



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

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?

No specific laws or regulations governing equity crowdfunding have been enacted. Instead, a new section governing equity crowdfunding has been added to the Financial Investment Services and Capital Markets Act (the FISCMA).

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

In terms of registration for the brokerage of crowdfunding, the Financial Services Commission (FSC) reviews the applications and determines who can be registered as crowdfunding brokers. The Korea Securities Depository (KSD), on the other hand, supervises investment orders, investment inquiries and provision of information regarding issuers of online small-value securities and investors.

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

Yes. The investment cap of a crowdfunding company is KRW 1.5 billion a year.

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

There are no personal restrictions, but an annual investment cap exists.

Type	Investment cap per fund	Investment cap per fund
General Investor	KRW 5 million	KRW 10 million
Qualified Investor*	KRW 10 million	KRW 20 million
Professional Investor	No limits	

*(Individual: 1) a person subject to aggregate taxation on financing income, 2) a person whose business income and earned income exceed KRW 100 million, or 3) a person who has a financial licence and has a history of practicing using that licence Corporation: a corporation whose equity capital of the most recent business year exceeds KRW 1 billion)

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?

In principle, crowdfunding brokers cannot advertise by a means other than websites established by themselves. However, exceptionally, by a means other than their own websites, crowdfunding brokers can provide information regarding the following:

- 1) The address of the website where the investment advertisement has been posted
- 2) The method of accessing the website where the investment advertisement has been posted

3) The name of the crowdfunding broker, type of the fund, period of equity subscription etc.

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?

Companies which are not registered with the FSC as crowdfunding brokers cannot engage in the brokerage of crowdfunding. The major requirements for the registration include:

- 1) A stock company shall be incorporated under the Commercial Act, or foreign crowdfunding brokers shall have branch offices necessary for crowdfunding.
- 2) Equity capital shall be not less than KRW 500 million
- 3) The company's business plan shall be feasible and sound
- 4) The company shall have human resources, electronic computer systems and other physical facilities sufficient to protect investors and conduct the financial investment business in which it intends to engage;
- 5) None of the company's executive officers shall be those provided for in article 5 of the Act on Corporate Governance of Financial Companies;
- 6) The foreign financial investment business entity shall have sufficient investment capabilities, good financial standing and social credibility
- 7) A system for preventing conflicts of interest between the financial investment business entity and investors, as well as between a specific investor and other investors, shall be in place.

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

Recently, the FSC has not only been deregulating crowdfunding, but also reforming the system in order to promote crowdfunding as a platform for raising funds for small and medium-sized companies.

Especially with the recent amendment to the act, crowdfunding is likely to grow even faster. Thanks to the amendment, the amount of funds which a company can raise through crowdfunding increased from KRW 700 million to KRW 1.5 billion. The range of companies that qualify for crowdfunding also expanded. Before, crowdfunding was limited to start-ups, venture capitals and unlisted small and medium-sized companies. After the amendment, even companies listed on the Korea New Exchange (KONEX) can take advantage of crowdfunding within three years from the listing if they did not raise funds through public offerings.

According to the act, those who obtained securities through crowdfunding cannot sell such securities or otherwise transfer them to a third person for six months. However, by relaxing the restriction on sales of securities of companies registered with the KRX Startup Market, the FSC is planning to revitalise the market.

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

CONTACT

Joo Hyung Jang (Partner)
jooyoung.jang@barunlaw.com

Thomas Pinansky (Partner)
tom.pinansky@barunlaw.com

www.barunlaw.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?

There are no specific legislations or regulations governing peer-to-peer (P2P) lending. Bills regarding P2P lending have been proposed and are being reviewed by the standing committee of the National Assembly.

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

As mentioned, there are no specific laws or regulations governing P2P lending, but the FSC has been regularly updating the P2P Lending Guideline (the Guideline) since February of 2017. The nature of the Guideline is to provide administrative guidance and therefore the Guideline is not legally binding. Its main purpose is to prevent any violations of law which may occur during the course of conducting P2P lending business.

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

In the Guideline, the FSC has published the following investment caps:

- Individual investor (excluding corporate and individual professional investors):

KRW 10 million per P2P lending business (with regards to the identical borrower, KRW 5 million). If investing in a product other than a real estate PF loan or a real estate mortgage loan, an additional KRW 10 million per P2P lending business.

- a person subject to aggregate taxation on financing income, whose business income and labour income exceed KRW 100 million or who has a financial licence and has a history of practicing using that licence: KRW 40 million per P2P lending business (with regards to the identical borrower, KRW 20 million)

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 types of persons who can lend and/or borrow. However, the interest rate cannot exceed 24% per annum, which is the maximum interest rate allowed under a loan contract prescribed by the Act on Registration of Credit Business Etc and Protection of Finance Users and the Interest Limitation Act.

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 mentioned, there are no specific legislations or regulations governing P2P lending. However,

currently pending bills at the standing committee of the National Assembly all propose a registration system as a form of regulation. If a credit business or loan brokerage business is involved in the P2P transaction, the business must register with the Financial Services Commission under the Act on Registration of Credit Business Etc and Protection of Finance Users.

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

In the Guideline, the FSC provides that, with regards to marketing and promotional documents and activities, a P2P lending business:

- 1) Shall not advertise false or exaggerated information
- 2) Shall not make any statements regarding uncertain items which may lead to conclusive determination
- 3) Shall list the name of the P2P lending product as well as the name of the company and shall notify that the product is not subject to financial regulations currently in place and therefore has corresponding risks, if the company is advertising the P2P lending product through a website other than its own.
- 4) Shall inform the investors about how they can check the company's business information, if the company is advertising the P2P lending product through a website other than its own
- 5) Shall not engage in any other conduct that may mislead or confuse investors

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

In the Guideline, the FSC has published the following recommendations.

With regards to the information provided to borrowers, a P2P lending business shall provide information that can facilitate the borrowers' use of the loan, such as the interest rate and commission fee, in a way easily understandable by the borrowers.

With regards to the information provided to the investors, a P2P lending business shall post the following information on its website in order to facilitate the investors' decision-making process:

- 1) Risks to the investment
- 2) Information about borrowers
- 3) Information regarding calculation of expected return
- 4) Matters investors should be aware of
- 5) In the case of a real estate PF loan investment product, information reviewed by external professionals (lawyers, accountants etc.)
- 6) Identical borrower's¹ status on the loan
- 7) Other material provisions of the contract

When signing the investment contract, a P2P lending business shall confirm that the investor understood the information provided by the company by investor's signature, email or other equivalent methods.

With regards to conduct of business conduct, a P2P lending business

- 1) Shall not participate in the lending as an investor.
- 2) Shall not use P2P lending to benefit as a large shareholder or related persons²

¹(Identical borrower under the Mutual Savings Bank Act: a person or an enterprise group defined under the Monopoly Regulation and Fair Trade Act which shares credit risks prescribed by Presidential Decree with the individual borrower)

²Large shareholder and related persons under the Act on Corporate Governance of Financial Companies: 'A person who holds the greatest number of outstanding voting shares (or equities; hereafter the same shall apply) of a financial company, when all shares (including depository receipts related to the shares) held by the person and persons who have a special relationship specified by Presidential Decree'

- 3) Shall inform investors about late payment and the reason for it without delay and publicly announce the current status and maintenance of the debt collection.
- 4) Shall have a follow-up procedure in place.
- 5) Shall ensure that the borrower's maturity and the investment product's maturity match.

With regards to separation of investment funds and loan payments, a P2P lending business shall maintain separate bank accounts for funds received from the investors and the company's assets in order to prevent commingling of funds. In case of a significant event, such as liquidation or declaration of bankruptcy, which disables further continuance of the business, the company shall ensure that the deposited investment funds and loan payments take priority over other claims and be distributed to the investors first.

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

With the rapid growth of the loan market, the Guideline has been operating as the regulation safeguarding the rights of investors and its contents has been more specified. Given the FSC's attitude stressing the protection of the investors, the regulation of P2P lending is likely to be more specific and enhanced in the future. Moreover, once the currently pending bills at the standing committee of the National Assembly pass the plenary session, the P2P lending business is likely to become more systematic and transparent.

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

CONTACT

Joo Hyung Jang (Partner)
joohyoung.jang@barunlaw.com

Thomas Pinansky (Partner)
tom.pinansky@barunlaw.com

www.barunlaw.com