



**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

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## RUSSIAN FEDERATION INTELLECT

### 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?**

On August 2, 2019, the law 'On attracting investments by means of investment platforms' has been enacted (from now on referred to as 'the Law'). The Law comes into force from January 1, 2020.

The Law regulates attracting investments by commercial organisations or individual entrepreneurs using information technologies through investment platforms and also provides the legal basis for the activity of operators of investment platforms (crowdfunding).

According to the Law, the ways of investment through an online platform are:

- 1) granting of a loan (P2P lending, see below);
- 2) acquisition of issued securities (including equity securities, i.e., equity crowdfunding);
- 3) acquisition of utility digital rights (utility tokens).

Equity crowdfunding is also subject to the provisions of general laws (Civil Code; Electronic Signatures Act; Personal Data Act; Information, Information Technologies, and Information Protection Act, for instance).

Furthermore, offering of shares as such is regulated by the specialised law – the federal law 'On Securities Market'. This law provides a legal framework for the securities market in Russia, including public offering of shares of Russian joint-stock companies. It sets forth special requirements for the issuers of shares and for the investors (i.e. potential buyers of shares), as well as for the information disclosure and other matters associated with the shares offering.

The new Law provides specific regulation for the shares offering through the online platforms, and, as such, the Law regulates participation of the platform operators in the securities transactions between the issuers (investee) and the investors. However, relations between the issuers and the investors are also still subject to the general provisions of the federal law 'On Securities Market'.

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

There are several regulatory bodies acting in the securities market in Russia. The main regulating authority is the Bank of Russia, which is responsible for control over the issuers and professional participants of the securities market.

According to the new Law, the Bank of Russia will also be appointed as the regulating body in the field of equity crowdfunding through the online platforms. Namely, it would have the following authorities, among others:

- maintenance of a register of investment platforms' operators;
- control over the compliance of the investment platforms' operators' activity with the requirements of the Bill and the regulations passed in accordance with it;

- conducting inspections of the investment platforms' operators' activity.

In addition, the Federal Antimonopoly Service is also engaged in the regulation of the securities market.

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

According to the Law, total amount of investments raised by one investee in one calendar year cannot exceed RUB 1 billion. This limitation does not apply to investments raised by public joint-stock companies in the form of utility digital rights.

There is also a limit on the amount of investments that can be made by private individuals (not being qualified as professional investors) in one calendar year. This amount cannot exceed RUB 600,000.

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

Current legislation does not set any general restrictions on the types of purchasers of the shares.

There are still some certain requirements regarding the purchase of specific types of shares and shares of some entities associated with antitrust and state security reasons. However, these requirements are common for any form of share purchase (either by means of crowdfunding or usual purchase agreement). For example, there are limitations with regard to acquiring enough shares to have a vote when investing in banks, insurance companies and strategic enterprises.

It should also be noted that, according to the Law, only private placement of securities (including shares) is available through the investment platforms.

### **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?**

The Law sets common rules related to information disclosure to potential purchasers regardless of the way of investment through an online platform. The following information has to be disclosed on the website of the investment platform:

- information on the platform operator;
- information on each investee and its investment offers;
- terms of service of the investment platform.

Thus, the information about an investee company that is to be disclosed to potential purchasers should include the following:

- name, location and address of an investee company;
- information on persons entitled to dispose of at least 10% of the votes in the supreme management body of the investee company, if such a company is a commercial corporation;
- information on the structure and composition of the governing bodies of the investee company;
- annual accounting (financial) statements for the last completed reporting year, together with an audit report on such statements, if the investee company is a legal entity that has existed for more than one year and the amount of investments attracted by it exceeds RUB 60 million;
- the core business of the investee company;
- information on the rating of the investee company, if such a rating is provided for by the specified rules; and
- information on facts (events, actions) that can have a significant impact on the performance of the investee company's obligations to investors.

Some additional requirements may be included in the terms of service of a particular investment platform. For instance, the terms of service of StartTrack.ru investment platform provide that information must be full, relevant and true.

Certain information about the investment offer (together with the offer documents) also needs to be disclosed on the website of the investment platform.

Offer information is not required, as a general rule, to be registered with any public authority. However, such requirements are provided by the law 'On Securities Market'. The federal law 'On Securities Market' provides general requirements for information disclosure while offering shares. First of all, any issue of shares is completed by the following steps:

- decision on the securities issuance;
- state registration of the securities by the Bank of Russia;
- placement of the securities; and
- state registration of the issue report.

The law sets forth a list of information that should be contained in the decision on the securities issuance (articles 17 and 22 of the federal law 'On Securities Market'). That is, mainly, the information about the issuer and the shares to be issued.

There are also general requirements of information disclosure for the issuers (mandatory in cases when the prospectus is published). Once the prospectus is published (or the shares are issued) the issuer is obliged to disclose (i.e. make accessible to all persons concerned) certain information:

- an annual report;
- an annual/quarterly business accounting report;
- a quarterly report;
- a list of affiliated persons;
- a decision/report on an issue;
- an issue prospectus; and
- a report on substantial facts.

## **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 Law provides general requirements for the operator of investment (crowdfunding) platform:

- 1) the operator of the investment platform must be a legal entity established in accordance with the legislation of the Russian Federation, provided that the company is included in the register of investment platform operators by the Bank of Russia;
- 2) the operator of the investment platform is not entitled to combine its activities with the activities of another non-credit financial institution, with the exception of the trade organiser, broker, manager, depository or registrar, as well as with the bank;
- 3) the amount of equity (capital) of the operator of the investment platform must be at least RUB 5 million; and
- 4) the powers of the executive body of the investment platform operator cannot be transferred to a legal entity.

The Law also provides for registration of the investment platform operator in a special state register which is going to be kept by the Bank of Russia.

There are also requirements for the investment platform itself:

- 1) it should contain a register of contracts on the basis of which investments are attracted; and

**2) it should provide:**

- the safety and reliability of data in the registry of contracts, as well as the impossibility of changing this data otherwise than making amendments to the terms of the contract by the parties;
- the ability for the parties to the contract to receive its text in Russian;
- the ability to obtain by parties an extract from the registry of contracts confirming the conclusion of the contract;
- confidentiality when creating and using a simple electronic signature key; and
- confidentiality of personal data of participants of the investment platform in accordance with the Law 'On personal data'.

As for the crowdfunding company (the investee), there is no requirement for its special registration. However, only Russian-based companies and individual entrepreneurs are entitled to attract investments with the investment platforms.

There are also some restrictions for certain persons to act as the investees. For instance, private individuals that have been disqualified during the administrative proceedings or that are subject to bankruptcy proceedings cannot be the investee and cannot act as the director of a company being the investee.

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

The new Law on crowdfunding provides specific regulation for the participation of platform operators in the securities transactions between the issuers (investee) and the investors. However, relations between the issuers and the investors would be still subject to the general provisions of the federal law 'On Securities Market'.

Therefore, relations in the field of shares placement are quite well-regulated in Russia, whereas the new regulation is expected to enhance their further development with the use of internet technologies.

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

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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 it is regulated under generally applicable laws?**

The abovementioned law 'On attracting investments by means of investment platforms' is going to deal with P2P lending in cases where the borrower is a business entity or an individual entrepreneur. The Law, however, will not apply to the market of P2P lending between private individuals.

In general, the legal framework in which the lending activity is carried out is also based on the following acts:

- Civil Code (general provisions on loans and other contractual obligations);
- Federal Law on Consumer Credit;
- Federal Law on Microfinance Organisations;
- Federal Law on Banks and Banking Activity.

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

The Bank of Russia is responsible for regulating any financial activity, including that of banking or microfinance organizations.

The new Law, as was already mentioned, appoints the Bank of Russia as a regulatory body for crowdfunding investment platforms, where P2P lending may also belong (in cases where the investments are attracted by businesses).

The Bank of Russia may also conduct voluntary monitoring of peer-to-peer lending companies. According to the information of the Bank of Russia, in the first nine months of 2018, the total volume of transactions in this segment reached RUB 11 billion.

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

There are no general restrictions as to the amount of the loan. However, as was mentioned, the new Law will set the ceiling amount of investment that can be attracted regardless of the way of investment through an online platform.

According to the Law, total amount of investments raised by one investee in one calendar year cannot exceed RUB 1 billion. This limitation does not apply to investments raised by public joint-stock companies in the form of utility digital rights.

There is also a limit on the amount of investments that can be made by private individuals (not being qualified as professional investors) in one calendar year. This amount cannot exceed RUB 600,000.

### **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?**

In general, according to Russian law, any individual or entity may provide loan(s).

However, there are certain restrictions for professional moneylending. Namely, according to the Federal Law on Consumer Loans, loans to private individuals (for their private purposes) may be provided on a



professional basis (i.e. more than 4 times in a year) only by organisations having a special status. These organisations are crediting organisations licensed by the Bank of Russia, microfinance organisations, pawnbrokers and other special entities provided by law. Any activity violating these restrictions would be considered as illegal banking and may cause administrative liability.

Taking into account these special requirements for consumer loans, P2P lending platforms in Russia commonly enable loans between businesses (B2B) or from private individuals to businesses, so as to avoid risks of illegal banking.

As for the maximum interest rate, there is only the limit for consumer loans as well. The Federal law on Consumer Loans provides for a maximum interest rate under the consumer credit agreement at 1% per day.

### **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?**

The Law provides general requirements for the operator of investment (crowdfunding) platform:

- 1) the operator of the investment platform must be a legal entity established in accordance with the legislation of the Russian Federation, provided that the company is included in the register of investment platform operators by the Bank of Russia;
- 2) the operator of the investment platform is not entitled to combine its activities with the activities of another non-credit financial institution, with the exception of the trade organiser, broker, manager, depository or registrar, as well as with the bank;
- 3) the amount of equity (capital) of the operator of the investment platform must be at least RUB 5 million; and
- 4) the powers of the executive body of the investment platform operator cannot be transferred to a legal entity.

The Law also provides for registration of the investment platform operator in a special state register which is going to be kept by the Bank of Russia.

There are also requirements for the investment platform itself:

- 1) it should contain a register of contracts on the basis of which investments are attracted; and
- 2) it should provide:
  - the safety and reliability of data in the registry of contracts, as well as the impossibility of changing this data otherwise than making amendments to the terms of the contract by the parties;
  - the ability for the parties to the contract to receive its text in Russian;
  - the ability to obtain by parties an extract from the registry of contracts confirming the conclusion of the contract;
  - confidentiality when creating and using a simple electronic signature key; and
  - confidentiality of personal data of participants of the investment platform in accordance with the Law 'On personal data'.

As for the crowdfunding company (the borrower), there is no requirement for its special registration. However, only Russian-based companies and individual entrepreneurs are entitled to attract investments with the investment platforms.

There are also some restrictions for certain persons to act as the investees (borrowers). For instance, private individuals that have been disqualified during the administrative proceedings or that are subject to bankruptcy proceedings cannot be the investee and cannot act as the director of a company being the investee.

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

There are general rules related to the advertising of financial services and financial activities.

Thus, in accordance with the federal law 'On advertising', advertising of financial services and financial activities should contain the name of individuals or legal entities that provide the services (activities) being advertised.

Advertising of financial services and financial activities must not:

- 1) contain guarantees or promises of future profit (return on investment), if such profit (return) can't be determined at the time of concluding the relevant contract; or
- 2) conceal some conditions that can affect the amount of income to be received by the persons who use financial services or the number of expenses to be incurred by these persons, while disclosing other conditions.

As for the advertising of the investment platforms, it cannot contain information on certain means of investments (with loans, or securities, or digital utility rights). Such advertising, obviously, can only contain general information about the platform and must name the website of the platform and should include the warning that this is a high-risk investment which may cause total loss of the invested amounts.

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

As was already mentioned, there is a special legislation providing protection to consumers borrowing money – the Federal Law on Consumer Loans. This law, however, does not apply in the cases of P2P lending through the online platforms, since according to the Law, only a company or an individual entrepreneur may act as the investee (the borrower).

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

Peer-to-peer lending is a developing segment of the Russian market.

At present, several large online P2P lending platforms operate in the Russian Federation. Most of them do not enable consumer loans, i.e. loans from business to individuals, due to special requirements for consumer loans.

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

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