



**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?**

Yes. By the amendments made to the Capital Markets Law numbered 6362 on November 2017, crowdfunding and crowdfunding platforms have been introduced to the Turkish law.

Furthermore, on January 2019, the Capital Markets Board of Turkey has published the 'Draft Communiqué on Equity Crowdfunding' in order to regulate the procedures and principles to be followed by crowdfunding platforms and crowdfunding companies in relation to equity crowdfunding. However, the Draft Communiqué is still in progress and has not been finalised by the Capital Markets Board as of March 2019. Although the Draft Communiqué is not yet in force, we prepared our responses in accordance with the Draft Communiqué as it is very likely that it will be adopted without much change.

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

The Capital Markets Board of Turkey and the Central Registry Agency are responsible for regulating equity crowdfunding.

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

Yes. Pursuant to the Draft Communiqué, a crowdfunding company shall only collect funds for a maximum of two campaigns within a period of 12 months. The amount that can be raised by these campaigns is limited by the export limit announced by the Capital Markets Board annually. For 2019, this limit is determined as TRY 8,289,910.

Moreover, pursuant to the Draft Communiqué, on funding requests exceeding TRY 1 million, a minimum of 10% of the target funding amount must be met by 'qualified investors', who are determined by the Capital Markets Board, within the campaign period.

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

Yes. Pursuant to the Draft Communiqué, the crowdfunding platform must reject the membership request of purchasers who are deemed to lack the knowledge of the risks and relevant experience and the understanding that they may lose all of their investment and that the shares they acquire may be transferred only in certain conditions.

Furthermore, the Draft Communiqué distinguishes types of purchasers as regular investors and qualified investors. The qualified investors are determined by the Central Registry Agency and,

contrary to the qualified investors, regular investors may only start investing on the fourteenth day of their membership of the crowdfunding platform, and they may only invest a total amount of TRY 20,000 annually.

**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?**

Pursuant to the Draft Communiqué, the crowdfunding company must publish an 'Information Form' on the campaign page. The minimum standards for its content will be determined by the Capital Markets Board. According to the Draft Communiqué, the information form must contain any information that might affect the investment decision of the investors and must be available during the campaign period and the following five years. The information form must also contain information on the rights and conditions of the shares to be offered and any privileges on the shares. The information form needs to be approved by the investment committee that is established by the crowdfunding platform.

Moreover, the crowdfunding company shall also prepare and publish a report on the campaign page with regard to the purpose of raising funds and how the funds will be used.

Furthermore, the crowdfunding company must inform the public within two days if one of the following occurs;

- If an action for liquidation of the crowdfunding company is filed, a reason for liquidation occurs as set forth in the articles of association, or the general assembly of the crowdfunding company agrees on dissolution of the company;
- If the crowdfunding company applies for a statutory arrangement with creditors;
- If an action for bankruptcy is filed against the crowdfunding company; or
- If there is a change of control over the crowdfunding company

The crowdfunding company shall also publish its financial tables and reports within the end of the fourth month following the relevant fiscal year.

All the information to be disclosed to potential purchasers must be in Turkish language.

**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. Pursuant to the Draft Communiqué, crowdfunding platforms need to apply to the Capital Markets Board in order to operate. In order for a crowdfunding platform to be enlisted, it needs to meet several criteria set forth under the Draft Communiqué.

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

The Draft Communiqué prohibits equity crowdfunding platforms established outside Turkey from actively offering their services to persons residing in Turkey by direct marketing and advertisement. Such platforms must establish a joint-stock company in Turkey to actively offer their services within Turkey. However, the Draft Communiqué allows such platforms to provide services to persons in

Turkey provided that they do not actively offer/market their services in Turkey.

**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?**

No, there is no specific legislation governing peer-to-peer lending. Under Turkish law, unless it is allowed by a law, any lending activity for the purposes of making a profit is prohibited. Article 241 of the Turkish Penal Code states that 'a person who lends money to someone else in return of a profit is sentenced to jail from two to five years and with a judicial fine up to five thousand days'. In principle, lending activities in Turkey are carried on by banks. There are a few other circumstances where lending activities are allowed. However, as peer-to-peer lending is not regulated under any law in Turkey, such activities are prohibited.

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

Peer-to-peer lending is not regulated and is prohibited under Turkish law.

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

Peer-to-peer lending is not regulated and is prohibited under Turkish law.

**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?**

Peer-to-peer lending is not regulated and is prohibited under Turkish law.

**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?**

Peer-to-peer lending is not regulated and is prohibited under Turkish law.

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

Peer-to-peer lending is not regulated under Turkish law.

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

Peer-to-peer lending is not regulated and is prohibited under Turkish law.

**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 not regulated and is prohibited under Turkish law.

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

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