promoting,

directly or indirectly, acquisition or taking up of securities, or encouraging, directly or indirectly, acquisition or taking up of same, unless the information is made available to fewer than 150 persons in the territory of one member state or is not made available to an unspecified offeree.

In case of infringement of the prohibition by the issuer, seller or other subjects acting on behalf or order of the issuer or seller, or in the case of a substantiated suspicion that such infringement may occur, the Financial Supervision Authority may:

1) prohibit making specified information available or continuing to make it available; or
2) publish, at the expense of the issuer or seller, information about the unlawful action having been performed in connection with making specified information available.

An issuer or seller may, however, perform a marketing campaign also through other persons and entities. He is allowed to make the following announcements: relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and aiming to specifically promote the potential subscription or acquisition of securities.

However, information disclosed in an oral or written form about the offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, may not contradict the information contained in the prospectus; refer to information which contradicts that contained in the prospectus materially; give an unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects; or contain alternative performance measures concerning the issuer, unless they are contained in the prospectus.

In the case of a marketing campaign being performed, all marketing materials have to include an unequivocal indication that they are exclusively promotional or advertising materials; that an issue prospectus or information memorandum has been or will be published, unless it is not required that such documents be made available to the public; and of the places where the issue prospectus or information memorandum are or will be available, unless it is not required that such documents be made available to the public.

The information being provided within a marketing campaign has to be in compliance with the information placed in the information memorandum made available to the public or with the information which should be placed in the information memorandum under the provisions of law, where the information memorandum has not been made available to the public. Such information may not mislead the investors about the situation of the issuer and the evaluation of securities.

Advertisements related to an offer to the public of securities or of an admission to trading on a regulated market may be disseminated to the public by interested parties, such as the issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities, notably by one of the following means of communication: addressed or unaddressed printed matter; electronic message or advertisement received via a mobile telephone or pager; standard letter; press advertising with or without order form; catalogue; telephone with or without human

intervention; seminars and presentations; radio; videophone; videotext; email; facsimile machine (fax); television; notice; bill; poster; brochure; web posting, including internet banners.

Where no prospectus is required, any advertisement shall include a warning to that effect unless the issuer, the offeror or the person asking for admission to trading on a regulated market chooses to publish a prospectus.

The issuer or seller may not commence a marketing campaign prior to submission of prospectus and other required documents to the Financial Supervision Authority. If there is no requirement to make the issue prospectus available, the issuer or seller may perform the marketing campaign on condition of submitting to the Financial Supervision Authority, not later than ten business days before its planned commencement, a notification of the intention to perform the marketing campaign, including information about the schedule of the marketing campaign, the entities involved in performing it and marketing materials which include the content to be disseminated.

Following the receipt of the notification, the Financial Supervision Authority may, not later than three business days before the planned commencement of the marketing campaign, demand that amendments or supplements be made in the submitted documents or that explanations be provided within a time limit specified in the demand, not shorter than two business days since the day of its delivery to the entity obliged to submit the notification. If the Financial Supervision Authority makes the demand mentioned above, the time of commencement of the promotional campaign will be postponed by another ten business days following the day of providing the Financial Supervision Authority with the required amendments, supplements and explanations to the submitted documents.

In case of infringement of duties regarding the performance of a marketing campaign, the Financial Supervision Authority may:

1) order that the commencement of the marketing campaign should be withheld or interrupted for a period not exceeding ten business days, for the purpose of removing the indicated irregularities; or

2) prohibit performance of the marketing campaign, especially if the issuer or seller evades the removal of irregularities indicated by the Financial Supervision Authority within the time limit mentioned above or if the content of promotional or advertising materials infringes the provisions of law; or

3) publish, at the expense of the issuer or seller, information about the unlawful performance of the promotional campaign, by indicating infringements of the law.

New provisions (Regulation 2017/1129 and amendment to Public Offer Act and other regulations)

New Regulation 2017/1129 will come into force in July 2019.

The Regulation 2017/1129 will not apply to an offer of securities to the public with a total consideration in the European Union of less than €1 million over a period of 12 months. Thus there is no obligation to prepare a prospectus and make it available to the public in case of such an offer.
The Regulation 2017/1129 introduces the changes in legal provisions referred to below. Advertisement may be disseminated to less than 150 persons on the territory of a single member state and must not be made available to unspecified recipients. According to new provisions set out in the Regulation

2017/1129, a prospectus has to contain the necessary information which is material to an investor for making an informed assessment of: the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; the rights attaching to the securities; and the reasons for the issuance and its impact on the issuer. That information may vary depending on any of the following: the nature of the issuer; the type of securities; the circumstances of the issuer; where relevant, whether or not the non-equity securities have a denomination per unit of at least €100,000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities.

Once approved by the Financial Supervision Authority, the prospectus has to be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.
There is a Government bill amending the Public Offer Act, not finalised yet but probability of enacting the amendment is very high. The date of entering into force has not been known at the moment of preparing of this publication. According to the bill, in cases where a prospectus is not required, an information memorandum has to be published after being approved by the Financial Supervision Authority. The memorandum has to be prepared in the form of a uniform document and may not be valid for longer than 12 months. The memorandum has to be approved by the Financial Supervision Authority.

In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least six working days before the end of the offer.

The obligation to publish a prospectus does not apply, inter alia, to any of the following types of offers of securities to the public: an offer of securities addressed solely to qualified investors; an offer of securities addressed to fewer than 150 natural or legal persons per member state, other than qualified investors; an offer of securities whose denomination per unit amounts to at least €100,000; an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer; shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital; or non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the European Union for the securities offered is less than €75 million per credit institution calculated over a period of 12 months, provided that those securities are not subordinated, convertible or exchangeable, and do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.

Advertisements have to state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it. Advertisements have to be clearly recognisable as such. The information contained in an advertisement must not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published. All information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on

a regulated market, even where not for advertising purposes, has to be consistent with the information contained in the prospectus.

Where a prospectus is not required, the information has to be consistent with that included in the information document. In the event that material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in oral or written form, such information has to, as applicable, either be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required to be published; or be included in the prospectus or in a supplement to the prospectus in the event that a prospectus is required to be published.

The Financial Supervision Authority where the advertisements are disseminated has the power to exercise control over the compliance of advertising activity relating to an offer of securities to the public or an admission to trading on a regulated market with the rules set out above. The issuer or seller may not commence a marketing campaign prior to submission of prospectus and other required documents to the Financial Supervision Authority.

Providing investors with information and advertisements as a service requiring permit of the Financial Supervision Authority

On 29 March 2019, the Financial Supervision Authority issued a statement regarding providing services of offering financial instruments. According to that statement, presenting advertisements including information regarding shares or other securities may constitute offering of financial instruments if at least one of the following actions is performed:

1) presenting, in any form and manner, the information on financial instruments and the conditions of their acquisition made available by the issuer, writer or seller, said information forming sufficient grounds for making a decision to acquire such instruments; or

2) intermediation in transferring financial instruments acquired by subjects as a result of provision of the information referred to in subparagraph 1; or

3) provision to individually specified addressees, in any form and manner, the information made available by the issuer, writer or seller in order to:

a) promote, directly or indirectly, the acquisition of financial instruments; or

b) encourage, directly or indirectly, the acquisition of financial instruments.

Offering of financial instruments by a third party is an activity which requires a permit from the Financial Supervision Authority.

Enabling the issuer to offer his own financial instruments to the investors through an internet platform used only as a place where information is published does not constitute offering of financial instruments and does not require a permit from the Financial Supervision Authority.

The owner of the internet platform may not perform any other actions apart from giving access to the platform. Otherwise, a permit from the Financial Supervision Authority will be required.

No permit is needed if the issuer offers his own financial instruments to the 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?

The information presented in this document has a general nature. In practice there are many models of P2P platforms. Legal qualification of services provided on a given platform will be determined by the solutions applied in it. Each case should be analysed separately.

First of all, the crowdfunding platform and the operator's activity should be analysed in the context of the provisions of the Act on Payment Services and the Act on Electronic Services. Due to the fact that services provided in crowdfunding platforms are conducted using the internet, they should be qualified as electronic services within the meaning of the Act on Electronic Services. Therefore, operators of such platforms should have internal regulation of service and should comply with the rules regarding the processing of personal data.

Activities of operators of crowdfunding platform can be defined as intermediation in the transfer of funds between financing party and beneficiaries. The transfer of funds will appear in almost all crowdfunding models. Intermediation in the transfer of funds via the crowdfunding platforms is a payment service, so it is a regulated service within the meaning of article 3 of the Act on Payment Services. Although a payment intermediation will be a payment transaction, it can be assumed that a lot of crowdfunding platform operators will not have to obtain a licence to provide payment services, due to the fact that they may meet the requirements of the exception specified in article 6.2 of the Act on Payment Services. However, in each case, this issue should be analysed. According to article 6.2 of the Act on Payment Services, the requirements included in the Act on Payment Services shall not apply to payment transactions between a payer and a payee made through a person performing activities aimed at the conclusion of a designated contract by a payer and a recipient, or containing such a contract, on behalf of or for the benefit of the payer or payee.

Secondly, the activities of the platform consisting in the intermediation of the transfer of funds should also be analysed in the light of the requirements imposed by the AML Act. One of the key issues is to decide whether the operator will be an 'obligated institution' within the meaning of this act. Determining whether the operator is subject to the provisions of the AML Act will be dependent on the crowdfunding model. The simplest crowdfunding models, such as donation-based crowdfunding models, may not be subject to the abovementioned act.

Depending on the platform's operating structure, the operator may operate as a financial institution within the meaning of the Banking Law or conduct regulated business activities. In this case the operator would be treated as an 'obligated institution' within the meaning of the AML Act and would be obliged to apply measures to prevent money laundering and terrorist financing provided for by this act.

Operating a crowdfunding platform may be treated as providing services consisting in offering of financial instruments. Rendering services consisting in offering of financial instruments requires a permit from the Financial Supervision Authority. See the answer to question 5.

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

Legal relationships that arise from crowdfunding are often based on typical contracts recognised by the Polish Civil Code, modified and adapted to specific crowdfunding models. A distinction should be made between legal relationships that arise between beneficiaries and financing parties and those between the platform operator and beneficiaries or financing parties. The most common crowdfunding models in Poland are donation-based crowdfunding, rewards-based crowdfunding, pre-sales crowdfunding, crowd investing (equity), and crowdlending (referred to as P2P lending).

The donation crowdfunding model is similar to the donation agreement. In the absence of additional provisions, a donation agreement within the meaning of the Polish Civil Code is concluded between the financing party and the beneficiary. After the donator finances the donation to the beneficiary, the legal relationship of the donation does not expire. Moreover, under certain circumstances the donation may be revoked and the beneficiary may be required to return the benefit received.

Crowdfunding based on a sales contract (presale) is covered by the mutual benefit of the project promoter (beneficiary) and financing party and may consist in providing the financing party with a specific product in the future (the so-called presale) or a specific award. The basic legal relationship in this crowdfunding model is similar to a sales contract within the meaning of the Polish Civil Code.

Crowdlending is not easy to classify in the light of Polish law. It is a model created on the basis of a loan agreement. In the case of this model, it is necessary to examine whether the provisions of the Act on Consumer Credit will apply. The Act on Consumer Credit concerns loan agreements in which the lender is an entrepreneur within the meaning of the Polish Civil Code and the borrower is a consumer, i.e. a natural person which does not take part in the transaction for its business purposes. Statistically, in most cases the financing party is a natural person and then the provisions of the Act on Consumer Credit will not apply. The provisions of the Polish Civil Code regarding the loan apply. If the Act on Consumer Credit applies, the loan agreement concluded as part of the crowdfunding platform must meet the requirements set out in the aforementioned regulations, i.e. it has to be concluded in writing and contain mandatory provisions, e.g. duration of the contract, total amount of the loan, and rules and dates of repayment, and the consumer must be given standardised precontractual information.

The Act on Public Offering may apply to share crowdfunding, where accumulating of funds is related to the issue of securities, e.g. shares. Moreover, share (investment) crowdfunding may involve the obligation to obtain a licence for brokerage activity in the scope of offering financial instruments, depending on the activities that the entity operating the platform intends to perform. In addition, the Financial Supervision Authority states that: 'the classic model of crowd investing is not deemed an alternative investment fund; nevertheless, should the organisation of a specific platform provide for the collection of assets from many investors in order to invest them in the best interest of the investors in accordance with an investment policy, it may be classified as an alternative investment fund. Then such platforms would be subject to the Act on Investment Funds and Management of Alternative Investment Funds' (report of KNF on the activities of the Special Task Force for Financial Innovation in Poland, November 2017, page 130).

The interpretation presented above is only an example of possible interpretations in the light of Polish law. Due to the lack of regulations related to crowdfunding directly, other legal interpretations or models cannot be excluded.

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?

There are no specific regulations regarding equity crowdfunding in Poland. Crowdfunding can be construed under general provisions, including a freedom to contract. The most significant regulations that may apply to crowdfunding are the provisions of the Polish Civil Code, the Act on Providing Electronic Services and the Act on the Public Offer and the Conditions for Introducing Financial Instruments to the Organised Trading System and Public Companies. Other acts such as the Act on the Protection of Personal Data, the Act on Copyright and Related Rights, the Act on Counteracting Unfair Market Practices and the Act on Competition and Consumer Protection also set out the legal framework for this kind of activity.

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

Since there are no specific regulations regarding equity crowdfunding in Poland, no specific government agency was designated especially to supervise such actions. In most cases, the Financial Supervision Authority (KNF) will be responsible for supervising the activities connected with equity crowdfunding and fintech – in particular, where the lending instrument falls within the meaning of 'financial instrument' (debt financial instrument).

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

There are no limits regarding amounts that can be lent. The loan may be granted regardless of the amount.

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 restrictions on the type of persons that can lend or borrow. Every person or entity may be a lender or borrower.

There are restrictions on the interest rate provided by the Polish Civil Code. The maximum annual interest rate may not exceed two times the sum of the reference rate announced by the National Bank of Poland and 3.5 percentage points. At present, the maximum annual interest rate amounts to 10%. As regards maximum late payment interest rate, at present it may not exceed two times the standard late payment interest rate, which currently amounts to 7%. Therefore at present the maximum late payment interest rate may not exceed 14%. These limits do not apply to interest on bonds.

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?

Generally there are no special requirements for lenders and for the online platform used for crowdfunding purposes to be registered or licensed (unless they would intermediate in a public offer). However, online platforms have to fulfil requirements such as:

1) providing information identifying the supplier of services enabling online payments, such as name and address;

2) providing information regarding risks connected with usage of online platform and regarding function of software which does not constitute a part of provided services but is introduced by the supplier to the system used by the user;

3) ensuring security during usage of the online platform and unambiguous identification of parties of the transaction and confirmation of declarations of will made by the parties;

4) defining regulations of supplying the services;

5) separating commercial advertisements from other content and not providing such advertisements if they have not been ordered by the recipient; and

6) complying with the rules of personal data protection resulting from the Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Provided that peer-to-peer lending consists in offering bonds (or other debt instruments) through a public offer, the issuer will be obliged to prepare a prospectus and make it available to the public according to the rules set out in the answer to no. 5 referring to equity crowdfunding.

On 29 March 2019, the Financial Supervision Authority issued a statement regarding providing services of offering financial instruments. According to that statement, the above advertisements including information regarding bonds or other securities may constitute offering of financial instruments if at least one of the following actions is performed:

1) Presenting, in any form and manner, the information on financial instruments and the conditions of their acquisition made available by the issuer, writer or the seller, said information forming sufficient grounds for making a decision to acquire such instruments; or

2) Intermediation in transferring financial instruments acquired by subjects as a result of provision of the information referred to in subparagraph 1; or

3) Provision to individually specified addressees, in any form and manner, the information made available by the issuer, writer or seller in order to:

a) promote, directly or indirectly, the acquisition of financial instruments; or

b) encourage, directly or indirectly, to acquire financial instruments.

Offering of financial instruments by a third party is an activity which requires a permit from the Financial Supervision Authority. Enabling the issuer to offer his own financial instruments to the investors through an internet platform used only as a place where information is published does not constitute offering of financial instruments and does not require a permit from the Financial Supervision Authority.

The owner of the internet platform may not perform any other actions apart from giving access to the platform. Otherwise, a permit from the Financial Supervision Authority will be required.

No permit is needed if the issuer offers his own financial instruments to the investors.

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

There are no regulations that regulate the marketing activity of P2P lending directly. Marketing activities and promotional documents must meet general rules, but they may be different depending on the crowdfunding model. The general restrictions and prohibitions on advertisements are regulated in, for example, the Act on Combating Unfair Competition.

According to the provisions of article 16 of the Act on Combating Unfair Competition, the following shall be particularly considered acts of unfair competition in the field of advertising:

1) Advertising in breach of the provisions of law, good practice or human dignity;
2) Advertising misleading the customer and thus potentially influencing his decision on acquiring goods or services;
3) Advertising appealing to feelings of customers through stimulating fear, taking advantage of superstitions or gullibility of children;
4) Statements encouraging the acquiring of goods or services which have the appearance of neutral information;
5) Advertising which is a material interference with the sphere of privacy, and in particular by pestering in public places bothersome to customers, sending goods which have not been ordered at the cost of the customer, or abuse of technical means of information transfer.

In the event of committing an act of unfair competition, the entrepreneur whose interest has been threatened or impaired may demand:

1) Cessation of the impermissible acts;
2) Elimination of the effects of the impermissible acts;
3) The making of a statement or series of statements with appropriate contents and in a proper form;
4) Repairing of the damage inflicted, according to general principles;
5) Release of unjust benefits according to general principles;
6) Ordering the payment of an adequate amount of money for a specific public purpose connected with supporting Polish culture or protection of national heritage, if the act of unfair competition was culpable.

If peer-to-peer lending consists in offering bonds (or other debt instruments) through a public offer with a payment term longer than one year, provisions regarding advertising set out in the answer to question 5 referring to equity crowdfunding will apply.

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

It depends on the circumstances. The provisions that protect consumers are, among others, provisions of the Act on Consumer Credit. This act will apply e.g. when the loan provider is considered as a creditor within the meaning of this act. If the entrepreneur is considered as a creditor within the meaning of the Act on Consumer Credit, it may mean that the entity running the platform will acquire the status of a loan broker (required to meet certain criteria and register with the KNF).

One of the basic mechanisms of consumer protection in the light of the Act on Consumer Credit is

the obligation to provide consumers with relevant information that will allow them to compare offers submitted by different lenders (creditors) and to make a reasonable decision on taking of consumer credit.

In the case when the loans are granted by natural persons (to each other) who are not entrepreneurs, none of the parties has the status of a consumer, so no regulations on consumer protection will apply. Moreover, If the entrepreneur provides a consumer with a loan through the P2P platform, this does not automatically mean that he has the status of a creditor and the Act on Consumer Credit will apply. An entrepreneur may grant a loan to a natural person outside the scope of his business. In that case, the operator of the crowdfunding platform does not have the status of a loan broker.

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

In Poland, there are no regulations that would regulate P2P lending directly. One of the major issues is the uncertainty as to the status of parties to the loan agreement concluded under P2P, and the related problem of applying the proper legal regime of the contract (whether the Act on Consumer Credit or the Polish Civil Code).

Please take into consideration that natural persons and entrepreneurs can act as borrowers or lenders. Depending on the adopted business model, the P2P platforms can perform various functions, e.g. the entity operating the platform can only mediate in the association of beneficiaries and financing parties or may conclude loan agreements on behalf of both parties to the agreement.

The various possible P2P lending models determine that different provisions may apply. Taking into consideration different aspects of P2P, the entrepreneur operating the P2P platform can be qualified as, for example: a service provider within the meaning of the Act on the Provision of Electronic Services; a credit intermediary within the meaning of the Act on Consumer Credit; or a proxy of both parties to the loan agreement within the meaning of article 108 of the Polish Civil Code.

The multiplicity of possible legal statuses of the P2P platform operator creates potential public law problems as regards the need to obtain permits, registration, organisational requirements etc. The Act on Consumer Credit establishes public registers kept by the Financial Supervision Authority. Under the current legal status, both the creditor and the lending institution can operate only in the form of a limited liability company or joint-stock company (in accordance with article 59a paragraph 1 of the Act on Consumer Credit). There is no obstacle to one entity being registered in several registers, i.e. that the platform operator simultaneously has the status of a lending institution (lender) and a consumer credit intermediary.

If bonds are not offered through a public offer, the issuer has to enter into an agreement with an investment firm or custodian bank. According to that agreement, the investment firm or custodian bank act as issue agent.
Obligations of the issue agent include:

1) verifying if the issuer fulfils legal requirements regarding issuing securities;

2) verifying if the issuer's actions conform with legal requirements regarding offering securities;
3) verifying if the securities and issuer thereof meet the conditions of registration in depository for securities set out in the bylaws of the Central Securities Depository of Poland;
4) establishing the register of holders of securities;
5) acting as agent in concluding agreement by the issuer if that agreement concerns registration in depository for securities, especially assistance in preparing necessary documents.

There is a possibility to register bonds in a system other than that provided by the Central Securities Depository of Poland. However, in such cases the issuer must submit to the Central Securities Depository of Poland information including:
a) identification of issue;
b) quantity of bonds issued;
c) nominal value per unit and currency in which that value is indicated;
d) total value and currency of consideration which should be paid by the issuer;
e) date until which the issuer should pay the consideration.

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

CONTACT

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