



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
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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?

Yes, there are regulations governing equity crowdfunding in Malaysia.

The Securities Commission Malaysia has issued the Guidelines on Recognized Markets pursuant to the Capital Markets and Services Act 2007 (CMSA) to regulate equity crowdfunding.

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

The Securities Commission Malaysia.

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

Yes. As at 17 May 2019 and under paragraph 13.19 of the Guidelines, an issuer may raise up to:

(a) a maximum of MYR 3 million within a 12-month period regardless of the number of campaigns or projects;

and

(b) a maximum of MYR 5 million via the ECF Platform ('ECF Platform' is the equity crowdfunding platform registered with the Securities Commission).

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

Yes.

A person may invest in any issuer hosted on the ECF platform, subject to the following limits:

(a) Sophisticated investors, e.g. venture capital corporations and private equity management corporations registered with the Securities Commission and persons falling within Part 1 Schedules 6 and 7 of the CMSA: no restrictions on investment amount;

(b) *Angel investors: A maximum of MYR 500,000 within a 12-month period; and

(c) Retail investors: a maximum of MYR 5,000 per issuer with a total amount of not more than MYR 50,000 within a 12-month period.

*(Angel investors refers to an individual:

(a) who is a tax resident in Malaysia; and

(b) whose total net personal assets exceed MYR 3 million or its equivalent in foreign currencies; or

- (c) whose gross total annual income is not less than MYR 180,000 or its equivalent in foreign currencies in the preceding twelve months; or
- (d) who, jointly with his or her spouse, has a gross total annual income exceeding MYR 250,000 or its equivalent in foreign currencies in the preceding 12 months.)

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?

An issuer proposing to be hosted on an ECF platform has to submit:

- (a) information on key characteristics of the issuer company,
- (b) information on the purpose of the offering and the targeted offering amount,
- (c) information on the business plan and financial information of the company.
- (d) financial information:
 - (i) for offerings below MYR 500,000, audited financial statements of the company, or certified financial statements or information by the issuer's management where audited financial statements are unavailable.
 - (ii) for offerings above MYR 500,000, audited financial statements of the company.

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?

Yes, all ECF operators must be locally incorporated and registered with the Securities Commission Malaysia.

ECF operators are required to comply with obligations specified in Chapter 6 and Chapter 13 of the Guidelines. To summarise, an ECF platform MUST:

- a) Monitor the trading and conduct of issuers and take action if there is non-compliance with the securities laws or its rules.
- b) Ensure compliance with all relevant laws, regulations and guidelines, including the Personal Data Protection Act 2010.
- c) Ensure that all disclosures are fair, accurate, clear and not misleading.
- d) Carry out a due diligence exercise on prospective issuers planning to use its platform.
- e) Ensure each issuer's disclosure lodged with the ECF operator is verified for accuracy and made accessible to investors through the ECF
- f) Inform investors of any material adverse change to the issuer's proposal
- g) Monitor to ensure fundraising limits imposed on the issuer are not exceeded
- h) Monitor to ensure investment limits imposed on investors are not exceeded.

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

Not applicable.

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 Guidelines on Recognized Markets issued under section 377 of the Capital Markets and Services Act 2007 (CMSA), read together with subdivision 4, division 2 of Part II CMSA, regulates peer-to-peer lending (P2P) in Malaysia.

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

The Securities Commission Malaysia (SC).

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

There is no limit if you are an angel investor or sophisticated investor as defined under Schedule 6 and 7 of the CMSA.

Retails investor should not invest more than MYR 50,000 at any period of time.

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?

The rate of financing must not be more than 18% per annum. A P2P operator must consult SC if it wishes to impose a rate of financing that is more than 18% 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?

Yes, the online platform must be registered by SC. In the case of P2P, operators must be locally incorporated and have a minimum paid-up share capital of MYR 5 million.

An online platform must establish and maintain, in a licensed institution, one or more trust accounts designated for the funds raised in relation to a hosting on its platform, and the trust accounts must be administered by an independent registered trustee.

If an Islamic investment note is executed or offered on or through a P2P platform, the P2P operator must establish and maintain a Shariah-compliant trust account with a licensed Islamic bank, licensed bank or licensed investment bank approved to carry on Islamic banking business, for the purpose of the funds raised.

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

An issuer proposing to be hosted on a P2P platform shall ensure that all information submitted or disclosed by the P2P operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.

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

All online businesses have to comply with the Consumer Protection (Electronic Trade Transactions) Regulations 2012. Under these Regulations, marketplace operators must disclose certain information stipulated in the Schedule of the Regulations. Any term or condition in a contract that is unfair may be declared as unenforceable or void under the Consumer Protection Act 1999.

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

Any update or development relating to P2P will usually be accessible through the official website of SC.

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

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