LEGALINK

INTERNATIONAL BUT PERSONAL

EQUITY CROWDFUNDING & PEER-TO-PEER LENDING

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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

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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

SWEDEN
HELLSTROM

Crowdfunding

INNEHÅLL

1. Introduction125

2. Current regulation of Equity crowdfunding125

2.1. Introduction 125
2.2. The Securities Market Act 125
2.3. Applicability to Crowdfunding 125
2.4. Prospectus requirements 126
2.5. Possible additional regulation 126

3. Current regulation of peer-to-peer lending127
3.1. Lending Model: LVK127
3.2. Lending Model: The Payment Service Act (2010:751)127
3.3. Possible additional regulation128

4. Descriptive summary of the framework with general applicability to crowdfunding129
4.1. Tort law129
4.2. Distance and Off-Premises Contract Act (2005:59)130
4.3. Information society130
4.4. The Marketing Practices Act131
4.5. Other possible regulations132

5. Regulatory barriers for crowdfunding crossing borders132
5.1. Applicable law132
5.2. Foreign crowdfunding platform addresses Swedish investors and companies132
5.3. Swedish crowdfunding platform addresses foreign (EU) investors132
5.4. Impact of EU regulation133
5.5. Summary135

6. The Government's inquiry on crowdfunding legislation135

7. Conclusion and recommendations136

1.Introduction

1.1. Crowdfunding is an alternative form of investment and a strongly increasing phenomenon in Sweden.

1.2. Although crowdfunding has shown positive competitive and financial effects on the market, crowdfunding entails high risks for the investor compared to the traditional forms of investing. Crowdfunding is only partially regulated in Swedish law despite the related consumer risks. Crowdfunding has, however, raised considerable interest with the Swedish government, which commissioned the Swedish Financial Supervisory Authority (S-FSA) to investigate and analyse the crowdfunding market and the regulatory framework for equity and lending based models. The Government has in an inquiry proposed that provisions on crowdfunding shall be introduced in a new commercial law act called the Act on certain financial mediation activities (Section 6).

2. Current regulation of Equity crowdfunding

2.1. Introduction

2.1.1. Equity crowdfunding platforms are the most common crowdfunding model in Sweden. The way equity-based crowdfunding is conducted today is, however, in non-compliance with the Swedish Companies Act (2005:551), due to the violation of the spreading and advertisement prohibition for private liability companies. Because of the insecurity and risks, many equity platforms are currently seeking to find new ways in order to operate a more compliant operation by using, for example, public investment models.

2.1.2. Equity crowdfunding is not regulated in any specific laws or regulations in Sweden.

2.2. The Securities Market Act

2.2.1. The Swedish Securities Market Act (2007:528) implemented directive 2014/65/EU (MiFID II directive). The act regulates financial trading of securities, which includes investment brokering, financial advising and prospectus rules. The act is merely applicable if the specific operation includes investment services and activities (specified in chapter 2, section 1) and relates to financial instruments. A financial instrument is defined as 'transferable securities, money market instruments, UCITS and financial derivative instruments'. It is transferable securities that are of relevance in this case. Transferable securities are defined as securities, except instruments of payment, which are traded on the capital market (chapter 1, section 4).

2.3. Applicability to Crowdfunding

2.3.1. Shares in both public and private limited liability companies that are not traded on the capital market fall outside the scope of the Swedish Securities Market Act. The capital market is defined as a securities market, meaning trading on the stock exchange or other organised marketplace (Prop. 2006/07:115, p.282).

2.3.2. Shares in private limited liability companies must not, according to the legislator, be spread to the public and traded on a Swedish or/and foreign marketplace. Consequently, shares in private limited liability companies do not constitute transferable securities. Furthermore, according to S-FSA's report. no listed public companies have been found on any crowdfunding platforms.

2.3.3. In accordance with the aforementioned, a crowdfunding platform does not constitute a platform where transferable securities are traded. Crowdfunding platforms primarily act as an active or passive intermediary for the share transfer of private and/or public limited liability companies. Consequently, crowdfunding platforms do not fall within the scope of the Securities Market Act and do not need to register or apply for a licence to offer their services in Sweden. Furthermore, the equity-based platforms are not subject to the S-FSA's supervision.

2.4.Prospectus requirements

2.4.1. The Financial Instruments Trading Act (1991:980) implemented directive 2003/71/EG. The act contains provisions regarding the prospectus requirements for trade in transferable securities and the exemptions from the requirements (chapter 2, sections 2-7).

2.4.2. According to the act, a prospectus shall be prepared when transferable securities are offered to the general public or admitted for trading on a regulated marketplace. In order to facilitate smaller companies, exemptions have been made where the offering does not exceed €2.5 million within a period of 12 months.

2.4.3. The definition of transferable securities under this act is the same as in the Securities Market Act. Consequently, equity crowdfunding is not subject to any prospectus requirements under this act and is not subject to any supervision of the S-FSA, because securities that are offered on crowdfunding platforms do not fall within the definition of transferable securities.

2.4.4. In addition to the abovementioned, crowdfunding platforms are not subject to the prospectus requirement themselves since they only work as an intermediary.

2.5. Possible additional regulation

2.5.1. The Companies Act (spreading prohibition)

2.5.2. Under the Swedish Companies Act, limited liability companies can be registered as either public or private companies. Private limited liability companies must have a registered share capital of at least SEK 50,000 while public companies must have a share capital of at least SEK 500,000. Public companies may, by advertisement or in other ways, offer their shares to the public (more than 200 persons). Private limited liability companies can raise capital by issuing new shares. However, the act restricts the scope of the share offers in private companies. A private limited liability company or a shareholder in such company is not allowed to offer securities or subscription rights to the public by advertisement, or in other ways offer or attempt to offer securities to more than 200 investors, as it constitutes a public offering (chapter 1, section 7).

2.5.3. Violation of the spreading and advertisement prohibition is sanctioned both under civil and criminal law. Despite the prohibition, many crowd equity platforms are still hosting funding campaigns for private limited liability companies. However, there have not been any lawsuits or rulings against any such campaigns and/or companies.

2.5.4. Alternative Investment Fund Managers Act

2.5.5. Directive 2011/61/EU (AIFMD) has been implemented in Swedish legislation with e.g. the Alternative Investment Fund Managers Act (2013:561). The act regulates licence and registration requirements for Alternative Investment Funds (AIF) and AIF managers (AIFM) as well as the supervision of funds and managers. An AIF is defined as a collective investment undertaking that raises capital from a number of investors in accordance

with a defined investment policy for the benefit of those investors. An AIFM is defined as a legal person whose regular business is managing one or more AIFs.

2.5.6. A Swedish AIFM whose total assets do not exceed the threshold of €100 million, and an AIFM who only manages unleveraged AIFs that do not grant investors redemption rights during a period of five years with a cumulative value of the AIFs below a threshold of €500 million, are exempted from the licence requirement and can instead apply for registration with the S-FSA. A registered AIFM may not, as a main rule, manage funds directed towards retail investors, and it can only be marketed and managed nationally.

2.5.7. The current platforms do not fall within the stipulated definition of AIFs/AIFMs. However, it is possible that future crowdfunding platforms will act in a way that would make the business model fall within the scope of the AIFMD. Such services have not yet been launched in Sweden.

3. Current regulation of peer-to-peer lending

3.1. The legislation in the lending-based model is far more complex and the S-FSA conducts an individual assessment of each specific case. If the platform offers payment services or credit intermediation, the platform needs a licence or registration under the Banking and Financing Business Act (2004:297), the Act regarding Certain Activities with Consumer Credit (2014:275) (LVK) or the Payment Services Act (2010:751). If a platform's activities are not covered by any of these acts, it may instead require registration under the applicable rules depending on the platform's management of the funds, e.g. Certain Financial Operations (Reporting Duty) Act (1996:1006).

3.2. Lending Model: LVK

3.2.1. For peer-to-peer lending platforms that accept funds for forwarding the loans, the S-FSA has concluded that the platforms are required to apply for a licence for the provision of payment services. However, if the platform only mediates between consumers without accepting any funds, authorisation as a consumer credit institution according to LVK is sufficient.

3.2.2. The S-FSA's assessment of application

3.2.3. Platforms that conduct activities under this act are required to run the business in a sound way. The soundness requirement includes that the company, among other things, must have internal routines and procedures on how credits are granted and intermediated as well as how the funds are handled.

3.2.4. The act also imposes specific requirements on the owners and the management of the platform. Every owner and representative needs to be assessed and approved by the S-FSA. Anyone who conducts activities under the act must also comply with the rules of the Consumer Credit Act (2010:1846).

3.2.5. The act is not applicable to consumer credit providers that are below the registration or licence requirement according to e.g. the Payment Service Act (see below).

3.2.6 .Violation of the act

3.2.7. If a platform or a board member of such platform violates or breaches a provision of the act, the S-FSA may issue an injunction restricting the activities or take any other

action to remedy the situation. If the violation is serious, the licence may be revoked, or a warning notice may be issued, if it is deemed sufficient. Sanction fines between SEK 5,000 and SEK 50 million may be levied in case of such breaches. An injunction may also be combined with a penalty fee (LVK sections 20-32).

3.2.8. The act does not contain any liability provisions, but a platform that is in violation of the act shall according to the provisions be liable for any incurred damages due to such violation.

3.3. Lending Model: The Payment Service Act (2010:751)

3.3.1. The Payment Service Act is based on the Payment Services Directive I (PSD I, 2007/64/EC) and Payment Service Directive II (PSD II, directive 2013/36/EU). Payment services are defined as, among other things, services that make it possible to make cash deposits and withdrawals, execution of payment transactions and money transfers (chapter 1, section 2). Any transfer of funds through the crowdfunding platform operator, i.e. the platform operator receives the investments and then passes the funds to the project owner, would constitute a service regulated by the Payment Services Act, which would require a licence to become an active payment service provider. The licence is issued by the S-FSA, which is also the supervising authority. A Swedish payment service provider must be a Swedish limited liability company or economic association to be granted the licence.

3.3.2. The Payment Service Directive II has been implemented in Sweden since 1 May 2018 in the Payment Service Act (2010:751). The amendments to the Payment Service Act primarily aim to develop the market for electronic payments and create better conditions for secure and efficient payments. The term 'payment service' expands to cover payment initiation services and account information services. The scope of application has been expanded with regard to geographical area and currencies. Under certain conditions, it also gives payment institutions the right of access to credit institutions' payment accounts services.

3.3.3. The S-FSA's assessment of application

3.3.4. The S-FSA conducts an individual assessment on each platform and decides whether the licence or authorisation requirements are applicable, based on the funding model and setup of the platform. Any transfer of funds through the crowdlending platform operator, e.g. the platform operator accepts funds from one party in order to forward loans to another party, would most likely constitute a service regulated by the Payment Service Act, which would require a licence to become an active payment service provider.

3.3.5. Similar to the LVK, owners and individuals in the management/board of the payment service provider must be reviewed and approved by the S-FSA. Any change of ownership or management must be reported to the S-FSA.

3.3.6. Exemptions

3.3.7. A payment service provider may apply to be exempted from the licence requirement. Exemptions may be provided if the total amount of payment transactions during the last 12 months do not exceed an amount equivalent to €3 million per month (average the latest 12 months). Those exempt from the licence requirement will instead be registered with the S-FSA (registered payment service provider).

3.3.8. Also, if the platform only mediates between the parties without possessing and/or controlling any funds, authorisation as a consumer credit institution according to LVK is most likely

sufficient. The S-FSA is, however, very restrictive in giving general statements on how the requirements are to be assessed due to the vast differences in platform solutions.

3.3.9. Violation of the act

3.3.10. If a platform is in violation of the provisions of the act, the S-FSA may issue an injunction restricting the activities or take any other action to remedy the situation. If the violation is serious, the licence may be revoked, or a warning notice issued if it is deemed sufficient (chapter 8 section 8). Sanction fines between SEK 5,000 and SEK 50 million may be levied in case of such breach. An injunction may also be combined with a penalty fee (chapter 8 section 15).

3.4. Possible additional regulation

3.4.1. The Consumer Credit Act

3.4.2. The Consumer Credit Act (2010:1846) (CCA) has implemented the directive on Credit Agreements for Consumers (2008/48/EC). CCA applies to financing via crowdfunding if the lender is a business operator and the borrower is a private individual. CCA is also applicable if both the lender and the borrower are private individuals under the circumstances that the intermediary is a business operator (article 1). The article is not applicable if the mediation takes place on behalf of the borrower.

3.4.3. In the mediation of loans procured and provided exclusively by private individuals via lending-based crowdfunding, neither borrowers nor lenders have any regulatory consumer protection rights or obligations towards each other.

3.4.4. Proposal in the government's inquiry regarding CCA

3.4.5. In mediating financing between a business operator (as lender) and a private person (as borrower), or between a private person (as lender) and a business operator (as borrower), the capital intermediary must assess, before the financing is provided, whether the party intending to procure financing (i.e. the borrower) has the financial ability to fulfil the commitments under the credit agreement. This credit assessment must be based on adequate information regarding the borrower's financial circumstances. Financing may only be provided if the borrower is deemed to have the financial ability to fulfil its commitments. However, the obligation to carry out a credit assessment does not apply if the entity providing financing is a company authorised by S-FSA to issue or mediate loans. In such case, the company is to carry out the credit assessment. The aforementioned requirements also apply to companies conducting these activities as a capital intermediary, even though they are exempt from the authorisation requirement, provided that the company is not already covered by a corresponding obligation under another law.

4. Descriptive summary of the framework with general applicability to crowdfunding

4.1. Tort law

4.1.1. According to the Tort Liability Act (1972:207), the general rule is that any purely financial loss incurred as a result of a criminal act leads to liability. The Tort Liability Act is subsidiary to other regulations of liability, lex specialis, such as the Criminal Code, the Marketing Act and the Companies Act. Legislation concerning pure financial loss usually imposes

liability if the damaging action was committed by intent or negligence.

4.1.2. An investor who has suffered damage from an investment can claim damages from the platform, but it is far more difficult to prove adequate causality. The platform usually disclaims all liability incurred by gross negligence or intent in its terms of use. According to Swedish case law (NJA 2011 s. 454), non-contractual tort law principles can be applied in a contractual relationship. In the named case, the court based the liability assessment on applicable tort principles and adequate causality instead of the liability clause in the contract. For a crowdfunding platform, it is possible that a court would apply the same principle in order to protect the weaker consumer, in this case being the investor, provided that the platform has contributed to the damage.

4.2.Distance and Off-Premises Contract Act (2005:59)

4.2.1. Agreements signed by electronic means falls within the scope of the Distance and Off-Premises Contracts Act (2005:59). In crowdfunding, the parties enter different types of contracts by distance (e.g. share subscription agreements, shareholders' agreement).

4.2.2. The act contains consumer-friendly conditions and a minimum protection level for consumers in conjunction with distance contracts, such as e.g. information duty and cancellation right. Any contracts containing less favourable terms than what is stated in the act shall be invalid and unenforceable against the consumer. The act also provides a higher protection in terms of damages due to unfair marketing practices.

4.2.3. The consumer shall be entitled to withdraw from the contract by submitting or sending notice thereof to the trader within 14 days of the contract date. However, the provisions concerning the right of cancellation shall not apply where both parties, at the consumer's request, have performed their obligations under the contract. Furthermore, the cancellation right is not applicable to contracts concerning:

(a) financial services or transfers of financial instruments where the price depends on fluctuations on the financial markets beyond the trader's control and which may occur during the withdrawal period;

(b) participation in share issues or another similar activity, where the price for the right to which the activity relates will, following the expiration of the subscription period, depend on such fluctuations on the financial markets; or

(c) credit associated with real estate mortgages, site leaseholds, or tenant-owners' association rights, or similar rights, or in connection with comparable rights in buildings which do not belong to the real property.

4.2.4. Consumers who subscribe to shares in crowd equity platforms do therefore not have a right of withdrawal in accordance with (b) above.

4.3.Information society

4.3.1. Crowdfunding constitutes electronic commerce with goods, services and credits that are marketed, purchased and agreed to online. The parties are dependent on the information provided on the web in order to complete a sale or contract. Crowdfunding therefore falls under the conditions for information society services as set out in the Electronic Commerce and Other Information Society Services Act (2002:562) and the Directive 2000/31/EC (the E-Commerce Directive). This act also includes provisions applicable

to service providers from other EEA jurisdictions when conducting business in Sweden. According to the act, it is highly important that the platforms and the project owners are transparent with information which the investors base their decisions upon.

4.4. The Marketing Practices Act

4.4.1. The purpose of the Marketing Practices Act is to promote the interests of consumers, trade and industry in connection with the marketing of goods and to counteract marketing practices that are unfair to consumers and companies.

4.4.2. The act is applicable to crowdfunding platforms because the platforms actively advertise the funding campaigns but also market the products and services of the fund-seeking projects/companies.

4.4.3. According to the act, all marketing must be based on generally accepted marketing practices, which means generally accepted business practices or other accepted norms, the purpose of which are to protect consumers and traders in the context of the marketing of products and services.

4.4.4. The act prohibits misleading marketing practices. A trader may not use inaccurate claims or other presentations in the marketing which are misleading with respect to the commercial operations of the trader or a third party. Nor may a trader omit material information in the marketing of its own or a third party's commercial operations. Misleading omission also refers to such cases where the material information is given in an unclear, incomprehensible, ambiguous or other inappropriate manner.

4.4.5. In the case of a purchase offer, the marketing practice is misleading where, in a presentation, the trader offers consumers a specified product with a statement of price but does not include the following material information:

(i)the product's defining characteristics;

(ii)price and comparison price;

(iii)the trader's identity and physical address;

(iv)terms and conditions for payment, delivery, performance and handling of complaints, where these differ from those which are standard for the industry or product in question; and

(v) information which must be provided to the consumers pursuant to law regarding the right of withdrawal or right to rescind a purchase.

4.5.6. Injunctions, orders and damages

4.5.7. A trader whose marketing practices are unfair may be prohibited from continuing the practice or from adopting any other similar practice. A trader who, in the course of its marketing, fails to provide material information may be ordered to provide such information, which may include a duty to provide information in advertisements, through labelling or in another certain form requested by a consumer.

4.5.8. Material information refers to e.g. such information that must be provided under specific legislation, information about warranties and information in connection with purchase offers (see above). Such an injunction shall be issued in conjunction with a conditional fine unless special reasons render such unnecessary.

4.5.9. A trader who intentionally or negligently breaches an injunction or order shall compensate any consumer or trader for any damage suffered thereby.

4.5. Other possible regulations

- Contracts Act (1915:218),
- Act on Qualified Electronic Signatures (2000:832),
- Consumer Contracts Act (1994:1512),
- Consumer Sales Act (1990:932),
- The Act on Contract Terms in Consumer Relations (1994:1512),
- The Terms of Contract between Tradesmen Act (1984:292),
- Financial Advice to Consumers Act (2003:862),
- The Deposit Guarantee Act (1995:1571) and
- Investor Protection Act (1999:15)

5. Regulatory barriers for crowdfunding crossing borders

5.1. As previously stated, the regulatory aspects of Sweden's crowdfunding market are still in a grey zone. The following are the major regulatory obstacles for cross-border business in Sweden.

5.2. Applicable law

5.2.1. The local Swedish financial regulations apply when a foreign platform markets its services on the Swedish market and Swedish investors are approached by foreign actors. The S-FSA thus applies to a marketing-focused approach. In addition, the financial rules also apply when a foreign actor has a seat or a registered office in Sweden.

5.3. Foreign crowdfunding platform addresses Swedish investors and companies

5.3.1.Swedish regulatory law may apply to:

(a) Crowdfunding platforms (mainly licence for lending, information and compliance obligations); and

(b)foreign companies/projects seeking funding (information and compliance obligations).

5.3.2.(a) Crowdfunding platforms

Licence obligations

MiFID-Equity

Since MiFID is not applicable to crowd equity platforms according to Swedish law, there is no requirement for a foreign crowdfunding platform to have an EU passport in order to offer its crowd equity services on the Swedish market.

PSD Lending

Swedish crowdlending platforms are obliged to hold a PSD licence or to obtain registration with the S-FSA in accordance with LVK or the Payment Service Provider Act in order to offer lending services in Sweden. Foreign actors must however hold a licence in their home state in order to offer services in Sweden – a registration with the national financial supervisory authority is not sufficient. Crowdlending platforms (categorised as payment providers) domiciled in an EEA country wishing to start operating in Sweden shall report this to the competent authority of the EEA country in which the company is authorised. It is then the home state regulatory authority that approves the cross-border activities and informs the S-FSA.

For foreign actors, the crowdfunding platform can be operated through either a branch, agent or entities to which the platform's activities have been outsourced.

Other financial/compliance regulations

Money Laundering and Terrorist Financing (Prevention) Act (2009:62)

This act shall apply to private individuals and legal entities who conduct crowdlending and crowd equity activities, e.g. operations providing payment services in the capacity of a payment institution pursuant to the Payment Services Act but also without being a payment institution, operations involving consumer credit pursuant to LVK as well as assisting with the planning or execution of transactions on behalf of a client in conjunction with the buying and selling of real property or a company. The provisions regarding basic due diligence measures and ongoing follow-up of business relationships do not apply to the referred platforms if they are domiciled within the EEA because the state has equivalent provisions regarding measures against money laundering.

5.3.3. **(b) Company/project**

Licence obligations

There is no prospectus requirement for companies that offer non-transferable securities under Swedish law.

Other regulations

The Companies Act is only applicable to Swedish limited liability companies. Foreign companies/projects will therefore not be affected by the spreading prohibition.

The companies/projects must comply with the information requirements under the Marketing Practices Act.

Swedish anti-money-laundering regulation is not applicable to any EEA fund-seeking companies/projects, since they or any branches are not based in Sweden and are covered by the anti-money-laundering provisions in their home state.

5.4. **Swedish crowdfunding platform addresses foreign (EU) investors**

5.4.1. In this situation a Swedish crowdfunding platform enters foreign (European) markets and therefore addresses foreign investors.

5.4.2. Again, two different alternatives must be considered:

(a) Swedish crowdfunding platform approaches foreign (EU) investors and companies/projects (mainly licence requirement for lending platforms); and

(b) Swedish crowdfunding platform approaches Swedish investors and presents a company/ project from another EU member state on its platform.

5.4.3. **(a) Crowdfunding platforms**

Licence obligations

PSD licence

Activities in an EEA country may, after notification to the S-FSA, be operated either by employing a representative or setting up a branch in that country or conducting other cross-border activities in the country. A company that is going to change any of the conditions specified in the company's notification to the S-FSA after the cross-border activity has been initiated must notify the S-FSA in writing before the change is made.

In order for a Swedish company to be able to operate in a non-EEA country, it is necessary for the company to set up a branch there and that the S-FSA provides permission for branch establishment. If the company subsequently intends to change any of the conditions specified in the company's licence application, the S-FSA must be informed before the change is made.

Other regulations

Anti-money-laundering

Crowdfunding platforms must comply with the Swedish anti-money-laundry provisions in order to be compliant in other EEA countries as well (see above). However, since the platform's liability for e.g. lending is often unclear, the incentives for the platforms to control borrowers in certain cases may be low, which increases the risk of the platform being used for money laundering and financing terrorism.

5.4.4. **(b) Company/project**

Anti-money-laundering

Same as above.

5.5. **Impact of EU regulation**

5.5.1. MiFID I and II and prospectus rules

5.5.2. The different interpretations and implementations of certain elements in MiFID I and II have created a quite non-harmonised regulatory framework regarding licence requirements for crowdfunding platforms. As crowdfunding platforms are covered by the scope of the local legislation in some countries, due to the definition of e.g. transferable securities, other countries have the opposite approach, which lead to licence

requirements in some countries but not others. Sweden does not have a MiFID licence requirement for equity platforms. The Swedish crowd equity platforms can therefore not enter a market that requires a passportable MiFID licence since the S-FSA cannot issue such licence for crowd equity platforms.

5.5.3. The same applies to the prospectus requirements in the EU that have emerged due to the different interpretations of the directive. Such differences create entry barriers for cross-border platforms.

5.6.**Summary**

5.6.1. Sweden does not have a crowdfunding act, and no other acts have been amended with regard to crowdfunding yet. This is similar to other European countries that have interpreted and implemented the EU directives differently. For instance, the different licence requirements in the EEA states make it more difficult for platforms to conduct cross-border activities. A clear example is that a Swedish platform cannot obtain a MiFID licence for a crowd equity platform and thus cannot enter a market that requires such a licence, for example Finland.

5.6.2. A harmonised crowdfunding regulation on the EU level would allow more cross-border activity and a more secure funding environment since many countries would have clear directions to relate to.

6.The Government's inquiry on crowdfunding legislation

6.1. The inquiry proposes that provisions on crowdfunding shall be introduced in a new commercial law act called the Act on certain financial mediation activities. The act will include provisions on (a) authorisation or registration requirements to conduct activities governed by the act, (b) how these activities are to be conducted, and (c) supervision and sanctions. The S-FSA will assess matters regarding authorisation and registration, exercise supervision and establish a register of those entitled to conduct activities under the act. Entities conducting activities under the new act will be governed by the Act on Measures against Money Laundering and Terrorist Financing (2017:630).

6.2. The proposed new act will apply to any business activity that, in return for compensation, tries to bring together private individuals or legal entities intending to procure financing from private individuals or legal entities intending to provide financing, if the financing is:

(a) via such loans, in return for compensation, issued by entities other than companies authorised by the S-FSA to grant or mediate loans (lending-based crowdfunding); or

(b) in return for the transfer of shares of ownership or debt in the legal entity procuring financing (equity-based crowdfunding).

6.3. The act is not intended to apply to financial mediation services via lending- or equity-based crowdfunding solely between business operators.

6.4. The proposed act specifies the requirements for authorisation or registration. Authorisation to act as a capital intermediary will only be granted to Swedish limited companies or Swedish economic associations, or to foreign companies with a branch in Sweden. After notifying the S-FSA, any Swedish company conducting activities as a capital intermediary is entitled to establish a branch in another country.

6.5. The proposed act contains provisions on the S-FSA´s supervision and sanctions powers. These provisions essentially correspond to what applies to other equivalent financial activities, and their formulation has been modelled after provisions in other commercial law acts pertaining to financial markets.

6.6. As of today, there is no Government bill regarding crowdfunding.

7. Conclusion and recommendations

7.1. Crowdfunding is an expanding phenomenon in Sweden that lacks satisfactory legislation at the moment. Equity crowdfunding platforms are not subject to a financial licence and are not under the S-FSA's supervision. However, the crowdlending platforms, depending on how the funds are managed, need to register their business with the S-FSA or apply for a licence as a payment service provider. The latter licence is required for cross-border activities.

7.2. The platforms, investors and project owners that wish to pursue cross-border activities are recommended to thoroughly review the legislative framework for each member state and evaluate which jurisdiction is most suitable and favourable from a legal and a cost- and time-efficient perspective. The importance of the investors' due diligence before investing shall be emphasised to reduce the risk of incurred damages and fraud.

7.3. Although there is no current crowdfunding regime, the Swedish Government has expressed interest in crowdfunding as an investment tool, and it is not improbable that exemptions or targeted regulations intended to facilitate business for crowdfunding platforms may be introduced in the coming years. The Swedish Government has, in accordance with the aforementioned, proposed that provisions on crowdfunding shall be introduced in a new commercial act called the Act on certain financial mediation activities.

7.4. The Commission has proposed a directive on crowdfunding, proposal for a regulation of the European Parliament and the Council on European Crowdfunding Service Providers (ECPS) for Business (COM 2018, 113 final). The final proposal was published on 8 March 2018. The European Parliament and the Council have not yet adopted the proposal.