



**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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## 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?**

Spain has specific legislation on crowd equity funding and lending, i.e. investment in shares and peer-to-peer lending. Both are regulated by chapter V of Law 5/2015 on promotion of business financing, as amended from time to time.

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

The Comisión Nacional del Mercado de Valores (CNMV) is the regulatory authority for equity crowdfunding platforms.

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

No project offered for equity funding or lending through an online platform can exceed €2 million (€5 million in the case of projects exclusively offered to qualified investors). In the event of investments in shares of non-listed companies and of loans, a qualified investor is defined, in the case of a company, if it fulfils two of the following three conditions: a) assets in excess of €1 million, b) turnover higher than €2 million, or c) equity equal to or more than €300,000. In the case of individuals, personal earnings of more than €50,000 or having financial assets in excess to €100,000, but these conditions are waivable in the case of individuals.

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

The law distinguishes between qualified investors (no restrictions) and ordinary investors. Ordinary investors cannot invest more than €3,000 per project in the same platform or a total of €10,000, also in the same platform, in any 12-month period.

### **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 website of the platform must alert the user that the project will not be approved or reviewed by CNMV or by the Bank of Spain; the information disclosed in the web is not a prospectus and the web must point out the risk of losses of the invested capital or the lack of the statutory guarantee by the banking system. In the event of equity crowdfunding, the web also has to inform about the risk of dilution, of not receiving dividends, of the existence of pre-emption rights, and of being unable to influence the management of the company. It must also be made clear that the platform is not a bank or a financial adviser. The web must also disclose fees and measures to avoid conflict of interest. In

short, online platforms have to operate principally as contact points between sellers and buyers, and not act as banks or financial advisors, or investors. Finally, and broadly speaking, marketing materials and communications must contain objective, transparent, accessible, clear and sufficient information. Corporate and financial rules applicable to online platforms are described in answer 4 below on peer-to-peer lending.

**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?**

They must be approved by the CNMV, and the Bank of Spain must issue previous binding advice addressed to the CNMV.

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

In the event of share offerings, Spanish law requires due identification and details of the issuer, including its financial condition, indebtedness and number of employees. In addition, the issuer must amend its articles of association to enable the stakeholders to attend meetings using remote telematics means, the right to be represented at meetings and the right to be informed about any shareholder agreements on voting rights or affecting the right to transfer of shares. Online platforms must also provide succinct information on the share offer, indicated by its type, identification code, a brief description of its essential characteristics and the risks involved in the investments, rights granted to the shares etc. It is worth mentioning that the approval process takes, in our experience, around nine months or more.

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

## CONTACT

**Alfonso López-Ibor Aliño** (Madrid Office)  
alfonso.LopezIbor@vg-li.com

**Marta Gil de Biedma** (Madrid Office)  
marta.gildebiedma@vg-li.com

**Ricard Gené** (Barcelona Office)  
ricard.gene@vg-li.com

[www.vg-li.com](http://www.vg-li.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?**

Yes, chapter V of Law 5/2015 on promotion of business financing. In particular, this law has introduced in Spain platforms for crowd lending or peer-to-peer lending.

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

The Comisión Nacional del Mercado de Valores (CNMV), which has to authorise expressly online platforms for peer-to-peer lending. If the platform publicises projects to be funded with loans, a binding report by the Bank of Spain is also required.

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

See above answer 3: the limits are the same as in the case of equity crowdfunding platforms.

### **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 as such on the type of persons who can borrow or lend, except for qualified investors and ordinary investors. Loans cannot be secured by a mortgage granted by the borrower, and the online platform must give information on the effective rates of interest, total financial cost including interest, commissions and taxes, etc., repayment table, default interest and collateral security. Additionally, Spanish law prohibits usury, i.e. charging a rate of interest which is well above prevailing market interest.

### **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 online platform must have the exclusive corporate object of carrying out this activity and a paid-out capital of €60,000. The directors must be persons of financial and business integrity and must have experience and knowledge on the relevant subject matter. They have to be registered in Spain or in another member country of the European Union. The platform must also have professional insurance with a minimum coverage of €300,000 per claim and an annual coverage of €400,000 for all claims. Aside from this, online platforms must have a minimum equity of €120,000, which is increased to 0.2% of the total amount of financing raised if such financing exceeds €5 million or up to a limit of €50 million, and 0.1% minimum equity for total financing which exceeds €50 million.

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

No, online platforms can do marketing in respect of their businesses and projects for investments,

provided the projects have been selected on the basis of objective and non-discriminatory criteria. Marketing and documents and activities must contain objective, clear, accessible and adequate information.

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

The general law on consumer protection applies to all Spanish lending. Aside from this, there is reiterated jurisprudence setting aside floor and collar rates, also on costs, taxes and loan commissions, determining which of them are legally acceptable to be borne by consumers.

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

None.

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

**CONTACT**

**Alfonso López-Ibor Aliño** (Madrid Office)  
alfonso.LopezIbor@vg-li.com

**Marta Gil de Biedma** (Madrid Office)  
marta.gildebiedma@vg-li.com

**Ricard Gené** (Barcelona Office)  
ricard.gene@vg-li.com

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