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), 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

Paulo Câmara
Managing Partner of Sérvulo & Associados
Leader of the Legalink FinTech Forum

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ARGENTINA
NICHOLSON Y CANO ABOGADOS

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?

There is a specific regulation governing equity crowdfunding; namely, Law No. 27,349 and Resolution No. 717/17 issued by the Argentine Securities Commission.

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

The main government agencies responsible for regulating equity crowdfunding are the Secretariat of Entrepreneurs and of the Small and Medium Companies of the Ministry of Labour and Production, and the Argentine Securities Commission.

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

Yes, the amount of all the instruments issued under each project may not exceed the sum of ARS20 million during a 12-month period.

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

Yes. In the case of companies, it can be in the form of shares or loans convertible into shares. In the case of trusts, it can be in the form of trust participations.

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?

If the equity crowdfunding is structured as a public offering, then it falls within the category of the collective financial system and it shall be organised in the form of a collective financial platform (the Crowdfunding Platform).
In connection with the public offering, the Crowdfunding Platform must disclose, among other things, the following:

- the procedures and risk management manual applicable to the Crowdfunding Platform;
- a clear warning to investors and entrepreneurs about the risks involved in crowdfunding projects;
- a guide describing the methods the Crowdfunding Platform utilises to select crowdfunding projects;
- the procedure and means used to carry out the sale of the instruments being publicly offered in the Crowdfunding Platform;
- the procedure and means used for the filing of complaints and/or claims from clients and the methods to solve them;
- the measures adopted to avoid conflicts of interest;

- if appropriate, the identity of the company that provides the payment service to the Crowdfunding Platform; and
- information on the historical performance of the Crowdfunding Platform, with statistics on the number or percentage of non-compliance, as well as the default rate.

Documents regarding the offer or marketing materials do not need to be approved by the regulator.

Likewise and in connection with each investment project, the Crowdfunding Platform shall be obliged to gather the following information, among others:

- the company's bylaws with their respective amendments, tax ID, address, website, list of shareholders and capital structure;
- the name of the members of the administrative body, legal representative and control body, organisational chart, time in office, experience in the business of the last three years, or since it's incorporation in case of having a shorter existence.
- a description of the project and its business plan.
- the total number of employees, if any;
- a general explanation of the general investment risks;
- the issuance's amount and the subscription deadline, including a statement that if the requested sum is not reached there will be no issue and the funds collected will be returned;
- the possibility of entrepreneurs to accept offers exceeding the amount to be subscribed and, if so, the maximum amount of oversubscription (which may never exceed 25% of the original amount) and the mechanism of how oversubscription will be allocated;
- a reasonably detailed description of how the funds resulting from the subscription shall be utilised; and
- a description of the type and class of instruments being offered.

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?

Crowdfunding Platforms need to be registered and authorised by the Secretariat of Entrepreneurs and the Small and Medium Companies of the Ministry of Labour and Production, and the Argentine Securities Commission, for public offerings.

Also, Crowdfunding Platforms must appoint a compliance responsible officer to be registered at the National Securities Commission.

In addition, said Crowdfunding Platforms need to be registered at the Public Registry of Commerce, at the tax authorities and at the Argentine Financial Information Unit (for money laundering purposes).

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

Be informed that investors cannot:
- invest or acquire in instruments offered by the Crowdfunding Platform for more than 20% of their

annual gross income (within a year); and

- participate in more than 5% of the shares issued on each Crowdfunding Project or in an amount higher than ARS 20,000, whichever is lower. The aforementioned limit of ARS 20,000 does not apply if the investor is eligible as a qualified investor pursuant to Argentine Securities Commission regulation.

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, it is regulated under generally applicable laws regarding financial intermediation and/or public offerings.

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

N/A

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

N/A

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?

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

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AUSTRALIA
PIPER ALDERMAN

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: Equity crowdfunding is regulated under a specific regime (part 6D.3A of the Corporations Act 2001) which prescribes less onerous disclosure requirements for CSF offers than for general securities offers and requires the CSF intermediary (the provider of the online platform by which investors can accept the offer) to perform a gatekeeper function in relation to the eligibility of the issuer to make a CSF offer and the adequacy of disclosure documents.

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

Australian Securities and Investments Commission.

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

AUD 5 million in total over a 12-month period, which includes:
(a) maximum amount sought to be raised by the CSF offer;
(b) all amounts raised through CSF offers in the past 12 months (before the date that the new CSF offer is made) by the company and its related parties; and
(c) all amounts raised by the company and its related parties in the past 12 months (before the date that the new CSF offer is made) through general securities offers that did not require a disclosure document because they were small-scale offers or made to sophisticated investors through a financial services licensee.

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

No, but retail investors cannot obtain more than AUD 10,000 in securities (valued at the offer/subscription price) in the same company via CSF offers 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?

CSF offers must be made under a CSF offer document – a simplified disclosure document prescribed exclusively for CSF offers. A CSF offer document must cover the following matters:

- standard-form risk warnings about the risks inherent in investing in securities via CSF offers;
- information about the offering company, including its directors and senior managers, organisational structure, capital structure, key business risks, key constitutional provisions affecting the rights and liabilities attached to securities being offered, summaries of financial statements of the company and, for proprietary companies, shareholder agreements that may affect the securities in the offering company;

- information about the offer, including a description of the securities being offered, the rights associated with the securities, the minimum and maximum subscription amounts, the period for which the offer is expected to be open and the company's intended use for the funds raised by the CSF offer; and
- information about investor protections, including cooling-off rights, the requirement for the CSF offer platform to contain a discussion board facility on which persons can make posts and have questions answered by the offering company, and the periodic financial reporting obligations of the offering 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?

Operators of equity crowdfunding platforms – CSF intermediaries – must hold an Australian Financial Services Licence (AFSL) authorising them to provide a crowdfunding service. CSF intermediaries are thereby subject to the general AFSL conduct obligations, including to:

- provide financial services efficiently, honestly and fairly;
- manage conflicts of interest to avoid detriment to clients;
- maintain adequate compensation arrangements, including professional indemnity insurance; and
- maintain adequate dispute resolution systems, including membership of the Australian Financial Complaints Authority non-judicial dispute resolution scheme.

In relation to CSF offers, CSF intermediaries serve as a gatekeeper between offerors and investors, providing an additional layer of checks and verification relative to a general securities offer. CSF intermediaries have the following specific obligations:

- to verify the identifying information about the company and its directors, and that the company is eligible to make a CSF offer, prior to publishing a CSF offer document on its crowdfunding platform;
- to perform checks to a reasonable standard to verify that the CSF offer contains the required information and is expressed in a clear, concise and effective manner, prior to publishing a CSF offer document on its crowdfunding platform;
- to notify the offering company if, during the period that the CSF offer is open, it becomes aware that the CSF offer document is defective and close or suspend the CSF offer until the defect is remedied by publication of a supplementary or replacement CSF offer document;
- to present required risk warnings and acknowledgements to investors on its platforms;
- to provide a discussion board facility in relation to each CSF offer in which investors can make posts and ask questions, and the company can respond; and
- to hold application moneys in a separate trust account, pending either payment to the offeror on successful completion of the offer or repayment to applicants if the offer is unsuccessful.

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

To be eligible to issue securities by way of CSF offer, a company must satisfy the following criteria:

- it is either an unlisted public company limited by shares or a proprietary company with at least two directors;
- a majority of its directors ordinarily reside in Australia;
- its principal place of business is in Australia;
- it meets the asset and turnover limits described below; and

- it does not have a substantial purpose of investing in securities, managed investment schemes or interests in other entities.

CSF offers may currently only be made by companies with consolidated assets less than AUD25 million and consolidated annual revenue less than AUD 25 million. Consolidated assets and consolidated revenue are determined in accordance with accounting standards and include the assets/revenue of related parties – related bodies corporate and entities controlled by a person who controls the company, and associates of that person.

'Securities' for the purposes of part 6D.3A of the Corporations Act include shares, debentures and call options over shares or debentures. The crowd-sourced funding provisions in part 6D.3A apply generally to any class of securities prescribed by the Corporations Regulations 2001. Presently, however, the only prescribed class of securities is fully paid ordinary shares in a company.

A company cannot make a CSF offer if it intends to use any of the funds raised to lend money to a related party, or for a related party to lend money to the company or to another related party.

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 dealing with peer-to-peer lending. However, the investment aspect of a peer-to-peer lending operation will generally be structured as a managed investment scheme and thereby regulated as a financial product under chapter 7 of the Corporations Act 2001, whilst if the lending side involves the provision of consumer credit, it will be regulated under the National Consumer Credit Protection Act 2009 (NCCP Act).

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

Australian Securities and Investments Commission.

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

No.

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 on the types of persons who can borrow.
If the credit being provided is consumer credit, under the NCCP Act the maximum annual cost rate of the credit (an effective interest rate which takes into account non-interest fees) is 48%.
There is no general restriction on the types of persons who can lend under peer-to-peer lending schemes. If a peer-to-peer lending operation is a managed investment scheme, a person's ability to be a lender in that particular scheme depends on whether:

- the person is a retail or wholesale investor; and
- the operator is authorised to provide financial services relating to the peer-to-peer lending managed investment scheme to wholesale and/or retail investors.

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?

If a peer-to-peer lending venture is structured as a managed investment scheme, the operator must hold an Australian financial services licence (AFSL) authorising it to deal in interests in a managed investment scheme and to provide general advice in relation to the managed investment scheme. Lenders will be investors in the scheme and so do not require any licence or registration; they will be clients of the operator of the scheme.
If the peer-to-peer lending venture will involve the provision of consumer credit regulated by the NCCP Act (that is, credit provided wholly or predominantly for personal, household or domestic purposes, to purchase, renovate or improve residential property for investment purposes or to refinance credit that was provided wholly or predominantly to purchase, renovate or improve residential property for

investment purposes), the operator of the peer-to-peer lending venture must hold an Australian Credit Licence authorising it to provide consumer credit.

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

There are no requirements specific to peer-to-peer lending distinct from the general issue of interests in a managed investment scheme or provision of regulated consumer credit.

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

If the credit provided is consumer credit regulated by the NCCP Act, the NCCP Act and National Credit Code contain consumer protection provisions that require the operator of the peer-to-peer scheme to assess whether the credit is unsuitable for a consumer prior to providing the credit and prescribing procedures that they must follow in enforcing the credit contract in the event of default.
Credit provided for investment purposes (other than in relation to residential property), for business purposes or to non-natural persons is not regulated by the NCCP Act but may be subject to consumer protection provisions in the Australian Securities and Investments Commission Act 2001 if it is provided to a small business.

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

As it is not possible to assign legal title to part of a debt in Australia, peer-to-peer lending operations are invariably structured as unit trust managed investment schemes in which funds are raised from investors and used to lend to consumers. The operator of the scheme is the lender of record on a loan contract and holds the legal title to the loan on trust for investors in the scheme. It is possible to structure the scheme so that each individual loan represents its own class of units in the scheme, so that particular loans can be funded by particular investors as if those investors were directly lending to borrowers, and those investors are exposed to the returns and risks of those particular loans. Alternatively, classes of units can represent pools of loans, so that investors in those units are exposed to the risks and returns of multiple loans.
The issuing of interests in managed investment schemes and the provision of consumer credit are regulated under different legislative schemes, and so it is necessary to consider them separately.

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

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CHILE
GRASTY QUINTANA MAJLIS

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?

No, Chile does not have specific regulation on equity crowdfunding. However, there is regulation for initial public offerings for publicly traded companies in the Chilean stock market under Law No. 18,045 regarding Capital Markets, dated 22 October 1981, which constitutes our general law on securities. This law is also supplemented by resolutions from the administrative authority on this matter, the Commission on Financial Markets, Banks and Financial Institutions (CMF).

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

t regulated, the CMF is the main authority on financial markets, banks and other financial institutions. Its main role is to oversee the correct functioning, development and stability of the Chilean financial market, along with promoting the participation of market agents in the financial market and safeguarding public faith.

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

Although equity crowdfunding is not regulated, there are no limits on amounts raised by similar financial operations (e.g. an IPO), and the applicability of the securities regulation would ultimately depend on whether any such offering is deemed 'public' or not.

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

Provided that an offering is not governed by securities regulation, the only possible restriction is the preemptive right that every shareholder has under Chilean Law No. 18,046, where, upon any share issuance, existing shareholders have a right to subscribe shares in the same proportion as their stake at any such company. Once preemptive rights are not exercised or waived, the company is free to offer shares to any purchaser.

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?

Regarding IPOs (a similar operation to an equity crowdfunding operation), the law requires that the offeror must publish a notice in at least two different local newspapers communicating the opening of the IPO. This notice must contain the essential information for its correct understanding. From the date of the abovementioned notice and during the extension of the offer, the offeror must make available to any interested parties a prospectus that contains all of the terms and conditions of the IPO (such as

complete identification of the offeror, shares or securities involved in the offer, prices and conditions for its payment, extension of the offer and procedure for its acceptance, among others). A copy of the prospectus must be available at the office of the relevant company, its parent company (if applicable), the CMF and the stock exchange offices. A guarantee for the fulfilment of the IPO may also be included by the offeror.

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?

Regarding private placements, there are no such requirements in Chile. Regarding IPOs under Chilean law, only a publicly traded company may offer its shares following the procedure set under Title XXV of Law No. 18,045. Publicly traded companies must comply with Law No. 18,046 on Stock Companies and are subject to specific regulation established by the CMF as they must be registered before the CMF as an issuer of securities for public offer.

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

Although equity crowdfunding is not regulated in Chile, our relevant authorities have been studying this matter during the past years, up to the point of publishing a White Paper describing Guidelines for the Regulation of Crowdfunding in Chile (February 2019). Our central bank also published a document titled 'Fintech and the Future of Central Banking' (August 2017), with its first impressions of the fintech industry, including equity crowdfunding, and its early impacts on Chile's financial markets. The CMF's White Paper is much more specific than the aforementioned document, as it focuses more on crowdfunding, providing insight on comparative experiences in other legislations and general guidelines for future regulations in Chile.

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 or regulation governing peer-to-peer lending. Therefore, general rules on lending agreements, found under Title XXXI of the Chilean Civil Code and Law No. 18,010 on Credit Operations and Other Financial Obligations, apply.

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

Considering that peer-to-peer lending is not regulated in Chile, there are no government agencies in charge of overseeing these operations.

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

No, there are no limits on the amounts that can be lent. However, the amount of principal under any such credit operation will affect the maximum rate of interest applicable to the loan under Chilean 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?

No, there are no restrictions on the types of persons who can lend/and or borrow. However, under Law No. 18,010, there is a maximum interest rate applicable for different credit operations, with some of them (depending on the person involved) exempted from such restrictions. In fact, credit operations which are contracted with foreign banks or financial institutions; are contracted using foreign currency for international trade operations; are contracted between the Central Bank of Chile and Chilean financial institutions; and are contracted by a bank or a financial institution as debtor, do not have restrictions on the maximum interest rate.

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?

No; however, observance of general rules regarding credit operations is always required.

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

Yes. Under article 17G of Law No. 19,496 on the Protection of Consumer's Rights, financial service providers (e.g. banks) must publish the annual equivalent cost (CAE) of a credit operation, expressed in the value of its monthly instalments, in their advertisements, either in massive or individual media outlets. Mentions of the CAE in such advertisements must have the same treatment as the rest of the information advertised with respect to fonts, extension, placement and duration, among other characteristics). The CAE is the total sum of instalments plus interest, operational expenses and any insurance associated with the credit operation.

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

A: Yes, articles 17A to 17L under Law No. 19,496 establish specific requirements for providers of financial products or services. The authority supervising compliance with this regulation is the National Consumer Service.

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

As with equity crowdfunding, peer-to-peer lending as a business model is not specifically regulated in Chile. However, the CMF's White Paper describing Guidelines for the Regulation of Crowdfunding in Chile (February 2019) includes peer-to-peer lending as one of the activities that need to be regulated in the future in order to prevent risks for the stability of our overall financial system. Our Central Bank also mentions this industry in its 'Fintech and the Future of Central Banking' (August 2017), as it considers peer-to-peer lending as one of several financial technological industries that are currently in development in Chile.

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

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COLOMBIA
MTA

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. Colombia has issued Decree 1357 of 2018, by means of which rules to carry out equity crowdfunding activities in Colombia were introduced.
Equity crowdfunding corporations are regulated and surveilled by the Financial Superintendence of Colombia.

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

The Ministry of Finance and Public Credit is the principal governmental body that regulates and addresses finance matters in Colombia, having a special unit known as Unit of Normative Projection and Studies of Financial Regulation (URF) with the purpose of preparing the regulation for the financial activity in Colombia for matters that include equity crowdfunding.

On the other side, the Financial Superintendence is the governmental agency responsible for the supervision and surveillance of the financial sector in Colombia. It has as its principal purpose the preservation of the stability of the Colombian financial system. The Financial Superintendence has created a special unit dedicated exclusively to fintech matters (the RegTech Proyect), which also works in collaboration with the different actors in the financial environment and with the Ministry of Finance. Additionally, this entity has recently created Sandbox, a programme to promote and develop fintech innovations.

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

First, it is important to clarify that the limits on the amounts that can be raised for crowdfunding projects are applicable to the start-ups or companies promoting their projects and not to the crowdfunding companies in the strict sense. Therefore, Colombian regulations have established certain limits to the amounts that can be raised by the legal entities or natural persons that request financing for a project under a crowdfunding or collaborative financing mechanism.

Pursuant to Decree 1357, the limits on the amounts that can be raised by the companies or receivers through crowdfunding depends on whether the investors are qualified or non-qualified.

Qualified investors are those who comply with one or more of the following characteristics at the time the investment is made:

a) a patrimony equal to or greater than 10,000 minimum legal monthly salaries (SMLMV) (approximately USD 2,250,000)
b) an investment portfolio in securities, other than collaborative financing securities, equal to or greater than 5,000 SMLMV (approximately USD 1,275,000)
c) certification of market professional as an operator issued by a self-regulatory body of the stock market;
d) an entity supervised by the Financial Superintendence of Colombia, or
e) a foreign or multilateral financial agency.

On the other hand, non-qualified investors are those who do not comply with any of the aforesaid characteristics.

Considering the above, Section 2.41.3.1.2 of Decree 1357 establishes that the maximum amount of financing that each of the receivers can raise through collaborative financing mechanisms or crowdfunding cannot be greater than 10,000 SMLMV and, in no case, greater than 3,000 SMLMV (approximately USD 765,000) when the investors are only non-qualified.

It is important to bear in mind that the limits on the amount previously indicated must be applied regardless of the nature of the method of the crowdfunding applied in the project, whether it is equity crowdfunding or debt crowdfunding through securities.

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

As stated above, Decree 1357 establishes two types of purchasers or investors: qualified and non-qualified. In this sense, restrictions have been imposed on the limits applicable to the amounts that can be raised by the receivers through the crowdfunding companies for the projects.

Furthermore, Decree 1357 determines restrictions on the amounts of the investments that can be done by the non-qualified investors. In this sense, these purchasers are prohibited from investing though collaborative financing companies more than 20% of their annual income or their patrimony, whichever is greater.

In the case of qualified investors, the above restriction does not apply.

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?

There are different information requirements provided under Decree 1357.

Section 2.41.2.1.6 of Decree 2555 of 2010 modified by Decree 1357 of 2018 indicates that the following information needs to de disclosed to investors by the crowdfunding companies, without cost, through the websites of such companies or any other means that guarantees access:

a) the operating regulations of the financing activity carried out by the crowdfunding company, which must be approved by the Financial Superintendence;

b) the description in a non-technical language of each of the projects to be financed in order to provide the necessary information to allow an investor a well-founded judgement on the financing decision of the project, in accordance with article 2.41.3.1.1 of Decree 2555 of 2010;
c) the classification procedure of the projects;
d) the description of the main financing elements determined by the receiver, which, as a minimum, are related to:

(i) the amount, term and price of the issuance or placement rate of the financing, expressed in annual effective terms;
(ii) in the case of debt securities, the amortisation table with the amount, number and periodicity of the payments to be made by the recipient of the credit;
(iii) the penalties for default;
(iv) withdrawal and prepayment events;
(v) payment and collection mechanisms;
(vi) the procedure for events in which financing amounts are not met and mechanisms to return the amounts to the purchasers; and
(vii) the costs or expenses, including taxes, related to the return procedure aforesaid mentioned.

e) a warning that the crowdfunding company that performs the crowdfunding activity does not hold the status of credit establishment or securities intermediary;
f) the fees charged by the crowdfunding company and any other commission, charge or withholding that may apply;
g) the mechanisms for the collection of resources related to the financing of the project;
h) the procedures and systems established to maintain and distribute the funds of investments;
i) the financial information related to the evolution of the financing of each of the projects, indicating at least the number of purchasers, amounts financed and conditions of the financing; and
j) the procedures to process requests, questions and claims.

Also, crowdfunding companies have the legal duty to report to the financial information operators of Law 1266 of 2008 information regarding the origin, modification or termination of the obligations contracted by the receivers, including their amount and payment reports, in a maximum term of three days from the date of the event, the reception of the information or the moment in which the crowdfunding company became aware of it.

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

In Muñoz Tamayo & Asociados we have been very active promoting crowdfunding activities in Colombia and have actively engaged with entrepreneurs to help in the development of this industry to provide alternative finance mechanisms for start-ups.

Nevertheless, the issuance of Decree 1357 of 2018 has not had the intended effects considered by the regulators, and has become, in a way, a barrier to the development of equity crowdfunding in Colombia.

Although the regulations address some of the biggest concerns about this mechanism such as public

offers and massive and usual collection of funds and establishes the rules to effectively avoid such risks, it determined that crowdfunding companies were obliged to incorporate themselves as stock companies and carry out an authorisation process before the Financial Superintendence and register before the National Agents Registry of the Stock Market (RNAMV, as per its name in Spanish). This regulatory burden has, to a certain extent, disincentivised the activity, which has not been able to consolidate as of today.

Furthermore, the Financial Superintendence has not regulated the requirements for the constitution of minimum capital of equity crowdfunding companies. As such, as of today there are no requirements, but those could come to exist in the near future.

Nevertheless, the fact that Colombian regulators have addressed the matter, and the approach of the current government towards the promotion of the fintech sector, may provide opportunities to promote certain regulatory adjustments to allow this sector to thrive.

Also, it is important to note that article 2.41.1.1.5 of Decree 2555 of 2010 states that section 41 of the Decree will be applicable to entities that develop crowdfunding activities in Colombia and are residents of the country, as well as the receptors and contributors that participate in them, meaning that those receptors would have to be Colombian residents. In other words, such provisions would not apply to operations executed by Colombian residents through platforms or crowdfunding organisations domiciled or operating outside Colombia.

7. 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?

To date, peer-to-peer lending in Colombia is yet to be regulated and is therefore governed under generally applicable laws for civil and commercial matters.

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

Although it is not regulated as such, the main regulatory actor is the Financial Superintendence, which oversees issuing specific financial regulations.

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

Even though peer-to-peer lending in Colombia has not yet been regulated, the execution of loan contracts or the entering into passive and debt-related obligations has been limited by Colombian law in relation to massive and usual collection of money from the public.

In accordance with Decree 1981 of 1988 compiled through 1068 of 2015, it is understood that a massive and usual collection of money from the public happens when (i) an individual or company receives sums of money from over 20 different third parties, or, without regard for the number of parties, has entered into 50 or more obligations or debts that involve the return of money without providing a service or good in exchange; or (ii) when an individual or company has executed during three consecutive months over 20 mandate contracts with the purpose of administrating the money of its principal to (a) invest them in negotiable instruments or values, (b) sell credit or investment bonds in order to transfer the property of titles, or (c) freedom of all business administration.

In any of the cases stated above, there will be a massive and usual collection of money should the sum of all operations add up to more than 50% of the liquid assets of the individual or company, or if they are the result of a public or private offer to undetermined third parties, or the usage of any other system or mean with identical or like effects to those of receiving the funds.

As such, it must be understood that peer-to-peer lending platforms cannot be a stage for the execution of operations related to the exercise of activities that are exclusive to financial institutions controlled and surveilled by the Financial Superintendence of Colombia.

Therefore, activities such as collection of public resources and financial intermediation are not allowed for peer-to-peer lending 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?

Yes, there are restrictions on the type of persons who can lend and on the rate of interest that can be charged. Those restrictions derive from (i) the type of loan contracts used, and (ii) the origin of the resources being lent.

Firstly, for the present case, the type of loan contracts would be either civil loans or regular commercial loans, which do not necessarily involve the need for approval, registry or the use of any specific corporate types.

In our opinion, and to the extent that there is no regulation on the matter, we do not consider that this would apply in the present case, as peer-to-peer lending is done by loaning an individual or company's own resources. This means that there would be no control by the Financial Superintendence and therefore, in general terms, would not require any specific corporate structure or authorisation.

As for the maximum interest rates, Colombian law regulates this matter for both civil and commercial types of loans.

For the case of civil loans, the first relevant provision derives from article 2232 of the Civil Code, and it states that should the parties not specify the interest rate that will be charged, the legal interest rate will apply (levied at 6% per year).

The second provision found in article 2231 states that, should the interest rate be specified by the parties, said stipulation cannot exceed 1.5 times the Current Banking Interest rate.

On the other hand, should the loan contract be considered commercial under the frame of mercantile operations contained in articles 20 to 25 of the Colombian Commercial Code, the maximum interest rate will be 1.5 times the Current Banking Interest rate, which varies depending on the type of credit being executed. These rates are determined monthly in Colombia by the Financial Superintendence. The Current Banking Interest annual rate for the month of June 2019 for consumption credits is 19,30%, and 28,95% annual rate for the usury rate.

Lending money at higher rates than the maximum ones provided by law attracts both economic sanctions like losing the amount charged in excess, along with a penalty of double the amount, and criminal liability.

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?

Usually, there would be no requirements for the online platform and/or the lenders to obtain a licence or be registered, nor would they have to comply with particular rules.

The only case in which there would be a need for an online platform or lender to comply with any requirements would be one where the lenders pursue types of lending that require Financial Superintendence approval and specific corporate structures.

Nevertheless, in our opinion it would not be the case for peer-to-peer lending, as it would regularly

structure itself around civil and commercial loan contracts through the loaning of an individual or company's own resources.

As for the online platform, other platforms in the transportation and service industries already operate in Colombia, whose purpose is not to provide a direct service as such in those industries, but rather to connect individuals who offer a service with those who require it.

Since peer-to-peer lending is yet to be regulated, the Financial Superintendence does not have specific requirements for those types of services to date. However, Colombia would still face the regulatory risk of having rules implemented that may affect a particular business model in the sector.

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

In Colombia there are no requirements for marketing and promotional documents and activities specifically for this type of service, other than the common provisions and laws. This means in general the prohibition on supplying false advertisements, compliance with offers made to the public, and regulations regarding use of public space and media, veracity of information and others.

Mainly, the provisions that could affect peer-to-peer lending and create requirements would be those around the information and transparency of the service given to users, as well as the need to review and verify the origins of funds to ensure that no illegal activities such as massive and usual collection of money from the public, money laundering or finance to terrorism is being made through the platform, in order to avoid sanctions for facilitation of illicit activities.

As such, platforms that ensure this could freely market their services without sanctions from government authorities.

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

Should the services provided be considered financial consumer-related matters, by stating that platforms for peer-to-peer lending must be controlled and regulated by the Financial Superintendence, all the provisions included in Law 1328 of 2009 regarding the protection of financial consumers would be applicable.

Those include, but are not limited to, the need for education and adequate explanations on the functioning of the system and type of service provided, the markets, the ability to pay interest rates and credits of under 800 minimum legal wages in anticipation, and others. This would require reports to and authorisation from the Financial Superintendence for the lenders, alongside other specific provisions for attention centres, response programmes and financial backings.

In the case that those regulations do not apply, the other potential regulation would be the Consumer Protection Statute and its different provisions on quality of services, adequate advertisements and guarantees for products or services, and all other rights and obligations contained in the statute.

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

In recent years, the Colombian Congress and different actors have been actively discussing the need to issue specific regulations for fintech companies and business models.

As such, there are non-governmental agencies like Colombia Fintech that are working together with the Financial Superintendence, reviewing the possibility of starting sandbox regulation processes on peer-to-peer lending operations in order to determine how to best structure the norms that govern it, making it favourable and friendly for final users.

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

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CZECH REPUBLIC
FELIX A SPOL.

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?

Equity crowdfunding, also referred to as crowd investing, is relatively newly discovered territory in the Czech Republic. In 2014, there were only four existing platforms operating on the Czech financial market, and five in 2015. Legislators have, therefore, not yet been able to cover the area as a whole and implement relevant legislation. That applies mostly to Czech legislation; the EU has already processed and issued certain laws regulating equity crowdfunding which were partially implemented into Czech legislation.

Equity crowdfunding is, however, regulated through other already effective laws and regulations, i.e. the Capital Market Act, Payment System Act, Banks Act or Czech National Bank Act.

Relevant legislation can be further divided into five main areas:

Anti-Money Laundering
a) Act no. 253/2008 Coll. (AML)
Consumer Laws
a) Act no.89/2012 Coll. (Civil Code)
b) Act no. 257/2016 Coll. (Consumer Credit Agreement Act)
Collecting funds from public
a) Act no. 256/2004 Coll. (Capital Market Business Act)
b) Act no.370/2017 Coll. (Payment System Act)
c) Act no.6/1993 Coll. (Czech National Bank Act)
d) Act no. 21/1992 Coll. (Banks Act)
e) Act no. 229/2009 Coll. (Financial Arbitrator Act)
f) Act no. 480/2004 Coll. (Act on Informational Services)
g) Act no. 240/2013 Coll. (Investment Companies and Funds Act)
h) Act no. 64/1986 Coll. (Czech Trade Inspection Authority (CTIA))
Personal Data Protection
a) Act no.101/2002 Coll. (Data Protection Act)
EU legislation (please note that this list is not exhaustive)
a) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market
b) Directive 2013/36/EU of the European Parliament and of the Council of 26June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

c) Regulation (EU) No575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms

d) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading

e) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

f) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms

g) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers

h) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property

i) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions

j) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

k) Regulation (EU) No345/2013 of the European Parliament and of the Council of 17April 2013 on European venture capital funds

l) Regulation (EU) No346/2013 of the European Parliament and of the Council of 17April 2013 on European social entrepreneurship funds

m) Directive 2013/11/EU of the European Parliament and of the Council of 21May 2013 on alternative dispute resolution for consumer disputes

n) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

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

The only agency supervising the financial market and the only authority responsible for licensing and approval proceedings in the Czech Republic is the Czech National Bank.

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

Generally, there are no limits on the amounts that can be raised; some platforms may set up such limits themselves. Nevertheless, according to some, it is more about the project than the actual money as equity crowdfunding is only a type of crowdfunding.

Some use crowdfunding platforms to 'find their audience' and often ask for less money than they actually need.

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

There are certain restrictions, or rather requirements, mostly depending on the nature of a purchaser. Each investor must register on the platform he/she wants to use in order to invest into various projects

(start-ups mostly) in exchange for convertible certificates or shares. Some platforms require specific numbers of professional investors to participate, i.e. some of them only allow specific numbers of ordinary investors to participate and the rest must be professionals or the other way around. The nature of the investors and the variety is the decisive factor on what type of information must be disclosed to those investors. (Further discussed in par.5).

As an authorised holder of a licence granted by the Czech National Bank (licensing further discussed in par.6) and according to the AML provisions, platforms are obliged to do the initial checks on each investor/purchaser before allowing them to register and then to invest.

Depending on the amount invested, the platform will do the following:

- Transaction exceeding €1,000 - the platform must identify the client BEFORE the actual operation/purchase (i.e. ID check); actual presence is not necessary; everything is being checked online;
- Transaction exceeding €15,000 - the platform must also check client's intentions, the nature of the operation, and source of income or assets.

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?

Naturally, no investor (legal entity nor natural person) would want to invest into a project without knowing anything about the actual business plan. Each platform, therefore, publishes relevant information concerning particular projects. As those are often sensitive, private or might even contain the actual trade secret, all purchasers/investors usually have to register in order to be granted access to such information.

What information will be disclosed to potential purchasers depends on their very nature.

1. Firstly, according to legislation (specifically according to the provisions of the Capital Market Business Act and the Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published where securities are offered to the public or admitted to trading), information presented to potential purchasers must be issued in the form of a Prospectus, with 'Prospectus' being a document describing financial security or prosperity to potential buyers. The prospectus must be approved by the Czech National Bank.

There are certain exceptions based on which project owners do not have to publish the prospectus, i.e. where the buyers are all professional investors.

Note: Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published where securities are offered to the public or admitted to trading will be replaced by regulation with direct effect in July 2019.

2. Secondly, no matter what type of purchasers the platform focuses on or what purchaser participates on each one of them (either general public or professional investors), the platform must always ensure that a 'Key information' document for each project is issued before allowing anyone to participate. Such a document shall be drawn up as a short summary (up to three pages long) and should not contain any promotional materials.

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?

Depending on the type of services the platform provides, the crowdfunding company must undergo a licensing and approval procedure conducted by the Czech National Bank. Each platform will then, most likely, hold some kind of licence in order to operate on the Czech financial market depending on what particular services (subscribing shares, investment consulting, and payment services) it offers to the public.

In order to be able to operate on the financial market (specifically on the securities market), platforms have the following options. They may apply for a security broker/dealer licence, an investment intermediary licence or an agent licence. The best option is to apply and be granted a licence as a security dealer/broker, as that is the only licence that allows an entity or an individual to trade securities on the financial market.

No matter what kind of licence a platform holds, it must be at least linked to a security broker/dealer, otherwise it cannot deal with securities. If a platform does not have a relevant licence or a link to an entity that has such a licence, it cannot, under any circumstances, operate on the market.

More about licensing proceedings conducted by the Czech National Bank available here:https://www.cnb.cz/en/supervision_financial_market/conduct_of_supervision/licensing_approval_proceedings/index.html.

The Czech National Bank maintains Regulated institutions and registered financial market entities lists.

Note: Platforms registered in other EU member states cannot trade cross-border unless given an exception.

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

In 2018, there was only one platform providing financial crowdfunding services – a company called Fundlift s.r.o., with its registered office at 838/9 Nové Město, Post Code 110 00, Praha 1. This particular company operates through another entity - Roklen360 a.s. - registered security broker and holder of special licence from the Czech National Bank.

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?

Decentralised bankingor peer-to-peer lending has a very similar regime to equity crowdfunding; comprehensive legislation does not exist yet, and most applicable provisions are sourced from EU legislation or already existing laws.(For list of relevant legislation please see question 1 - Equity Crowdfunding).
What is, however, worth mentioning is theConsumer Credit Agreement Act (CCA). As most customers or clients will be also consumers, such lending will be considered to be a consumer agreement and certain requirements will then apply to the platform.

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

The only agency supervising the financial market and the authority responsible for licensing and approval proceedings in the Czech Republic is again the Czech National Bank.
Another administrative government institution isthe Czech Trade Inspection Authority (CTIA),which supervises whether relevant and sufficient information is presented to consumers. Their website is in the English language; anyone can contact them or call their advisory helpline in case of disputes or demands.

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

There are currentlyno restrictionson the amount that can be lent.

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?

1. onthe types of persons who can lend;

As P2P platforms or other entities linked to platforms offer credit to those whowould not succeed when applying for bank loans, such platforms will then be very unlikely to apply for a bank licence in order to become a bank. They will rather fit in asnon-banking entitiesand will be regulated mostly by the CCA.In accordance with the CCA, such entities must meet certain conditions in order be granted a licence and to be able to operate on the financial market.

When the conditions set out below are met, a non-banking entity may apply for a licence granted by the Czech National Bank(please note that the application can only be filed online and takes up to four months):

- the only acceptable legal form is eitherjoint stock companyorlimited liability company,
- a supervisory bodyhas to be established

- a demonstrable level ofcompetence
- minimum registered capital CZK 20,000,000

2. or borrow:
Either platform or investor mustperform a creditworthiness checkat any time before granting a loan and other initial checks – banking and non-banking registry lustration, insolvency register, search in register of enforcement etc.

The platform also usually formulates some kind of aratingscheme on both the investor (the credit provider) and the individuals ("scoring") in order to ensure that both parties are aware of the initial evaluation which they would have to do anyway.

3. or restrictionson the rate of interestthat can be charged?

Rates of interest are limitedas per the type of borrower.
There are no restrictions when lending to alegal entity/company.
There are, however, restrictions when lending to aprivate individual. Even though the interest rates seem to be very high sometimes (e.g. platform Zonky.cz offers between 4% and 45% interest rate p.a.), the interest ratecannot exceed the official interest rate issued by the Czech National Bank for each month multiplied by four). Higher interest will be against "good morals" and such a loan may be considered to beusury.
When it comes to interest rates and generally all issues arising from credit agreements or other banking/non-banking transactions, the institution to reach out to before approaching a court isthe Financial Arbitrator of the Czech Republic.

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 procedure is very similar and sometimes the same as that described in the equity crowdfunding section. The platform either has to be granted aspecific licenceby the Czech National Bank itself, or has to operate in connectionwith an entity that is an authorised licence holder.(Please see question 6).
Generally, the second option is more common, as platforms mostly work on the basis of commission or fees and do not want to invest or rather take responsibility in case of dispute.

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

There are no specific requirements. However, all marketing and promotional documents must comply with valid legislation, andespecially with all consumer-related provisions(please see examples in question7). Advertisingcannot be misleadingand must not deceive consumers under any circumstances, either by actions or omissions.

7 Are there any particular consumer protection provisions that apply?

According to valid legislation, consumers are heavily protected. It is reflected in the Civil Code, Consumer Credit Agreement Act, Consumer Act, Financial Arbitrator, Data Protection and many more.
The EU operates with the term "weaker party", and consumers certainly fall within this category. As the EU passes legislation mostly in the form of regulations (direct effect) and directives, Czech national laws are under an obligation to

implement them. The consumer protection provisions within the EU may then be very similar.

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

It is important to realise that platforms operating on the financial market are oftenjust agentsand provide borrowers and lenders only with additional information, ratings and a P2P environment. It is then complicated to seek help or recognise who to approach in case of dispute.

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

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GERMANY
RITTERSHAUS

Preliminary Remark

Before we answer the following questions from the German law perspective, we would like to briefly address the terminology used in Germany in the field of crowdfunding in order to avoid misunderstandings. The German Federal Financial Supervisory Authority (BaFin) distinguishes between crowd investing, which corresponds to the following definition of Equity Crowdfunding, and crowdlending, which corresponds to the following definition of Peer-to-Peer Lending. This information is intended to help you better understand the publications of BaFin, most of which are also published in English.

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?

Germany has not introduced specific laws or regulations governing equity crowdfunding. The different types and characteristics of crowdfunding are regulated under the existing securities and capital market laws.

Both the platform as well as the borrower, respectively the issuer of the shares, may require authorisation. Which of the existing provisions must be observed depends on the specific structure of the crowdfunding.

The following authorization requirements can be of relevance for the operator of a crowdfunding platform:

- authorisation requirements pursuant to the German Banking Act,
- the German Payment Services Supervision Act,
- the German Capital Investment Code or
- other obligations, particularly arising from the German Securities Trading Act

The issuer of the shares may be required to publish a prospectus pursuant to

- the German Capital Investment Act or
- the German Securities Prospectus Act.

Which of the aforementioned provisions and requirements apply depends on the structure of the platform and the sort of shares or convertibles.

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

The government agency which is responsible for the regulation of the issuer of shares and of the

crowdfunding platform is the German Federal Financial Supervisory Authority.

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

The German banking supervisory and capital market laws do not set a limit on the amounts that can be raised by crowdfunding companies.

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

There are no restrictions on the types of purchases under German corporate or security law. If the issuer will offer shares or units of a special AIF according to the German Capital Investment Code, the group of purchasers is limited to semi-professional or professional investors. However, it is unusual to offer such financial instruments via crowdfunding.

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?

Which information is to be published depends on whether the platform operator or the issuer is obliged to publish a sales prospectus. If a prospectus has to be published, it contains a wide range of detailed information, in particular about the issuer, the securities offered and the business plan of the issuer. If there is no prospectus requirement, there are no specific requirements for the disclosure of information.

If capital investments or securities are offered through the crowdfunding platform, the crowdfunding platform and/or the issuer of the shares or capital investments may be subject to prospectus requirements pursuant to the German Capital Investment Act or the German Securities Prospectus Act.

If the issuer offers capital investments such as bonds, convertibles or profit participation certificates, the German Capital Investment Act is applicable. If the issuer offers securities such as shares, the German Securities Prospectus Act is applicable.

Pursuant to the German Capital Investment Act there are two information requirements which come into consideration: (i) a capital investments information sheet, which is comparable to the key investor information document of investment funds, and (ii) a complete capital investments prospectus.

The capital investments information sheet provides brief information for the investor and is like a sort of 'instruction leaflet'. The purpose of this instruction leaflet is to increase the transparency of the capital investment and the comparability with other financial instruments. The information sheet must always be published whenever capital investments are offered.
Generally, an undertaking which publicly offers capital investments in Germany is also obliged to publish a complete prospectus. A publication of a prospectus is not required for offers where the number of units or shares offered in the same capital investment does not exceed 20, where the selling price for all units or shares in a capital investment offered within a period of 12 months does not exceed €100,000, or where the price of each unit or share in a capital investment offered amounts to at least €200,000 per investor.

A further exemption from the requirement to publish a complete prospectus applies to crowdfunders. There is no obligation to publish a prospectus for the capital investments offered if they are brokered via an internet-based services platform and the selling price for all capital investments of the same issuer does not exceed €2.5 million.

If one of the aforementioned exemptions applies, the crowd investing platform is only required to publish the short capital investments information sheet. This information sheet - as well as a complete prospectus where mandatory – has to be approved by BaFin before the issuer, or respectively the crowdfunding platform, can start the offer of the shares or convertibles. The same applies for a prospectus under the requirements of the German Securities Prospectus Act.

Pursuant to the German Securities Prospectus Act, a prospectus requirement only arises under said act if the public offer is made in Germany. Only in these cases is BaFin responsible for supervising the prospectus requirement and for approving the prospectus. A domestic connection exists if the prospectus will be addressed to investors domiciled in Germany. Generally, a domestic connection is assumed if the offer can be accessed from Germany.

This means that a prospectus is required in Germany if there is unrestricted online access to a public offer. If this is to be prevented, it must be clearly indicated who the offer is addressed to, pursuant to article 29(2) of the EU Prospectus Regulation.

(see to this section BaFin fact sheet on crowd investing)

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?

Pursuant to section 32(1) sentence 1 of the German Banking Act, authorisation is required by anyone wishing to conduct banking business or provide financial services in Germany, if such businesses or services are to be conducted or provided commercially or on a scale which requires commercially organised business operations.

The operator of a platform conducts deposit business in the meaning of the German Banking Act if they accept funds from others as deposits or other repayable funds from the public, unless the claim to repayment is securitised in the form of bearer or order debt certificates. An authorisation requirement would come into question if, for example, the operator has the funds paid in by potential investors before the conclusion of specific contracts. This may be the case within the context of the user login process.

Furthermore, other authorisation requirements may arise for the operator of a crowdfunding platform if the platform operators broker or place financial instruments. In this case – depending on the structure of the platform and the shares/convertibles – the operator of the platform may require a licence for investment broking, contract broking, placement business or operation of a multilateral trading facility.

In addition to an authorisation requirement under the German Banking Act, an authorisation requirement under the German Payment Services Supervision Act also comes into question. This is the

case when the operator of the internet services platform receives money from investors and transfers it to the equity investment providers. It is then performing a money remittance business pursuant to the German Payment Services Supervision Act.

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

As the platform operators regularly receive funds and forward those to the issuers in accordance with the structure frequently found in Germany, many platform providers work together with a bank. The bank then handles the necessary payment services so that the platform operator itself does not need a banking licence or a licence under the German Securities Supervision Act.

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?

Germany has not introduced specific laws or regulations governing peer-to-peer lending. The different types and characteristics of peer-to-peer lending are regulated under the existing banking supervisory law and the prospectus requirements.

The following authorisation requirements can be of relevance for the operator of a peer-to-peer lending platform:

- authorisation requirements pursuant to the German Banking Act, and
- the German Payment Services Supervision Act.

The borrower may be required to publish a prospectus pursuant to

- the German Capital Investment Act.

Which of the aforementioned provisions and requirements apply depends on the structure of the platform and the business model.

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

The government agency which is responsible for the regulation of the borrower and of the peer-to-peer lending platform is the German Federal Financial Supervisory Authority (BaFin).

If the platform operator operates credit brokerage, he requires a business licence. In this case, the relevant trade supervisory authority is the competent authority.

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

The German banking supervisory law does not set a limit on the amounts that can be lent over a peer-to-peer lending platform.

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 on the types of lenders or borrowers or on the interest rates that can be charged.

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?

Pursuant to section 32(1) sentence 1 of the German Banking Act, authorisation is required by anyone wishing to conduct banking business or provide financial services in Germany, if such businesses or services are to be conducted or provided commercially or on a scale which requires commercially organised business operations.

The operator of a platform conducts deposit business in the meaning of the German Banking Act if they accept funds from others as deposits or other repayable funds from the public, unless the claim to repayment is securitised in the form of bearer or order debt certificates. An authorisation requirement would come into question, if, for example, the operator has the funds paid in by potential investors before the conclusion of specific contracts. This may be the case within the context of the user login process.

The platform operators generally do not engage in credit business within the meaning of the German Banking Act, as they themselves do not offer loans to borrowers, but only broker them. The platform operators do not conduct credit business within the meaning of the German Banking Act, i.e. the granting of money loans and acceptance credits:

- if they either only broker the loans and use the services of licensed credit institutions for the actual granting of loans; or
- if, as a result of the nature of the contract chosen, they avoid the authorisation requirement by agreeing to a qualified subordinated loan.

In addition to an authorisation requirement under the German Banking Act, an authorisation requirement under the German Payment Services Supervision Act also comes into question. This is the case if the operator of the internet services platform accepts money from investors and passes this on to the equity investment providers. They are then conducting a money remittance business pursuant to the German Payment Services Supervision Act.

(see to this section BaFin fact sheet on Crowdlending)

If the activity of the platform operator is limited to brokering a loan agreement between a borrower and a credit institution and to brokering the conclusion of agreements on the purchase of receivables between the credit institution and several investors, he does not need a banking licence. In this case, he only needs a business licence.

The lender is deemed to conduct credit business within the meaning of the German Banking Act (granting of money loans and acceptance credits) if they grant money loans commercially or on a scale which requires commercially organised business operations.

However, if a licensed credit institution awards the loan and the lender/investor merely has the repayment claim transferred, then the lender/investor is not deemed to be conducting credit business. They then only acquire the repayment claims of the loans granted by the credit institution, and do not grant any loans themselves.

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

The obligations to publish a sales prospectus also apply to peer-to-peer lending. In this case, the publicly

offered partial amounts of the loan repayment claim are to be classified as capital investments and open up the scope of application of the German Capital Investment Act.

The offeror of the asset investment is obliged to publish a prospectus. The offeror is the one who is responsible for the public offer and/or who is externally recognisable to investors as the offeror. In crowdlending, the internet platform is usually not the provider and is therefore usually not subject to the prospectus requirement. In most constellations, the borrower is classified as the provider.

With regard to exemptions from the prospectus requirement, the same applies to peer-to-peer lending as to crowdfunding under question 5 above.

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

The obligation to publish a sales prospectus or at least an investment information sheet serves to inform the consumer and thus to protect his interests.

If only an investment information sheet has to be published, the provider must grant the consumer a 14-day right of withdrawal. The revocation period begins with the clear reference to the right of revocation, at the earliest however with the conclusion of the contract, and expires, at the latest, 12 months after conclusion of the contract.

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

In most peer-to-peer lending constellations, a credit institution is included. The peer-to-peer lending then takes place in the following steps:

- Would-be borrowers place their investment ideas on a platform. Investors can pick which projects they would like to invest in.
- If there are enough investors, the platform brokers the conclusion of a loan agreement between a credit institution and the borrower.
- The credit institution then resells the repayment claim arising from the loan agreement in the form of partial claims to individual investors through agreements on the purchase of receivables, and transfers the receivables.

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

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HONK KONG
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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?

Hong Kong has not introduced a regulatory framework catering specifically for equity crowdfunding. Equity crowdfunding is, however, subject to Hong Kong's general securities laws and regulations including: (i) restrictions on public offers of company shares under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO) and the Securities and Futures Ordinance (Cap. 511) (SFO); and (ii) requirements for intermediaries marketing shares in Hong Kong to be licensed by the Securities and Futures Commission (SFC).

On 1 April 2019, the SFC granted its first licence to AngelHub Limited, an equity crowdfunding site operating in Hong Kong. The SFC has imposed controls on how the crowdfunder's business is operated through the imposition of a number of conditions, including a restriction to offering only to 'professional investors' as statutorily defined and the SFC's right to approve the number of projects the crowdfunding platform can manage at any one time.

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

The SFC.

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

Where company shares are publicly offered in Hong Kong, the company must prepare a prospectus which must be registered with the Hong Kong Registrar of Companies and comply with detailed contents requirements as specified in Schedule 3 to CWUMPO. In order to avoid having to produce a prospectus, an issuing company will typically seek to rely on one of the exemptions from the requirement which exist for:

i. Offers made only to 'professional investors' as defined in the SFO and subsidiary legislation. Broadly, professional investors include:

a. institutional investors (banks, pension funds, licensed securities intermediaries, authorised funds etc.);
b. corporate investors (corporations with a portfolio of cash and securities of HK$ 8 million or total assets of HK$ 40 million); and
c. individual investors with a portfolio of cash and securities of HK$ 8 million.

ii. Private placements – offers to not more than 50 persons in Hong Kong;

iii. Small offers – where the total consideration payable for the shares offered in Hong Kong does not exceed HK$ 5 million; and

iv. Offers where the minimum consideration payable for the offered shares or the minimum principal amount to be subscribed (for debentures) does not exceed HK$ 500,000.

The amount a company can raise by way of equity crowdfunding is thus capped only if the company seeks to rely on the small offer exemption under paragraph (iii) above. However, that only limits the amount that can be raised from Hong Kong buyers and would not restrict the amount that could be raised offshore. In determining the HK$ 5 million limit for Hong Kong, the company must include any other share offers made in the previous 12 months which also relied on the small offer exemption from CWUMPO's prospectus regime. Similarly, in determining the 50-offeree limit for the private placement exemption under paragraph (ii) above, the issuer must include offerees in any private placements made in Hong Kong within the previous 12 months. These anti-avoidance measures prevent companies from raising larger amounts, or increasing the number of investors, by staggering share offers.

In the context of equity crowdfunding, where the marketing and offer are typically conducted online, it will, however, be difficult to rely on the private placement exemption. This is because the 50-person limit applies to the number of persons to whom the shares are offered, which in the case of an online offer is potentially unlimited, and not to the number of persons who actually subscribe for the shares.

In the case of a professionals-only offer, there is case law to the effect that, provided the company only issues shares to professionals, then it does not matter that the online advertisement/offer can be viewed by non-professional investors (Securities and Futures Commission v. Pacific Sun Advisors Ltd and Andrew Pieter Mantel). The company must, however, obtain documentary proof that Hong Kong investors are 'professional investors' within the statutory definition.

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

As discussed in the answer to question 3 above, a company would only be restricted in terms of the type of investor to whom it offers its shares if it chooses to rely on the 'professional investor' exemption. Even then, the company would be able to offer its shares to up to a maximum of 50 non-professional investors in Hong Kong in addition to unlimited numbers of Hong Kong professional investors.

In the case of AngelHub, in addition to restricting investors in projects offered on its platform to professional investors, the SFC has also imposed a limit on the aggregate amount that can be raised from individual professional investors and from corporate professional investors with respect to whom it has not been able to make certain assessments required under the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC. Those required assessments include an assessment that the person or persons making investment decisions on behalf of the corporate professional investor has or have sufficient investment background and experience and are aware of the risks involved in investing in the product. The applicable limit is not specified in the licence terms and conditions but will be set by the SFC from time to time.

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?

A company wishing to offer its shares to the retail market in Hong Kong must prepare a prospectus which complies with the detailed requirements of Schedule 3 to CWUMPO. The prospectus must also be registered with the Hong Kong Registrar of Companies on or before the date of its publication.

Where an offering document is exempt from CWUMPO's prospectus requirements and any marketing documents issued in relation to the offering are exempt from the SFC's requirements under the SFO, the issuer will not be required to comply with the statutory requirements for those documents. A platform operator which is licensed by the SFC is, however, required to act with due skill, care and diligence when posting and monitoring information on its online platform.

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?

Where the operator of an equity crowdfunding platform offers or markets company shares in Hong Kong, it will need to be licensed by the SFC for regulated activity Type 1 (dealing in securities). A Type 4 licence for advising on securities can also be applied for as an add-on. There are very limited exemptions available. A licence is not required for dealing in the shares of Hong Kong private companies – i.e. companies whose articles restrict shareholders' rights to transfer their shares and limit the number of shareholders to 50. However, relying on this exemption is problematic in the context of a crowdfunding platform because private companies are prohibited from offering their shares to the Hong Kong public, which is generally considered to mean more than 50 persons in Hong Kong. Thus any crowdfunding activity in respect of a Hong Kong private company must be made on a private placement basis so that shares are offered to no more than 50 potential investors, and only to such number that, if all offers are accepted, will not result in the company having more than 50 shareholders in total. In terms of offering private company shares online, this would require access to the online offer to be restricted to a maximum of 50 persons in Hong Kong.

The operator of a crowdfunding platform will therefore typically need to be licensed as an intermediary under the SFO. All employees involved in the crowdfunding activities must also be licensed as representatives of the licensed entity, and at least two responsible officers must be appointed in respect of each licensed activity conducted. Licensed representatives and responsible officers must meet the SFC's requirements in terms of experience and having passed specified regulatory examinations. Licensed entities and their licensed staff are also required to comply with the SFC Code of Conduct. While this is non-statutory, breach can constitute grounds for the SFC considering the entity or its staff to not be 'fit and proper' for the purposes of licensing, and may result in the SFC revoking or suspending licences and/or making an order for the payment of compensation to any party who has suffered loss.

The recent grant of AngelHub's licence appears to demonstrate that the SFC is willing to treat licensing applications on a case-by-case basis and will impose restrictions it considers appropriate through conditions attached to the licence. A licensed platform operator will need to comply with the SFC Code of Conduct and the SFC's Guidelines on Online Distribution and Advisory Platforms.

The Code of Conduct requires know-your-client procedures to be implemented and performed, and

also obliges licensed employees to ensure that any solicitation or recommendation made with regard to an investment product is reasonably suitable for the particular client. In assessing suitability, they must consider the information about the particular client which they know or should know from conducting due diligence. Licensed entities must also comply with statutory requirements relating to capital maintenance, holding client money, issuing contract notes, and anti-money-laundering and counter-terrorist-financing procedures.

Where an SFC licence is restricted to offerings only to professional investors, the platform operator must ensure that investors meet the qualification requirements for professional investors, including, in the case of individual professional and corporate professional investors, that they meet the applicable assets or portfolio threshold to qualify. Records of the assessment process and the prescribed evidential documents set out in the Securities and Futures (Professional Investor) Rules must be kept for seven years.

Thus a crowdfunding platform which raises funds for start-ups and other companies must be licensed in Hong Kong by the SFC. Another possibility might be for a crowdfunding company itself (i.e. the company seeking to raise capital) to offer the shares online through its own website. This should not require any licence in Hong Kong since it should not be regarded as offering its shares in the course of a business of dealing in securities. If the company is offering its shares to the Hong Kong public, it will, however, need to prepare and register a CWUMPO-compliant prospectus, unless it can rely on an exemption under CWUMPO as described in the response to question 3 above. The options are essentially to offer only to 'professional investors' and obtain proof that each investor qualifies as such, or to offer shares to no more than 50 Hong Kong investors.

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

The Hong Kong regulators adopt a technology-neutral approach to regulation of securities offerings. The offering of company shares via an online platform is thus subject to the same restrictions as an offer made using paper documents. The recent licensing of online equity crowdfund platform AngelHub is encouraging, and this will hopefully lead to the licensing of similar platforms.

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?

Hong Kong has not implemented a regulatory framework to deal specifically with peer-to-peer lending. Peer-to-peer lending is, however, regulated under Hong Kong's general laws and will typically require lenders to obtain a moneylender's licence under Hong Kong's Money Lenders Ordinance (Cap. 163).

There are, however, no true peer-to-peer lending platforms operating in Hong Kong. The reason is that, in addition to the lending platform and/or its operator needing to be licensed, it is likely that individual lenders would also need to obtain a moneylender's licence. Online lending platforms in Hong Kong have therefore adopted other structures whereby the platform operator obtains a licence, but the requirement for individual lenders to be licensed is removed. Ways of achieving this include:

i. The online lender raises funds from its own investors – WeLend adopted this structure and is backed by a group of large corporate investors; and

ii. The online lender partners with a Type 9 licensed asset manager which raises funds from investors to be on-lent through the licensed money lender. Online lending platform MoneySQ has partnered with SFC-licensed fund manager Bridgeway Prime Fund, which is permitted to raise funds from professional investors for lending through MoneySQ's platform. The limitation to professional investors has the additional advantage of taking the offering document outside the prospectus regime of CWUMPO, and also taking any marketing materials outside the scope of the requirement for SFC authorisation and of the need for the fund itself to be approved under the SFO. It is worth noting that the SFC did not allow MoneySQ to describe itself as a 'peer-to-peer lender' because it does not facilitate loans directly between individual borrowers and lenders. It describes itself instead as an online lender since it lends indirectly from a pool of funds.

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

The Hong Kong Commissioner of Police is responsible for the licensing and supervision of online moneylenders in Hong Kong.

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

There is no limit on the amount a licensed moneylender can lend. Loans are, however, illegal if they provide directly or indirectly for the payment of compound interest; prohibit the repayment of the loan by instalments; or if the rate or amount of interest increases following a default in payment of any amount due.

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 on the type of entity which can be licensed as a moneylender nor on who they

can lend to.
The Money Lenders Ordinance makes it an offence for any person (whether a moneylender or not) to lend or offer to lend money at an effective rate of interest exceeding 60% per annum; any such loan is unenforceable. In proceedings for the recovery of a loan or the enforcement of security, the courts are also entitled to reopen a loan with an effective rate of interest of over 48% and may make any order they consider fair to the parties.

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?

As discussed above, an online platform or its operator (i.e. the entity which is party to the loan agreement) will typically need to be licensed as a moneylender. True peer-to-peer online lending would likely also require individual lenders to be licensed, and this requirement is typically avoided by means of one of the structures outlined in the response to question 1 above. Licensed moneylenders must comply with the provisions of the Money Lenders Ordinance which require, among other things, that the loan agreement must be in writing and include the matters specified in the Ordinance, such as the requirement that the borrower must be permitted to repay early without payment of any penalty.

Online licensed moneylenders must additionally comply with the anti-money-laundering and counter-terrorist-financing obligations set out in the Companies Registry's 'Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders'.

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

Any advertisement or similar document published by a moneylender must include its name and the number of its moneylender's licence. Where the document indicates the rate of interest at which the moneylender will make loans, the proposed rate must be shown as a percentage rate per annum.

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

There are no consumer protection provisions that apply to online moneylending except those provisions under the Money Lenders Ordinance, some of which are discussed above.

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

The scope for conducting true peer-to-peer lending is extremely limited in Hong Kong. In practice, an entity considering moving into this space will need to explore alternative structures as highlighted above.

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

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ITALY
COCUZZA & ASSOCIATI STUDIO LEGALE

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?

The Italian regulation on equity crowdfunding was introduced in 2012 for financing start-ups. Later on, in 2015 and in 2017 the legislation was amended, and finally extended equity crowdfunding for financing small and medium-sized companies (even if not start-ups). The provisions on equity crowdfunding are contained in the law on financial activity, so-called TUF (Legislative Decree 58/1998).

After that, the Italian Finance Act has been amended several times with regards to equity crowdfunding regulation. However, such act (and its subsequent amendments) remains the reference point for equity crowdfunding regulation in Italy.

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

The Italian government agency for listed companies and financial activity (called CONSOB) is the one indicated for supervising and regulating equity crowdfunding operations in Italy.

In 2013, CONSOB issued a resolution containing the regulation on capital raising through online portals (which is equivalent to equity crowdfunding). The regulation was updated in 2016 and in 2018. Among other things, the regulation provides for the duty for providers to be listed in a specific registry, informative disclosure to be done by providers to clients, and some rules regarding the content of the terms of the offer.

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

In Italy, the maximum amount that can be raised with a single crowdfunding operation is €8 million.

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

There are no restrictions regarding the type of purchaser. However, please consider that, if the purchaser is not a professional investor, he/she cannot buy more than the 95% of the total amount set out as the target of the operation.
Furthermore, the provider has to establish that purchasers are aware of the risks of the equity crowdfunding operation by asking questions regarding comprehension of the risks.

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 information to be disclosed to the purchasers is contained in the CONSOB regulation on

crowdfunding at annex 3. In general, such information shall comprise:
- the characteristics and risks of the offer,
- the identity of the offeror;
- the modalities of the purchase;
- the modalities for buyers to withdraw from the operation (the provision of such a facility is mandatory).

The documentation containing the information to be provided to buyers does not have to be approved by CONSOB or by any other authority. In fact, every offer submitted to the public has to contain a disclaimer indicating that the information provided by the provider has not been approved by CONSOB.

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?

CONSOB regulation on crowdfunding provides a list of requirements for operators of equity crowdfunding platforms in order to be enlisted in a specific register held by CONSOB, which also handles the procedure for the listing of the operators.
Such requirements pertain both to the financial status of the operators and to their good reputation.
Under the first profile, operators need to have in place proper guarantees to secure reimbursement of the users' amounts managed by operators.

With regards to the good reputation, the individuals who own the shares of the operator company or run it shall not have any record with regards to certain criminal offences.

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

When the equity crowdfunding regulation was implemented in Italy in 2013, it was not successful because it was applicable only to a few companies having certain tight requirements. However, since the most recent amendments to such regulation have extended the realm of equity crowdfunding, such operations appear to have increased in number and importance.

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?

Peer-to-peer lending in Italy is not regulated by any ad hoc law provision.
However, peer-to-peer lending falls into the general set of rules provided by the Italian Civil Code on loans between private entities or individuals (article 1813 of the Italian Civil Code), and into the provisions on moneylending contained in the Legislative Decree 385/1993 (so-called TUB, the Italian Bank Act). The application of TUB to peer-to-peer lending was confirmed by the Bank of Italy in its decision 584/2016.
An authorisation for moneylending in general is required under Italian law.

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

Moneylending is an activity monitored by the Bank of Italy.
In its role of national supervisory authority on banking and financing, such authority has the duty to ensure prudent management of intermediaries, the overall stability and efficiency of the financial system, and compliance with the rules and regulations of those subject to supervision.

Under this profile, in 2009 Bank of Italy suspended the activity of a company lending money because the company did not respect the necessary requirements.

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

There is no provision regarding the maximum lendable amount. Therefore, there is no limit for peer-to-peer lending.

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?

Under this profile the Italian Bank Act provides that banking and financial transactions with the public at large should be carried out only by authorised entities (i.e. banks or other financial institutions). Such provisions apply also to online portal providers and to borrowers, who de facto deal with the savings of the public at large.

The Bank of Italy, in its abovementioned decision 584/2016, stated that that peer-to-peer lending activity does not fall into gathering savings of the public at large, when such activity is carried out by specific categories of entities or with specific modalities, i.e. payment institution, electronic money institution or financial intermediary (which are nonetheless subject to a prior authorisation by Bank of Italy, and which are subject to specific rules contained in the Italian Banking Act).

With regards to borrowers, the rules on banking and financial transactions with the public at large do

not apply if the borrowing is preceded by a negotiation between lender and borrower. If this is not the case, the activity of the borrowers has to be considered as activity of gathering savings of the public at large, for which specific requirements and authorisations are necessary.
With regards to the limitation of the rate of interest, the regulation against the use of usury rates applies also to money borrowed though peer-to-peer lending (Italian act n. 108/1996). Such limit is calculated and issued quarterly by the Bank of Italy.

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?

As above written, an authorisation by the Bank of Italy is needed regardless of the money being lent by a peer-to-peer institution or any other subject providing for peer-to-peer lending

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

Limitations and prescriptions are set forth for moneylending in general.

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

Since peer-to-peer lending agreements are executed through online portals, they have to be considered as distance contracts.
Pursuant to Italian Consumer Code (Italian Legislative Decree n. 206/2005), distance contracts executed with consumers should fall into the regulation of the Consumer Code, which is favourable to consumers.
In fact, such regulation provides, for distance contracts regarding the purchasing of financial services,
(i) the right of the consumers to receive a list of information provided by the law, and
(ii) the right to withdrawal from the agreement within 14 days from the execution of it.

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

The foregoing recaps the main characteristics of peer-to-peer lending in Italy so far.

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

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LATVIA
VILGERTS

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?

No. A draft crowdfunding law was introduced in September 2017 and now is in a review process.

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

After crowdfunding law comes into force, the Financial and Capital Market Commission will be the responsible agency supervising compliance with the law.

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

The limit set in the draft law is €100,000 for 12 months if an investor invests funds in debt or equity securities issued by the beneficiary as a legal entity for the implementation of the project it has applied for.

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

There are no special restrictions in the draft law. Crowdfunding service providers shall, before or during the conclusion of the agreement, assess if the crowdfunding services offered are appropriate for the prospective investors.

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 draft law provides that, prior to the conclusion of a specific crowdfunding service contract with an investor, the crowdfunding service provider shall provide an investor with at least the following information:

1. information about the beneficiary:

(a) in case the beneficiary is a business - name, registration number, registered office, type of economic activity and previous business experience; in case the beneficiary is a natural person - nationality, sex, age, level of education and occupation, and previous business experience;

(b) the risk rating according to publicly agreed criteria of the crowdfunding service provider;

(c) the project applied for, its nature and profitability information, the deadline for implementation, the purpose of the loan to be issued and the planned use of the financing;

(d) financial indicators and information on the reported solvency assessment results of the project;

(e) the total amount of financing and the schedule and terms of its repayment;

(f) all costs associated with the planned crowdfunding service;

(g) the amount of co-financing by the project applicant;

2) identified risks associated with the particular crowdfunding service;
3) security of the liabilities and the procedure for its realisation, if the obligations are not fulfilled, the beneficiary (secured creditor) and value (assessment of the certified appraiser, if any);
4) debt collection procedure, performer and costs related to debt collection;
5) the procedure for handling complaints (disputes);
6) information on the possible relationship between the crowdfunding service provider and the beneficiary and the restrictive measures taken to address specific conflicts of interest.

The draft law does not provide that offer documents or marketing materials should be registered or approved by the Financial and Capital Market Commission.

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?

According to the draft law, crowdfunding platforms shall not be registered or comply with any specific requirements. Crowdfunding service providers are subject to registration.

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

Only the draft law is introduced at this point, therefore the final regulation is not clear yet.

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?

Companies that provide peer-to-peer lending services are operating under generally applicable laws. The draft crowdfunding law referred to in the crowdfunding section of this questionnaire will apply to peer-to-peer lending as well.

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

After the crowdfunding law comes into force, the Financial and Capital Market Commission will be the responsible agency supervising compliance with the law. If peer-to-peer lending falls under the regulations of consumer credits, the responsible agency is the Consumer Rights Protection Centre.

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

In Latvia there are no specific regulations that limit the amount that can be lent through peer-to-peer lending. Limits apply in the case of consumer loans (see answer to question 8).

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 case of peer-to-peer lending there are no specific restrictions. Restrictions apply in the case of consumer loans (see answer to question 8).

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?

No. This might change, however, with the introduction of crowdfunding law. Consumer loan providers must obtain a licence issued by the Consumer Rights Protection Centre (see answer to question 8).

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

There is no specific regulation to promote peer-to-peer lending sites. Restrictions apply in the case of consumer loans (see answer to question 8).

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

Only for consumer loans (see answer to question 8). If the lending service does not fall under the regulations applied to consumer loans, then there are no consumer protection provisions that peer-to-peer lending providers should be compliant with.

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

Only the draft law is introduced at this point, therefore the final regulation is not clear yet.

In some circumstances peer-to-peer lending can fall under regulation regarding consumer loans, for example, where the loans are issued regularly. Therefore, prior consultation with the Consumer Rights Protection Centre is recommended.

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

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LIECHTENSTEIN
GASSER PARTNER RECHTSANWÄLTE

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?

No, Liechtenstein has not implemented a law specifically addressing crowdfunding. Thus, equity-based crowdfunding and its permissibility will have to be assessed under general laws, e.g. the Liechtenstein Persons and Companies Act (PGR) and from a regulatory perspective in particular under the Liechtenstein Prospectus Act (WPPG), the law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMA) and the Liechtenstein Banking Act (BA). Furthermore, general regulatory aspects must be taken into account.

It is expected that the regulator will enact specific rules with regard to blockchain-based crowdfunding in Liechtenstein in 2019.

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

Liechtenstein law does not specifically regulate equity crowdfunding. The Liechtenstein Financial Market Authority (FMA), being the relevant regulatory body for financial market regulation and supervision, is the competent authority with respect to potential licensable activities.

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

Due to the fact that crowdfunding will be assessed under general law, there is no limit on the amount that can be raised by way of crowdfunding. If applicable, the respective thresholds set out by the WPPG have to be taken into account with regard to the obligation to draw up a securities prospectus.

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

In the absence of specific regulation, there are no specific provisions addressing equity-based crowdfunding and the types of eligible purchasers. Depending on the specific business model and setup, specific regulation may be applicable and may provide for such restrictions (e.g. AIFMA). Further, Liechtenstein has implemented MiFID II and the respective provisions on investor protection, e.g. suitability, are applicable to entities conducting MiFID II regulated activities.

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?

Whenever the WPPG is applicable to the security issue, the entity planning to raise funds through crowdfunding will have to comply with the respective provisions and draw up a full prospectus, which subsequently will have to be approved by the FMA. If the WPPG should not be applicable, e.g. because

securities in the amount of less than €5 million are offered during a period of 12 months, no specific rules on information disclosure apply directly to the issuing entity itself. However, if the respective securities, being financial instruments, are marketed through regulated entities, these will have to fulfil their investor information obligations, and thus the entity seeking to raise money via crowdfunding will have to provide the necessary information. Further specific rules may be enacted with regard to blockchain-based crowdfunding in Liechtenstein.

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?

As outlined above, there is no law specifically addressing crowdfunding as a fundraising model. Each and every service provided by a crowdfunding platform must be assessed from a regulatory perspective on a service-by-service basis. Experience shows that crowdfunding platforms often provide regulated services of some kind and are thus subject to licensing requirements and financial regulation. Further, the applicability of general securities laws as well as prospectus requirements must be considered.

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

Briefly summarised, no specific law addressing equity crowdfunding exists in Liechtenstein. Companies planning on raising funds through crowdfunding should seek local legal advice and, if necessary, discuss their business model with the Liechtenstein FMA before providing services. Experience shows that engaging with local counsel and the regulator is crucial for a successful business model.

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

With regard to equity crowdfunding enquiries, our banking and financial markets law team led by Dr Hannes Arnold, M.B.L.-HSG, hannes.arnold@gasserpartner.com, being one of the most experienced and responsive corporate and finance teams in Liechtenstein, is your point of 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 is it regulated under generally applicable laws?

No, Liechtenstein has not enacted any law specifically addressing and regulating peer-to-peer lending. Thus, every business model must be analysed individually from a general regulatory perspective and services provided should be assessed on a case-by-case basis. It should in particular be assessed whether or not the services are to be considered services regulated under the Liechtenstein Banking Act (BA) or the law of 19 December 2012 concerning the Managers of Alternative Investment Funds (AIFMA) and thus trigger licence requirements.

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

Liechtenstein law does not specifically regulate peer-to-peer lending. The Liechtenstein Financial Market Authority (FMA), being the relevant regulatory body for financial market regulation and supervision, is the competent authority with respect to potential licensable activities.

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

No, as there is no law specifically regulating peer-to-peer lending, no amount limit has been imposed.

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 specific restrictions in this regard. However, the possibilities to freely agree on a rate of interest are of course subject to the confines set out by case law with regard to the violation of moral principles.

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?

As there is no regulation specifically addressing peer-to-peer lending, this question cannot be answered with general validity. In principle, granting a loan does not automatically trigger licensing requirements. However, depending on the services provided and their extent, it is possible that the involved parties provide regulated services and are thus required to obtain a licence.

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

Whenever regulated services are concerned, these may only be marketed and promoted if the respective licence has been obtained.

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

As there is no law directly aiming to regulate peer-to-peer lending, no specific consumer protection provisions apply. However, depending on the circumstances, laws such as the Consumer Credit Act may be applicable.

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

We note that peer-to-peer lending is not per se regulated in Liechtenstein. However, this does not entail that the involved parties do not provide services regulated under general regulatory law and are thus required to obtain a licence. Against this background, we recommend engaging local counsel with in-depth knowledge of financial markets and banking law in order to assess the envisaged business model from a regulatory perspective and prevent a violation of statutory provisions or licensing requirements.

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

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MALAYSIA
AZMAN DAVIDSON & CO

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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MALTA
DF ADVOCATES

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?

Equity crowdfunding is regulated by the Malta Financial Services Authority (MFSA) under the Investment Services Act (Chapter 370 of the Laws of Malta) as investment business crowdfunding through the 'Requirements regarding applications for a licence to carry out Investment-based Crowdfunding under the Investment Services Act' (the Requirements).

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

Malta's single regulator for financial services, the MFSA, is responsible for regulating the crowdfunding platform.

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

Crowdfunding companies are to apply with respect to issuers and investors, as the case may be, a limit on the maximum allowable investable amount per individual investor, as well as a limit on maximum project size in terms of total value of securities issued.
Specifically, an investor cannot invest more than €5,000 over a period of 12 months in any issuer listed on an investment-based crowdfunding platform or more than 20% of their net annual income through an investment-based crowdfunding platform over a period of 12 months. Such restrictions would not apply to professional clients in terms of MiFID.
Offers of securities made on an investment-based crowdfunding platform cannot exceed a value of €1 million over a period of 12 months, whilst an issuer shall only be allowed to list a project on one crowdfunding platform.

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

The Requirements also seek to adopt a proportional approach by distinguishing between investment opportunities offered to retail and professional investors respectively, as outlined above.

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?

Potential purchasers must be made aware that the proposed crowdfunding platform will be subject to minimum disclosure requirements tailored to investments of this nature. In cases where the offer triggers the applicability of the Regulation (EU) 2017/1129 (the Prospectus Regulation), the general requirements in this regard would be applicable. Information provided should be directly available on the platform's website.

As such, the purchaser is to have access to a platform with information containing full details on the identity of the issuer, including full contact details, as well as all the relevant information on the business activity of the issuer, the project in relation to which the investment offer is being made as well as the potential risks and rewards associated with it.

The information document should contain information to help the purchaser understand the specific type of instrument that is being offered and make investment decisions on an informed basis. The information disclosed must be meaningful, comprehensive and sufficient enough to enable an informed investment decision. The information document must in addition disclose that the document has neither been verified nor approved by the MFSA.

Potential purchasers are to be informed whether and to what extent the service providers' activities are covered by the Investor Compensation Scheme and/or by the Depositor Compensation Scheme. Furthermore, the provider is to disclose to potential purchasers the name of the entity which will be entrusted with the safekeeping of their invested funds and the manner and timing in which these funds will be transferred.

The service provider is expected to display, at all times and in a prominent place on the homepage of its website, general risk warnings in relation to the nature of the investment and the risks involved, including the fact that the platform does not undertake any responsibility regarding the feasibility of the project as presented, as well as a section on the services offered by the licence holder in relation to the instrument on offer, including the nature and risks of the investment service to be provided and the total amount to be charged to the investor.

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?

In order to provide investment-based crowdfunding services, a platform shall apply for a licence under the Investment Services Act. The latter should take into consideration the conditions of the Requirements. The nature of the licence required will depend on the range of activities provided by the prospective licence holder, either on a stand-alone basis or as a part of a group of providers.

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

N/A

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 Maltese legislature has not introduced any specific legislation or regulations governing peer-to-peer lending, as it is regulated under generally applicable laws. These include but are not limited to the Civil Code (Chapter 16 of the Laws of Malta), the Banking Act (Chapter 371 of the Laws of Malta), and the Financial Institutions Act (Chapter 376 of the Laws of Malta).

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

All financial services in Malta are regulated by the MFSA.

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

There are no limits on the amounts that can be lent under generally applicable laws.

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?

Lenders may grant loans to Maltese borrowers provided that such lenders are regulated banking or financial institutions (or equivalent qualifying lenders). Foreign lenders within the European Economic Area (EEA) may grant loans to Maltese borrowers provided that they are regulated and have passported their services to Malta or, in the case of unregulated foreign lenders, provided that the lending is not undertaken on a regular basis.
However, where the foreign lender is not regulated as a bank or financial institution within an EEA jurisdiction, but can provide a loan in terms of the laws of its home state, regular or habitual lending by that lender to Malta-based borrowers triggers regulatory restrictions requiring the foreign lender to be duly licensed in Malta by the MFSA. There are no restrictions on the types of persons who can lend and/or borrow, however, such applies insofar as the lending is not regular or habitual.
There are restrictions on the rate of interest that can be charged, with a maximum of 8% per annum. However, the Interest Rate (Exemption) Regulations (L.N. 142 of 2009), as amended by L.N. 107 of 2013 and act LII of 2016, provide specific exceptions to that general rule, placing banking institutions and other specific financing vehicles and defined transactions outside the scope of the restriction, and thus allowing interest rates of more than 8% 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?

If the lender is a regular or habitual lender, then regulatory restrictions take force, requiring the lender to be duly licensed in Malta by the Malta Financial Services Authority. As stated above, lenders may grant loans to Maltese borrowers provided that such lenders are regulated banking or financial institutions (or equivalent qualifying lenders). Foreign lenders within the European Economic Area

(EEA) may grant loans to Maltese borrowers provided that they are regulated and have passported their services to Malta.

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

The MFSA's Banking Notice on Advertising for Deposits by Credit Institutions Authorised Under the Banking Act 1994 deems advertising for deposits and similar services to be crucial to the industry. However, it is fundamental to point out that advertising by licensed institutions ensures that the customer is informed of all the financial and legal implications related to the deposits, whilst also ensuring that the legal responsibilities of the providers, and their liabilities, are clearly expressed.

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

The Depositor Compensation Scheme is a rescue fund for depositors of failed banks which are licensed by the MFSA. Compensation is paid if a bank is unable to meet its obligations towards depositors or if the bank has suspended payment. The Scheme limits compensation to €100,000 per depositor per credit institution. The Scheme is based on the EU Directive 2014/49/EU on deposit guarantee schemes.

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

N/A

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

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MEXICO
RAMOS, RIPOLL AND SCHUSTER

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 March 2018, the Law to Regulate Financial Technology Institutions (the Fintech Law) came into force, which regulates, among other things, crowdfunding institutions.
Fintech law distinguishes three kinds of crowdfunding institutions:

› Collective debt financing.
• Peer to peer lending.
• Peer to business.
• Lending
• Leasing
• Factoring
• Real estate financing.
› **Equity**
› Co-ownership and royalties.

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

Mainly the National Banking and Securities Commission.
Other relevant government agencies:

› Bank of Mexico, in everything related to the use of cash, virtual assets and foreign currencies.
› Secretariat of Finance and Public Credit, in everything related to tax and anti-money-laundering policies.

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

The regular limit that can be raised by a company in equity crowdfunding is 1,670,000 investment units (approximately USD 545,667). Special authorisation can be requested to increment the limit up to 6,700,000 investment units (approximately USD 2,189,201).

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

There are no restrictions regarding to whom equity can be offered. However, crowdfunding institutions must establish in their platforms controls that prevent the same investor from making investment commitments that exceed the percentages established by the Fintech Law (15% individuals/20% legal entities in case of equity crowdfunding), once the indicated formula has been applied:

$ to invest in the project
The sum of ALL the past and x 100 <= 15% in case of individuals, 20% in case of legal entities
present investments
For example:
John wants to invest MXN 2,000 (approximately USD 102) in project C (the amount of money that the project is asking for does not matter). In his previous investments (projects A and B), he invested MXN 15,000 (approximately USD 772). Since applying the formula, the result of John's investment commitment is less than 15% as required by the Fintech Law, John can invest in project C.

MXN 2,000
MXN 15,000 x 100 = 13.3%
These limitations were created for the purpose of protecting retail investors from possible loss by obliging them to diversify their investments in different projects.
There are some exceptions to these rules:

- When the sum of all the previous investments is lower than 8,300 investment units (approximately USD 2,673), the investor can spend 4,150 investment units (approximately USD 1,356) in the new project without following the formula.
- When there are 25 or less crowdfunding applications published on the platform, the investment commitment to be made by the same investor to an applicant may not exceed the maximum between 5% of the amount of financing required or the equivalent in national currency to 167,000 investment units (approximately USD 54,567).
- When the crowdfunding institution, as part of the schemes to share risks with the investors, makes investment commitments in an applicant or project, it may increase the percentages referred before by adding the percentage of investment that the own Institution is engaging in such applicant or project, or 25%, whichever is less.
- No limitation will be applied to accredited (experienced) and institutional investors.
- No limitation will be applied to related investors. According to Fintech Law a related investor is anyone who demonstrates to the crowdfunding institution to have kinship with the applicant by consanguinity, affinity or civil to the fourth degree, or be their spouse or concubine.

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?

In addition to diversification, the investor protection framework relies on the disclosure of information that platforms must perform at various times: before establishing a contractual relationship with the investor, before they choose any of the financing options offered, and during the time their resources are invested in these financing options.

1.Proof of knowledge of risks:
Crowdfunding institutions must obtain electronic evidence that investors know the risks they assume by investing through their platforms, for which they will be required to fill out a form (annex 8 of the General Dispositions of the Fintech Law published by the National Banking and Securities Commission).

2.Initial information
They must make known, through the platform, at least the following:

- Characteristics of the project to be financed, differentiated by type of financing (debt, equity or co-

ownership):

- Financing destination.
- Information about the applicant (identity and technical knowledge of the individuals behind the company).
- General conditions of the offer.

› Specific risks of each financing option offered.

› The type of information and documentation that will be collected to carry out the analysis and the respective assessment of the potential applicants and, where appropriate, the activities to verify the veracity of said documentation and information.

› the form to verify the identity and location of the potential applicants.

› the criteria that will be used to select the applicants and the projects subject to financing.

› Methodology of risk rating of applicants or projects and the meaning of each rating.

› Obligations and limits of liability towards investors.

› Any other information necessary for decision-making.

3. Continuous information

› Payment behaviour/performance of funded projects: payments, defaults, debt collection actions, etc.

› Annual report on the performance of the project with unaudited financial information.

› Statistical information added in the platform:

- Financing granted: quantity and amount
- Number of registered and active investors
- Total expired portfolio broken down by financing destination.

The information disclosed to investors must comply with the following minimum characteristics:

› Use clear and easy-to-understand language.

› Avoid the use of superlative terms and value judgements.

› Ensure that the information that is intended to be transmitted includes graphic or symbolic representations that facilitate its understanding.

› Use a font size similar to the text of the main contents of the publications made through the platforms.

› Include a section of frequently asked questions regarding the operation of the crowdfunding institution, the applications and projects published therein, as well as, where appropriate, the methods for resolving disputes or clarifications among the applicants, the investors and the crowdfunding institution.

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?

For the crowdfunding platform to operate as such, they must obtain an authorisation to operate as a crowdfunding institution. This authorisation is granted by the National Banking and Securities Commission, with the previous agreement of the Interinstitutional Committee, which is formed by representatives from the National Banking and Securities Commission, the Bank of Mexico and the Secretariat of Financing and Public Credit.

They need to comply with all the technical, operative and legal requirements established by the Fintech Law. Any platform that performs any of the activities reserved to crowdfunding institutions in Mexican territory, even if registered outside of Mexico, is subject to be fined and criminally prosecuted.

The Fintech Law gave a safe conduct to all the crowdfunding companies that were operating before the law came into force (March 2018). These platforms may operate, even without authorisation, to

the extent that they submit their request for authorisation before September 2019. As long as they do not receive the respective authorisation, they must publish on their website or platform that the authorisation to carry out this activity is in process, so it is not an activity supervised by the Mexican authorities.

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

The regulation is based on six guiding principles: 1) financial innovation and inclusion; 2) consumer protection; 3) promotion of competition; 4) preservation of financial stability; 5) prevention of money laundering; and 6) technological neutrality.
The regulation can be summarised in the following elements:
› Solvency and operation requirements:
• Minimum and net capital.
• Investment and financing limits.
• Limits for reception and delivery of cash.
• Accounting regulation, financial information and valuation.
• Methodologies for evaluation and qualification of applicants and projects.
• Mandates or commissions.
• Proof of knowledge of risks for investors
› Robust regulation framework in the following topics:
• Use of electronic means.
• Provision of third-party services.
• Security of information and operational continuity (plan against technological risks).
• Application Programming Interface (API).
• Anti-money-laundering/Know Your Customer policies.
› Regulatory sandbox

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?

Fintech law distinguishes three kinds of crowdfunding institutions:
› Collective debt financing.
• Peer to peer lending.
• Peer to business.
• Lending
• Leasing
Factoring
• Real estate financing.
› Equity
› Co-ownership and royalties.

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

Mainly the National Banking and Securities Commission (CNBV).
Other relevant government agencies:
o Bank of Mexico (Banxico), in everything related to the use of cash, virtual assets and foreign currencies.
o Secretariat of Finance and Public Credit (SHCP), in everything related to tax and anti- money-laundering policies.

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

When the loan is to an individual who is not registered with the tax administration system as a person with business activity (peer to peer), the limit that can be lent is 50,000 investment units (approximately USD 16,337).
When the loan is to a legal entity or to an individual who is registered with the tax administration system as a person with business activity (peer to business), the limit that can be lent is 1,670,000 investment units (approximately USD 545,667). Special authorisation can be requested to increment the limit up to 6,700,000 investment units (approximately USD 2,189,201).

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, there are no restrictions on the type of persons who can lend and/or borrow.
To be a borrower, the platform must evaluate in depth their credit history, job, salary, reports, income and more to determine their level of risk and to attend and prevent vulnerable operations and money laundering.
In the case of a lender, there are no restrictions if they sign a specific contract acknowledging that the investment is not guaranteed by the platform, and they operate at their own risk. However, crowdfunding institutions must establish in their platforms controls that prevent the same lender from

making investment commitments that exceed the percentages established by the Fintech Law (7.5% individuals/20% legal entities in case of peer-to-peer lending and 15% individuals/20% legal entities in case of peer-to-business lending), once the indicated formula has been applied:

$ to invest in the project
The sum of ALL the past and x 100 <= 7.5%/15% in case of individuals, 20% in case of legal entities
present investments
For example:
John wants to lend MXN 1,000 (USD 51) to Maria (the amount of money the borrower is asking for does not matter). In his previous commitments of investment (money lent to other borrowers), John lent MXN 15,000 (USD 772). Since, applying the formula, the result of John's investment commitment is less than 7.5% as required by the Fintech Law, John can lend the MXN 1,000 to Maria through the platform.
MXN 1,000
MXN 15,000 x 100 = 6.7%
These limitations were created for the purpose of protecting retail investors from possible loss by obliging them to diversify their investments in different projects.
There are some exceptions to these rules:

- When the sum of all the previous commitments is lower than 2,000 investment units (approximately USD 653), the investor can lend 667 investment units (approximately USD 218) in the new project, without following the formula.
- When there are 25 or less crowdfunding applications published on the platform, the investment commitment to be made by the same lender to a borrower may not exceed the maximum between 5% of the amount of financing required or the equivalent in national currency to 167,000 investment units (approximately USD 54,567).
- When the crowdfunding institution, as part of the schemes to share risks with the lenders (skin in the game), also lends (investment commitments) to the borrower, it may increase the percentages referred to before, by adding the percentage of investment that the own institution is engaging with the borrower, or 25%, whichever is less.
- No limitation will be applied to accredited and institutional investors.
- No limitation will be applied to related investors. A related investor, is anyone who demonstrates to the crowdfunding institution to have kinship with the applicant/borrower by consanguinity, affinity or civil to the fourth degree, or be their spouse or concubine.

The rate of interest in peer-to-peer lending depends on the level of risks that each borrower has. Each borrower is classified by a letter and a number.

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 lenders do not need a licence or permission as such. They only need to sign a contract with the crowdfunding institution, have a bank or electronic funds account and follow the rules that are applicable to them (limits of investment and AML/KYC provisions, among others).
For the online platform to operate as such, they must obtain an authorisation to operate as a crowdfunding institution. This authorisation is granted by the National Banking and Securities

Commission, with the previous agreement of the Interinstitutional Committee, which is formed by representatives from the National Banking and Securities Commission, the Bank of Mexico and the Secretariat of Financing and Public Credit.
They need to comply with all the technical, operative and legal requirements established by the Fintech Law.
Any platform that performs any of the activities reserved to crowdfunding institutions in Mexican territory, even if registered outside of Mexico, is subject to be fined and criminally prosecuted.
The Fintech Law gave a safe conduct to all the crowdfunding companies that were operating before the law came into force (March 2018). These platforms may operate, even without authorisation, to the extent that they submit their request for authorisation before September 2019. As long as they do not receive the respective authorisation, they must publish on their website or platform that the authorisation to carry out this activity is in process, disclosing that in the meanwhile their activity is not supervised by the Mexican authorities.

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

In addition to diversification, the investor protection framework relies on the disclosure of information that platforms must perform at various times: before establishing a contractual relationship with the investor/lender, before they choose any of the financing options offered and during the time their resources are invested in these financing options.

1. Proof of knowledge of risks:
Crowdfunding institutions must obtain electronic evidence that investors/lenders know the risks they assume by investing through their platforms, for which they will be required to fill out a form (annex 8 of the General Dispositions of the Fintech Law published by the National Banking and Securities Commission).

2. Initial information
They must make known through the platform at least the following:
› Information about the borrower (credit history/business history, if applicable).
› The general conditions of the loan (guarantees, interest rate, etc).
› The specific risks of each loan offered.
› The type of information and documentation that will be collected to carry out the analysis and the respective assessment of the potential borrower and, where appropriate, the activities to verify the veracity of said documentation and information.
› The form to verify the identity and location of the potential borrower.
› The criteria that will be used to select the borrowers and loans.
› The methodology of risk rating of borrowers and the meaning of each rating.
› The obligations and limits of liability towards investors/lenders.
› Any other information necessary for decision making.

3. Continuous information
› Payment behaviour: payments, defaults, debt collection actions, etc.
› Statistical information added in the platform:
• Financing granted: quantity and amount

- Number of registered and active investors
- Total expired portfolio, broken down by financing destination.

The information disclosed to investors/lenders must comply with the following minimum characteristics:

› Use clear and easy-to-understand language.
› Avoid the use of superlative terms and value judgements.
› Ensure that the information that is intended to be transmitted includes graphic or symbolic representations that facilitate its understanding.
› Use a font size similar to the text of the main contents of the publications made through the platforms.
› Include a section of frequently asked questions regarding the operation of the crowdfunding institution and the applications and projects published therein, as well as, where appropriate, the methods for resolving disputes or clarifications among the applicants, the investors and the crowdfunding institution.

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

There are various consumer protections provision that the platforms are obliged to apply and integrate. These include:

› Personal information must be protected and kept private for only the client and the crowdfunding institution, attending normative compliance with the Federal Law of Protection of Personal Data in Possession of Individuals.
› Facilitate clients (lenders and borrowers) to add or remove available funds in the online platform.
› Strict policies for segregation of accounts.
› Disclosure of risks of applicants/borrowers and the platform itself (e.g. if the platform does not explicitly tell the lender that the investment is not guaranteed, then they must pay damages that may occur).
› Obtaining express consent from clients to assume the risks related to participating in a crowdfunding.
› They must inform lenders about the borrowers' performance.
› They must establish mechanisms of skin in the game (e.g. invest own money on borrowers).
› Prohibition to ensure returns or guarantee the success of investments.
› Disclose criteria that the platform used to select borrowers and loans.

Also, the Fintech Law enables users to file complaints against crowdfunding institutions before the National Commission for the Protection and Defence of Users of Financial Services.

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

The Law is based on six guiding principles: 1) financial innovation and inclusion; 2) consumer protection; 3) promotion of competition; 4) preservation of financial stability; 5) prevention of money laundering; and 6) technological neutrality.

The regulation can be summarised in the following elements:

› Solvency and operation requirements:
- Minimum and net capital.
- Investment and financing limits.

- Limits for reception and delivery of cash.
- Accounting regulation, financial information and valuation.
- Methodologies for evaluation and qualification of applicants and projects
- Mandates or commissions.
- Proof of knowledge of risks for investors

› Robust regulation framework in the following topics:
- Use of electronic means.
- Provision of third-party services.
- Security of information and operational continuity (plan against technological risks).
- Application Programming Interface (API).
- Anti-money-laundering/Know Your Customer policies.

› Regulatory sandbox

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

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NEW ZEALAND
LOWNDES LAW

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?

New Zealand's Financial Markets Conduct Act 2013 (FMC Act) and regulations implemented thereunder specifically address equity crowdfunding.

As described in greater detail below, the FMC Act limits the total amount companies can raise through equity crowdfunding and requires equity crowdfunding to be conducted via a licensed crowdfunding service provider.

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

Equity crowdfunding is regulated primarily through the Financial Markets Authority (FMA), and crowdfunding service providers must be registered on the Financial Service Providers Register. As at April 2019, there are 8 approved crowdfunding platforms registered on the Financial Service Providers Register.

The Commerce Commission and Advertising Standards Authority may also investigate complaints about companies that raise money via crowdfunding.

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

Companies are limited to raising NZD 2 million in any 12-month period from equity crowdfunding.

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

New Zealand does not restrict the types of purchasers who can buy equity crowdfunding shares and there is no limit to the size of investments individuals can make.

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?

If companies are within the maximum fundraising limit and conduct the crowdfunding through a licensed crowdfunding service provider, they do not have to issue a Product Disclosure Statement (known under New Zealand's previous securities law regime as a Prospectus) or provide other information on the Disclose Register, as is usually required if a company wishes to offer shares in New Zealand.

The licensed crowdfunding service provider must ensure adequate disclosure arrangements so that investors have enough information to decide whether to acquire the shares. The FMA has issued

guidance on the minimum disclosures they expect crowdfunding service providers to make available to investors.

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?

Crowdfunding Service Providers

Crowdfunding service providers must be licensed by the FMA, registered on the Financial Service Providers Register and a member of a recognised dispute resolution scheme.

After obtaining a licence, crowdfunding service providers must comply with a number of ongoing obligations, including:

- notifying the FMA of certain events;
- complying with the fair dealing requirements set out in the FMC Act;
- filing an annual regulatory return; and
- maintaining an appropriate level of professional indemnity insurance cover.

Crowdfunding Companies

Companies that raise money through crowdfunding do not require a specific licence or registration themselves. However they must comply with the fair dealing requirements set out in the FMC Act. In particular, they must avoid misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations.

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

The New Zealand Takeovers Code is triggered when a New Zealand-registered company (a) has listed shares trading on an NZX market; or (b) has 50 or more voting shareholders and 50 or more parcels of shares (Code Company). The Takeovers Code subjects Code Companies to a number of onerous compliance obligations. Because of this, many offers on licensed crowdfunding platforms use non-voting shares which do not trigger the Takeovers Code requirements.

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?

New Zealand's Financial Markets Conduct Act 2013 (FMC Act) and regulations implemented thereunder specifically address peer-to-peer lending.

As described in greater detail below, the FMC Act limits the total amount borrowers can borrow through peer-to-peer lending and requires peer-to-peer lending to be conducted via a licensed service provider.

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 regulated primarily through the Financial Markets Authority (FMA), and a peer-to-peer lending provider must be registered on the Financial Service Providers Register. The Commerce Commission and Advertising Standards Authority may also investigate complaints about peer-to-peer lending.

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

Borrowers can borrow a maximum of NZD 2 million in any 12-month period, although some services may only allow smaller loans.

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 is no legislation specific to peer-to-peer lending that limits who can lend/borrow or what interest rates can be charged (but see our comments at point 7 below regarding oppressive credit contracts). The loan must be for personal, charitable or small business purposes.

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 providers must be licensed by the FMA, registered on the Financial Service Providers Register, and a member of a recognised dispute resolution scheme.

After obtaining a licence, peer-to-peer lending providers must comply with a number of ongoing obligations, including:

- notifying the FMA of certain events;
- complying with the fair dealing requirements set out in the FMC Act;
- filing an annual regulatory return;

• maintaining an appropriate level of professional indemnity insurance cover;
• having a written client agreement with lenders; and
• giving disclosure statements to retail lenders.

Neither lenders nor borrowers are required to be licensed or registered. However, they must comply with fair dealing requirements set out in the FMC Act as discussed below.

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

Peer-to-peer lenders are exempt from the requirement under the FMC Act to issue a Product Disclosure Statement (known under New Zealand's previous securities law regime as a Prospectus) and the requirements to provide other information on the Disclose Register. However, peer-to-peer lenders must still comply with fair dealing requirements set out in the FMC Act. In particular, they must avoid misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations.

The FMA has issued a detailed guidance note about fair dealing in advertising communications relating to peer-to-peer lending.

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

The Credit Contracts and Consumer Finance Act 2003 (CCCFA) provides protections in connection with 'consumer credit contracts' – contracts where credit is to be used wholly or predominantly for personal, domestic, or household purposes. Some provisions of the CCCFA do not apply to peer-to-peer lending. For example, the obligation under the CCCFA to disclose certain loan information to lenders is relaxed in the context of peer-to-peer lending. However, other consumer protection provisions under the CCCFA continue to apply. For example, the CCCFA allows the courts to reopen a credit contract if it considers it to be 'oppressive'.

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

N/A

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

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POLAND
FKA

Equity Crowdfunding

[updated for Poland in June 2019]

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?

There are no specific regulations regarding equity crowdfunding in Poland. Crowdfunding can be construed under general provisions, including freedom to contract. The most significant regulations that may apply to crowdfunding are the provisions of the Polish Civil Code, the Act on Providing Electronic Services and the Act on the Public Offer and the Conditions for Introducing Financial Instruments to the Organised Trading System and Public Companies. Other acts such as the Act on the Protection of Personal Data, the Act on Copyright and Related Rights, the Act on Counteracting Unfair Market Practices and the Act on Competition and Consumer Protection also set out the legal framework for this kind of activity.

Depending on the adopted model of crowdfunding, other legal provisions will apply. The most common crowdfunding models in Poland include donation-based crowdfunding, rewards- based crowdfunding, pre-sales crowdfunding, crowd investing (equity) and crowdlending (referred to as P2P lending) - please see the answer to question 7.

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

Since there are no specific regulations regarding equity crowdfunding in Poland, no specific government agency was designated especially to supervise such actions. In most cases, the Financial Supervision Authority (KNF) will be responsible for supervising the activities connected with equity crowdfunding and fintech.

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

There are no limits regarding amounts that can be raised. However, there are financial thresholds that, when reached, oblige an issuer to file a prospectus with the Financial Supervision Authority.

There is an exemption from obligation to make the prospectus available to the public if: 1) it is addressed exclusively to investors each of whom acquires the securities with a value, as calculated according to their issue price or sale price, of not less than €100,000 as of the date of fixing the price but not more than €1 million; 2) it concerns securities with a nominal unit value of not less than €100,000 as of the date of fixing it.

A public offer means making available to at least 150 persons within the territory of one member state or to an unspecified offeree, in any form and manner, the information about securities and conditions

for the acquisition thereof (such information must give grounds for making a decision to acquire the securities).

Currently, work on a bill amending the Act on Public Offer is in progress. The purpose of the new regulations is to implement EU regulations and to ensure that the Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC will be correctly applied. The new regulations will come into force in July 2019. The new bill will change the current definition of the public offer and provisions on the information memorandum and a prospectus.

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

Every person or entity may purchase shares in Polish companies. There are no limitations regarding persons and entities to whom the shares may be offered (subject to certain limitations in case a company own a real estate and a buyer comes from outside the EU or a real estate is agricultural land).

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?

Current provisions
In the case of a joint-stock company that offers its shares or other securities through a public offer, it is obliged to prepare a prospectus and make it available to the public. The prospectus includes information regarding the issuer of the shares, the kind of securities which are offered, the economic and financial situation of the issuer, the development perspectives of the issuer, the entity securing receivables from issued shares, and the rights and obligations connected with offered shares.

The prospectus has to be approved by the Financial Supervision Authority. The prospectus does not have to be available to the public if, among other things:

1) predicted revenues based on the issue price or sales price of the shares or other securities to be achieved by the entity within the European Union are lower than €1 million; if the issue price or sales price is lower than €1 million but amounts to at least €100, 000, the issuer has to publish a document containing basic information about the issuer and conditions and rules regarding the offer; specifying the securities which are offered, the aims of the issuance achievement of which is going to be financed by issuance of securities, and important risk factors; and with a statement made by the issuer confirming his responsibility for information included in the document.
2) predicted revenues based on the issue price or sales price of the shares or other securities to be achieved by the entity within the European Union amount not less than €1 million but less than €2.5 million; in that case the issuer has to prepare an information memorandum and make it available to the public; shares in the company which is an issuer provided that offered shares constitute less than 10% of shares of the same kind in that company admitted to trading on a given regulated market and together with shares admitted to trading on that regulated market in that manner within last 12 months will neither reach nor exceed that value.

It is prohibited to make information available, in any form and in any manner, with the aim of promoting,

directly or indirectly, acquisition or taking up of securities, or encouraging, directly or indirectly, acquisition or taking up of same, unless the information is made available to fewer than 150 persons in the territory of one member state or is not made available to an unspecified offeree.

In case of infringement of the prohibition by the issuer, seller or other subjects acting on behalf or order of the issuer or seller, or in the case of a substantiated suspicion that such infringement may occur, the Financial Supervision Authority may:

1) prohibit making specified information available or continuing to make it available; or
2) publish, at the expense of the issuer or seller, information about the unlawful action having been performed in connection with making specified information available.

An issuer or seller may, however, perform a marketing campaign also through other persons and entities. He is allowed to make the following announcements: relating to a specific offer to the public of securities or to an admission to trading on a regulated market; and aiming to specifically promote the potential subscription or acquisition of securities.

However, information disclosed in an oral or written form about the offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, may not contradict the information contained in the prospectus; refer to information which contradicts that contained in the prospectus materially; give an unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects; or contain alternative performance measures concerning the issuer, unless they are contained in the prospectus.

In the case of a marketing campaign being performed, all marketing materials have to include an unequivocal indication that they are exclusively promotional or advertising materials; that an issue prospectus or information memorandum has been or will be published, unless it is not required that such documents be made available to the public; and of the places where the issue prospectus or information memorandum are or will be available, unless it is not required that such documents be made available to the public.

The information being provided within a marketing campaign has to be in compliance with the information placed in the information memorandum made available to the public or with the information which should be placed in the information memorandum under the provisions of law, where the information memorandum has not been made available to the public. Such information may not mislead the investors about the situation of the issuer and the evaluation of securities.

Advertisements related to an offer to the public of securities or of an admission to trading on a regulated market may be disseminated to the public by interested parties, such as the issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities, notably by one of the following means of communication: addressed or unaddressed printed matter; electronic message or advertisement received via a mobile telephone or pager; standard letter; press advertising with or without order form; catalogue; telephone with or without human

intervention; seminars and presentations; radio; videophone; videotext; email; facsimile machine (fax); television; notice; bill; poster; brochure; web posting, including internet banners.

Where no prospectus is required, any advertisement shall include a warning to that effect unless the issuer, the offeror or the person asking for admission to trading on a regulated market chooses to publish a prospectus.

The issuer or seller may not commence a marketing campaign prior to submission of prospectus and other required documents to the Financial Supervision Authority. If there is no requirement to make the issue prospectus available, the issuer or seller may perform the marketing campaign on condition of submitting to the Financial Supervision Authority, not later than ten business days before its planned commencement, a notification of the intention to perform the marketing campaign, including information about the schedule of the marketing campaign, the entities involved in performing it and marketing materials which include the content to be disseminated.

Following the receipt of the notification, the Financial Supervision Authority may, not later than three business days before the planned commencement of the marketing campaign, demand that amendments or supplements be made in the submitted documents or that explanations be provided within a time limit specified in the demand, not shorter than two business days since the day of its delivery to the entity obliged to submit the notification. If the Financial Supervision Authority makes the demand mentioned above, the time of commencement of the promotional campaign will be postponed by another ten business days following the day of providing the Financial Supervision Authority with the required amendments, supplements and explanations to the submitted documents.

In case of infringement of duties regarding the performance of a marketing campaign, the Financial Supervision Authority may:

1) order that the commencement of the marketing campaign should be withheld or interrupted for a period not exceeding ten business days, for the purpose of removing the indicated irregularities; or

2) prohibit performance of the marketing campaign, especially if the issuer or seller evades the removal of irregularities indicated by the Financial Supervision Authority within the time limit mentioned above or if the content of promotional or advertising materials infringes the provisions of law; or

3) publish, at the expense of the issuer or seller, information about the unlawful performance of the promotional campaign, by indicating infringements of the law.

New provisions (Regulation 2017/1129 and amendment to Public Offer Act and other regulations)

New Regulation 2017/1129 will come into force in July 2019.

The Regulation 2017/1129 will not apply to an offer of securities to the public with a total consideration in the European Union of less than €1 million over a period of 12 months. Thus there is no obligation to prepare a prospectus and make it available to the public in case of such an offer.
The Regulation 2017/1129 introduces the changes in legal provisions referred to below. Advertisement may be disseminated to less than 150 persons on the territory of a single member state and must not be made available to unspecified recipients. According to new provisions set out in the Regulation

2017/1129, a prospectus has to contain the necessary information which is material to an investor for making an informed assessment of: the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; the rights attaching to the securities; and the reasons for the issuance and its impact on the issuer. That information may vary depending on any of the following: the nature of the issuer; the type of securities; the circumstances of the issuer; where relevant, whether or not the non-equity securities have a denomination per unit of at least €100,000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities.

Once approved by the Financial Supervision Authority, the prospectus has to be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved.
There is a Government bill amending the Public Offer Act, not finalised yet but probability of enacting the amendment is very high. The date of entering into force has not been known at the moment of preparing of this publication. According to the bill, in cases where a prospectus is not required, an information memorandum has to be published after being approved by the Financial Supervision Authority. The memorandum has to be prepared in the form of a uniform document and may not be valid for longer than 12 months. The memorandum has to be approved by the Financial Supervision Authority.

In the case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, the prospectus shall be made available to the public at least six working days before the end of the offer.

The obligation to publish a prospectus does not apply, inter alia, to any of the following types of offers of securities to the public: an offer of securities addressed solely to qualified investors; an offer of securities addressed to fewer than 150 natural or legal persons per member state, other than qualified investors; an offer of securities whose denomination per unit amounts to at least €100,000; an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer; shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital; or non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the European Union for the securities offered is less than €75 million per credit institution calculated over a period of 12 months, provided that those securities are not subordinated, convertible or exchangeable, and do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.

Advertisements have to state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it. Advertisements have to be clearly recognisable as such. The information contained in an advertisement must not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published. All information disclosed in an oral or written form concerning the offer of securities to the public or the admission to trading on

a regulated market, even where not for advertising purposes, has to be consistent with the information contained in the prospectus.

Where a prospectus is not required, the information has to be consistent with that included in the information document. In the event that material information is disclosed by an issuer or an offeror and addressed to one or more selected investors in oral or written form, such information has to, as applicable, either be disclosed to all other investors to whom the offer is addressed, in the event that a prospectus is not required to be published; or be included in the prospectus or in a supplement to the prospectus in the event that a prospectus is required to be published.

The Financial Supervision Authority where the advertisements are disseminated has the power to exercise control over the compliance of advertising activity relating to an offer of securities to the public or an admission to trading on a regulated market with the rules set out above. The issuer or seller may not commence a marketing campaign prior to submission of prospectus and other required documents to the Financial Supervision Authority.

Providing investors with information and advertisements as a service requiring permit of the Financial Supervision Authority

On 29 March 2019, the Financial Supervision Authority issued a statement regarding providing services of offering financial instruments. According to that statement, presenting advertisements including information regarding shares or other securities may constitute offering of financial instruments if at least one of the following actions is performed:

1) presenting, in any form and manner, the information on financial instruments and the conditions of their acquisition made available by the issuer, writer or seller, said information forming sufficient grounds for making a decision to acquire such instruments; or

2) intermediation in transferring financial instruments acquired by subjects as a result of provision of the information referred to in subparagraph 1; or

3) provision to individually specified addressees, in any form and manner, the information made available by the issuer, writer or seller in order to:

a) promote, directly or indirectly, the acquisition of financial instruments; or

b) encourage, directly or indirectly, the acquisition of financial instruments.

Offering of financial instruments by a third party is an activity which requires a permit from the Financial Supervision Authority.

Enabling the issuer to offer his own financial instruments to the investors through an internet platform used only as a place where information is published does not constitute offering of financial instruments and does not require a permit from the Financial Supervision Authority.

The owner of the internet platform may not perform any other actions apart from giving access to the platform. Otherwise, a permit from the Financial Supervision Authority will be required.

No permit is needed if the issuer offers his own financial instruments to the investors.

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 information presented in this document has a general nature. In practice there are many models of P2P platforms. Legal qualification of services provided on a given platform will be determined by the solutions applied in it. Each case should be analysed separately.

First of all, the crowdfunding platform and the operator's activity should be analysed in the context of the provisions of the Act on Payment Services and the Act on Electronic Services. Due to the fact that services provided in crowdfunding platforms are conducted using the internet, they should be qualified as electronic services within the meaning of the Act on Electronic Services. Therefore, operators of such platforms should have internal regulation of service and should comply with the rules regarding the processing of personal data.

Activities of operators of crowdfunding platform can be defined as intermediation in the transfer of funds between financing party and beneficiaries. The transfer of funds will appear in almost all crowdfunding models. Intermediation in the transfer of funds via the crowdfunding platforms is a payment service, so it is a regulated service within the meaning of article 3 of the Act on Payment Services. Although a payment intermediation will be a payment transaction, it can be assumed that a lot of crowdfunding platform operators will not have to obtain a licence to provide payment services, due to the fact that they may meet the requirements of the exception specified in article 6.2 of the Act on Payment Services. However, in each case, this issue should be analysed. According to article 6.2 of the Act on Payment Services, the requirements included in the Act on Payment Services shall not apply to payment transactions between a payer and a payee made through a person performing activities aimed at the conclusion of a designated contract by a payer and a recipient, or containing such a contract, on behalf of or for the benefit of the payer or payee.

Secondly, the activities of the platform consisting in the intermediation of the transfer of funds should also be analysed in the light of the requirements imposed by the AML Act. One of the key issues is to decide whether the operator will be an 'obligated institution' within the meaning of this act. Determining whether the operator is subject to the provisions of the AML Act will be dependent on the crowdfunding model. The simplest crowdfunding models, such as donation-based crowdfunding models, may not be subject to the abovementioned act.

Depending on the platform's operating structure, the operator may operate as a financial institution within the meaning of the Banking Law or conduct regulated business activities. In this case the operator would be treated as an 'obligated institution' within the meaning of the AML Act and would be obliged to apply measures to prevent money laundering and terrorist financing provided for by this act.

Operating a crowdfunding platform may be treated as providing services consisting in offering of financial instruments. Rendering services consisting in offering of financial instruments requires a permit from the Financial Supervision Authority. See the answer to question 5.

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

Legal relationships that arise from crowdfunding are often based on typical contracts recognised by the Polish Civil Code, modified and adapted to specific crowdfunding models. A distinction should be made between legal relationships that arise between beneficiaries and financing parties and those between the platform operator and beneficiaries or financing parties. The most common crowdfunding models in Poland are donation-based crowdfunding, rewards-based crowdfunding, pre-sales crowdfunding, crowd investing (equity), and crowdlending (referred to as P2P lending).

The donation crowdfunding model is similar to the donation agreement. In the absence of additional provisions, a donation agreement within the meaning of the Polish Civil Code is concluded between the financing party and the beneficiary. After the donator finances the donation to the beneficiary, the legal relationship of the donation does not expire. Moreover, under certain circumstances the donation may be revoked and the beneficiary may be required to return the benefit received.

Crowdfunding based on a sales contract (presale) is covered by the mutual benefit of the project promoter (beneficiary) and financing party and may consist in providing the financing party with a specific product in the future (the so-called presale) or a specific award. The basic legal relationship in this crowdfunding model is similar to a sales contract within the meaning of the Polish Civil Code.

Crowdlending is not easy to classify in the light of Polish law. It is a model created on the basis of a loan agreement. In the case of this model, it is necessary to examine whether the provisions of the Act on Consumer Credit will apply. The Act on Consumer Credit concerns loan agreements in which the lender is an entrepreneur within the meaning of the Polish Civil Code and the borrower is a consumer, i.e. a natural person which does not take part in the transaction for its business purposes. Statistically, in most cases the financing party is a natural person and then the provisions of the Act on Consumer Credit will not apply. The provisions of the Polish Civil Code regarding the loan apply. If the Act on Consumer Credit applies, the loan agreement concluded as part of the crowdfunding platform must meet the requirements set out in the aforementioned regulations, i.e. it has to be concluded in writing and contain mandatory provisions, e.g. duration of the contract, total amount of the loan, and rules and dates of repayment, and the consumer must be given standardised precontractual information.

The Act on Public Offering may apply to share crowdfunding, where accumulating of funds is related to the issue of securities, e.g. shares. Moreover, share (investment) crowdfunding may involve the obligation to obtain a licence for brokerage activity in the scope of offering financial instruments, depending on the activities that the entity operating the platform intends to perform. In addition, the Financial Supervision Authority states that: 'the classic model of crowd investing is not deemed an alternative investment fund; nevertheless, should the organisation of a specific platform provide for the collection of assets from many investors in order to invest them in the best interest of the investors in accordance with an investment policy, it may be classified as an alternative investment fund. Then such platforms would be subject to the Act on Investment Funds and Management of Alternative Investment Funds' (report of KNF on the activities of the Special Task Force for Financial Innovation in Poland, November 2017, page 130).

The interpretation presented above is only an example of possible interpretations in the light of Polish law. Due to the lack of regulations related to crowdfunding directly, other legal interpretations or models cannot be excluded.

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?

There are no specific regulations regarding equity crowdfunding in Poland. Crowdfunding can be construed under general provisions, including a freedom to contract. The most significant regulations that may apply to crowdfunding are the provisions of the Polish Civil Code, the Act on Providing Electronic Services and the Act on the Public Offer and the Conditions for Introducing Financial Instruments to the Organised Trading System and Public Companies. Other acts such as the Act on the Protection of Personal Data, the Act on Copyright and Related Rights, the Act on Counteracting Unfair Market Practices and the Act on Competition and Consumer Protection also set out the legal framework for this kind of activity.

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

Since there are no specific regulations regarding equity crowdfunding in Poland, no specific government agency was designated especially to supervise such actions. In most cases, the Financial Supervision Authority (KNF) will be responsible for supervising the activities connected with equity crowdfunding and fintech – in particular, where the lending instrument falls within the meaning of 'financial instrument' (debt financial instrument).

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

There are no limits regarding amounts that can be lent. The loan may be granted regardless of the amount.

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 on the type of persons that can lend or borrow. Every person or entity may be a lender or borrower.

There are restrictions on the interest rate provided by the Polish Civil Code. The maximum annual interest rate may not exceed two times the sum of the reference rate announced by the National Bank of Poland and 3.5 percentage points. At present, the maximum annual interest rate amounts to 10%. As regards maximum late payment interest rate, at present it may not exceed two times the standard late payment interest rate, which currently amounts to 7%. Therefore at present the maximum late payment interest rate may not exceed 14%. These limits do not apply to interest on bonds.

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?

Generally there are no special requirements for lenders and for the online platform used for crowdfunding purposes to be registered or licensed (unless they would intermediate in a public offer). However, online platforms have to fulfil requirements such as:

1) providing information identifying the supplier of services enabling online payments, such as name and address;
2) providing information regarding risks connected with usage of online platform and regarding function of software which does not constitute a part of provided services but is introduced by the supplier to the system used by the user;
3) ensuring security during usage of the online platform and unambiguous identification of parties of the transaction and confirmation of declarations of will made by the parties;
4) defining regulations of supplying the services;
5) separating commercial advertisements from other content and not providing such advertisements if they have not been ordered by the recipient; and
6) complying with the rules of personal data protection resulting from the Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Provided that peer-to-peer lending consists in offering bonds (or other debt instruments) through a public offer, the issuer will be obliged to prepare a prospectus and make it available to the public according to the rules set out in the answer to no. 5 referring to equity crowdfunding.
On 29 March 2019, the Financial Supervision Authority issued a statement regarding providing services of offering financial instruments. According to that statement, the above advertisements including information regarding bonds or other securities may constitute offering of financial instruments if at least one of the following actions is performed:

1) Presenting, in any form and manner, the information on financial instruments and the conditions of their acquisition made available by the issuer, writer or the seller, said information forming sufficient grounds for making a decision to acquire such instruments; or
2) Intermediation in transferring financial instruments acquired by subjects as a result of provision of the information referred to in subparagraph 1; or
3) Provision to individually specified addressees, in any form and manner, the information made available by the issuer, writer or seller in order to:
    a) promote, directly or indirectly, the acquisition of financial instruments; or
    b) encourage, directly or indirectly, to acquire financial instruments.

Offering of financial instruments by a third party is an activity which requires a permit from the Financial Supervision Authority. Enabling the issuer to offer his own financial instruments to the investors through an internet platform used only as a place where information is published does not constitute offering of financial instruments and does not require a permit from the Financial Supervision Authority.
The owner of the internet platform may not perform any other actions apart from giving access to the platform. Otherwise, a permit from the Financial Supervision Authority will be required.
No permit is needed if the issuer offers his own financial instruments to the investors.

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

There are no regulations that regulate the marketing activity of P2P lending directly. Marketing activities and promotional documents must meet general rules, but they may be different depending on the crowdfunding model. The general restrictions and prohibitions on advertisements are regulated in, for example, the Act on Combating Unfair Competition.

According to the provisions of article 16 of the Act on Combating Unfair Competition, the following shall be particularly considered acts of unfair competition in the field of advertising:

1) Advertising in breach of the provisions of law, good practice or human dignity;
2) Advertising misleading the customer and thus potentially influencing his decision on acquiring goods or services;
3) Advertising appealing to feelings of customers through stimulating fear, taking advantage of superstitions or gullibility of children;
4) Statements encouraging the acquiring of goods or services which have the appearance of neutral information;
5) Advertising which is a material interference with the sphere of privacy, and in particular by pestering in public places bothersome to customers, sending goods which have not been ordered at the cost of the customer, or abuse of technical means of information transfer.

In the event of committing an act of unfair competition, the entrepreneur whose interest has been threatened or impaired may demand:

1) Cessation of the impermissible acts;
2) Elimination of the effects of the impermissible acts;
3) The making of a statement or series of statements with appropriate contents and in a proper form;
4) Repairing of the damage inflicted, according to general principles;
5) Release of unjust benefits according to general principles;
6) Ordering the payment of an adequate amount of money for a specific public purpose connected with supporting Polish culture or protection of national heritage, if the act of unfair competition was culpable.

If peer-to-peer lending consists in offering bonds (or other debt instruments) through a public offer with a payment term longer than one year, provisions regarding advertising set out in the answer to question 5 referring to equity crowdfunding will apply.

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

It depends on the circumstances. The provisions that protect consumers are, among others, provisions of the Act on Consumer Credit. This act will apply e.g. when the loan provider is considered as a creditor within the meaning of this act. If the entrepreneur is considered as a creditor within the meaning of the Act on Consumer Credit, it may mean that the entity running the platform will acquire the status of a loan broker (required to meet certain criteria and register with the KNF).

One of the basic mechanisms of consumer protection in the light of the Act on Consumer Credit is

the obligation to provide consumers with relevant information that will allow them to compare offers submitted by different lenders (creditors) and to make a reasonable decision on taking of consumer credit.

In the case when the loans are granted by natural persons (to each other) who are not entrepreneurs, none of the parties has the status of a consumer, so no regulations on consumer protection will apply. Moreover, If the entrepreneur provides a consumer with a loan through the P2P platform, this does not automatically mean that he has the status of a creditor and the Act on Consumer Credit will apply. An entrepreneur may grant a loan to a natural person outside the scope of his business. In that case, the operator of the crowdfunding platform does not have the status of a loan broker.

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

In Poland, there are no regulations that would regulate P2P lending directly. One of the major issues is the uncertainty as to the status of parties to the loan agreement concluded under P2P, and the related problem of applying the proper legal regime of the contract (whether the Act on Consumer Credit or the Polish Civil Code).

Please take into consideration that natural persons and entrepreneurs can act as borrowers or lenders. Depending on the adopted business model, the P2P platforms can perform various functions, e.g. the entity operating the platform can only mediate in the association of beneficiaries and financing parties or may conclude loan agreements on behalf of both parties to the agreement.

The various possible P2P lending models determine that different provisions may apply. Taking into consideration different aspects of P2P, the entrepreneur operating the P2P platform can be qualified as, for example: a service provider within the meaning of the Act on the Provision of Electronic Services; a credit intermediary within the meaning of the Act on Consumer Credit; or a proxy of both parties to the loan agreement within the meaning of article 108 of the Polish Civil Code.

The multiplicity of possible legal statuses of the P2P platform operator creates potential public law problems as regards the need to obtain permits, registration, organisational requirements etc. The Act on Consumer Credit establishes public registers kept by the Financial Supervision Authority. Under the current legal status, both the creditor and the lending institution can operate only in the form of a limited liability company or joint-stock company (in accordance with article 59a paragraph 1 of the Act on Consumer Credit). There is no obstacle to one entity being registered in several registers, i.e. that the platform operator simultaneously has the status of a lending institution (lender) and a consumer credit intermediary.

If bonds are not offered through a public offer, the issuer has to enter into an agreement with an investment firm or custodian bank. According to that agreement, the investment firm or custodian bank act as issue agent.
Obligations of the issue agent include:

1) verifying if the issuer fulfils legal requirements regarding issuing securities;

2) verifying if the issuer's actions conform with legal requirements regarding offering securities;
3) verifying if the securities and issuer thereof meet the conditions of registration in depository for securities set out in the bylaws of the Central Securities Depository of Poland;
4) establishing the register of holders of securities;
5) acting as agent in concluding agreement by the issuer if that agreement concerns registration in depository for securities, especially assistance in preparing necessary documents.

There is a possibility to register bonds in a system other than that provided by the Central Securities Depository of Poland. However, in such cases the issuer must submit to the Central Securities Depository of Poland information including:
a) identification of issue;
b) quantity of bonds issued;
c) nominal value per unit and currency in which that value is indicated;
d) total value and currency of consideration which should be paid by the issuer;
e) date until which the issuer should pay the consideration.

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

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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. Equity crowdfunding is governed by Law 102/2015 of 24 August, which approves the legal regime on crowdfunding, and Law 3/2018 of 9 February, which defines the crowdfunding penalties system. Some types of crowdfunding (including equity crowdfunding) are further governed by Regulation 1/2016 of the Portuguese Securities Market Authority (CMVM), which complements Law 102/2015.

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

In Portugal the supervisor for equity crowdfunding is the CMVM, with whom any future operator of an equity crowdfunding platform must be registered prior to engaging in such role. This authority is also entrusted with regulating and supervising these players' business activities.

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

Yes. There are two different sets of limits that need to be observed. Firstly, a global raising limit of €1 million per offer or per set of offers raised within the European Union by the same raiser for a period of 12 months. This limit increases to €5 million if the target investors of such offer/set of offers are exclusively legal persons or natural persons with annual income of at least €70,000.
The second limit that needs to be taken into consideration is the global investment limit, which limits any investment to €3,000 per offer and a total of €10,000 per 12-month period. These investment limits are not deemed applicable if the investor is a legal person, a natural person with an annual income of at least €70,000 or a professional investor qualified as such under the Portuguese Securities Act.

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

No, there are no restrictions as to the type or nature of investors. However, some investment limits and raising limits apply, as described in the previous question.

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?

Before each offer, the beneficiary of the investment must provide the equity crowdfunding platform's operator with a standardised document containing all relevant information to the equity crowdfunding investors (this document is designated as IFIFC). The IFIFC shall be written in Portuguese and in a clear language and shall contain all truthful, complete, current, objective and detailed information that might be relevant for an investor to make an informed decision on its equity crowdfunding investment. The IFIFC will be disclosed to any potential investor prior to any offer and regarding each specific offer and

contains the following information:

a) A description of the activity or product to be funded and the funding goal(s);

b) The amount to be raised and the deadline to achieve such goal;

c) The price of each unit to be subscribed or how is that price calculated;

d) The full name of the beneficiary;

e) For legal persons and if available, the balance sheet and management report of the beneficiary regarding the preceding financial year;

f) The key features of the activity or the product to allow potential investors to understand the nature and inherent risks of the product or the activity;

g) The costs and charges related to the activity or the product to be funded, as well as a brief description of its profitability forecast;

h) Details of the offer processing;

i) The deadline for purchasers to revoke their subscription, whenever applicable;

j) The timing and manner according to which any amounts raised are to be transferred to the beneficiary, including any underwriting mechanisms and refunding mechanisms if any invested sums exceed the maximum limits, the intended raising goal is not met and/or the offer's terms and conditions cannot be adjusted accordingly;

k) A disclaimer on the risk of partial or total loss of the amounts invested;

l) A disclaimer on the risk of the amounts invested not reaching the profitability forecast;

m) A disclaimer on liquidity risks or lack of secondary market risk for financial instruments or credits wherein purchasers have invested;

n) A disclaimer regarding the fact that neither products nor activities funded through equity crowdfunding are subject to authorisation or supervision by the CMVM or by any other financial supervision authority, nor do these entities approve any information disclosed with regards to these products/activities on them;

o) A disclaimer that the investment is not guaranteed by the Portuguese Investors Compensation Scheme, unless it has occurred as a result of financial intermediation and provided it complies with said scheme's relevant eligibility requirements;

p) A disclaimer that the investment is not guaranteed by the Portuguese Deposits' Guarantee Fund;

q) A disclaimer on the fact that the issuance of securities (maxime equity crowdfunding) is not subject to supervision by the CMVM, neither does the latter approve the information made available through this IFIFC or any documents related to the offer;

r) The relevant tax regime;

s) The procedures to be followed, including, but not limited to, how and where the amounts invested will be committed if the equity crowdfunding platform's operator goes bankrupt or its activities are suspended for whatever reason;

t) The procedures to be followed to ensure the continuity of payments of any invested amounts if the equity crowdfunding platform's operator goes bankrupt or its activities are suspended for whatever reason.

Further to the IFIFC, additional information needs to be disclosed to potential investors, including but not limited to any adjustment of the offer deadline or the revised funding goal (provided such changes are admissible for such specific offer). Other types of information do not need to be disclosed to the investor but rather have to be made available by the equity crowdfunding platform's operator (such as information regarding conflicts of interests prevention, registration with the supervisor, investments'

historical background of each offer, ongoing offers, pricing list etc).
With regards to marketing activities it should be noted that all advertising actions must state, in a clear and explicit manner, that an investor has a risk of losing its entire investment and cannot include any statements that may contradict or decrease this risk, nor the relevance of the IFIFC's content. Each advertising action shall further indicate the existence of the IFIFC and where/how an investor can obtain or receive such document.

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?

Access to equity crowdfunding activity is subject to prior registration with the CMVM. The relevant rules state that one platform operator = one platform, hence only the operators are subject to registration.
As per Regulation 1/2016 of the CMVM, operators must comply with a minimum set of asset requirements, including a minimum share capital and a civil liability insurance with a specific coverage, and operational requirements, in terms of how the platform activities are defined, organised and forecasted. Provided all those requirements are met, an equity crowdfunding platform operator must complete the registration form in the annex I to the Regulation 1/2016 and submit it to the CMVM, hence providing the necessary information and documentation to the supervisor so the latter can issue the relevant authorisation. Only upon being authorised as such can an equity crowdfunding platform's operator start its activity.

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

It is important to point out that the Portuguese legislator chose to establish a significant range of duties related to prevention of conflicts of interest, thus highlighting the importance of having well-designed policies and procedures governing that topic.
Moreover, on Law 3/2018 of 9 February, which defines the crowdfunding penalties system, it is important to note that Portugal currently has a very rigorous penalties regime which enables the CMVM to punish unauthorised activities with a penalty ranging from €5,000 to €1 million and breach of information, disclosure or other customer-related duties with a penalty ranging from €1,000 to €500,000, further to cancelling (temporarily or for good) the equity crowdfunding platform operator's registration.

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?

Yes. Peer-to-peer lending is governed by Law 102/2015 of 24 August, which approves the legal regime on crowdfunding, and Law 3/2018 of 9 February, which defines the crowdfunding penalties system. Some types of crowdfunding (including peer-to-peer lending) are further governed by Regulation 1/2016 of the Portuguese Securities Market Authority (CMVM), which complements Law 102/2015.

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

In Portugal the supervisor for peer-to-peer lending is the CMVM, with whom any entity intending to manage a peer-to-peer platform must be registered prior to engaging in such role. This authority is also entrusted with regulating and supervising these players' business activities.

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

Yes. There are two different sets of limits that need to be observed. Firstly, a global raising limit of €1 million per offer or per set of offers raised within the European Union by the same raiser for a period of 12 months. This limit increases to €5 million if the target investors of such offer/set of offers are exclusively legal persons or natural persons with annual income of at least €70,000.
The second limit that needs to be taken into consideration is the global investment limit, which limits any investment to €3,000.00 per offer and a total of €10,000 per 12-month period. These investment limits are not deemed applicable if the investor is a legal person, a natural person with an annual income of at least €70,000 or a professional investor qualified as such under the Portuguese Securities Act.

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?

No, there are no restrictions as to the type or nature of investors. However, some investment limits and raising limits apply, as described in the previous question. Moreover, Portuguese legislation does not set an interest rate limit.

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?

Access to peer-to-peer lending activity is subject to prior registration with the CMVM. The relevant rules state that one platform operator = one platform, hence only the operators are subject to registration.
As per Regulation 1/2016 of the CMVM, operators must comply with a minimum set of asset requirements, including a minimum share capital and a civil liability insurance with a specific coverage, and operational requirements, in terms of how the platform activities are defined, organised and forecasted. Provided all those requirements are met, a peer-to-peer lending platform operator must

complete the registration form in the annex I to the Regulation 1/2016 and submit it to the CMVM, hence providing the necessary information and documentation to the supervisor so the latter can issue the relevant authorisation. Only upon being authorised as such can a peer-to-peer lending operator start its activity.

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

With regards to marketing activities it should be noted that all advertising actions must state, in a clear and explicit manner, that an investor has a risk of losing its entire investment and cannot include any statements that may contradict or decrease this risk, nor the relevance of the content of the standardised document containing all relevant information to the peer-to-peer lenders (the IFIFC). Each advertising action shall further indicate the existence of the IFIFC and where/how an investor can obtain or receive such document.
Please note that all peer-to-peer lending platforms' operators must require any beneficiary to prepare and provide a comprehensive and standardised IFIFC comprising the content defined under the peer-to-peer lending regime.

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

Not exactly. However, it should be noted that the beneficiary is, through the platform, subject to a significant range of information duties. Moreover, the abovementioned global raising limits and global investment limits take into consideration the nature of the investor (please refer to question 3 above).

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

It is important to point out that the Portuguese legislator chose to establish a significant range of duties related to prevention of conflicts of interest, thus highlighting the importance of having well-designed policies and procedures governing that topic.
Moreover, on Law 3/2018 of 9 February, which defines the crowdfunding penalties system, it is important to note that Portugal currently has a very rigorous penalties regime which enables the CMVM to punish unauthorised activities with a penalty ranging from €5,000 to €1 million and breach of information, disclosure or other customer-related duties with a penalty ranging from €1,000 to €500,000, further to cancelling (temporarily or for good) the peer-to-peer lending platform operator's registration.

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

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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.

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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 the 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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SOUTH AFRICA
FLUXMANS INC.

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
South African Regulation of Equity Crowdfunding and Peer-to-Peer Lending – Provided for information purposes only and not intended to constitute legal advice.

1.Has your country introduced specific laws or regulations governing equity crowdfunding, or is it regulated under general securities or other laws?

South Africa is yet to introduce specific laws governing equity crowdfunding. Crowdfunding, inasmuch as it involves the offering of shares (or instruments convertible into shares), would fall to be regulated by the South African Companies Act of 2008 (the Companies Act). The Companies Act places certain restrictions on the offering of shares to the public. It also contains provisions regarding pre-incorporation contracts that may apply should the entity that is seeking crowdfunding not be incorporated. Moreover, the Companies Act would require entities to have Memorandums of Incorporation (MOI) authorising the public offering of shares in the entity.
Crowdfunding and the process involved in the transmission and storage of data related thereto may also be regarded as a cryptography product or service and thus fall within the ambit of the Electronic Communication and Transactions Act 25 of 2002 (ECTA). Additionally, the transfers of monies involved in crowdfunding may also attract regulation under the Financial Intelligence Centre Act 38 of 2001 (FICA).
In addition, the Collective Investment Schemes Control Act 45 of 2002 (CISCA) may apply, given that crowdfunding in exchange for equity could be regarded as a collective investment scheme. To the extent that equity crowdfunding involves instruments that may be converted into shares, the use of cryptocurrencies must be considered. Cryptocurrencies may be offered in exchange for fiat/material currency or assets, with the cryptocurrency convertible into shares in the entity seeking funding (alternatively, representative of those shares itself).
In this regard, a number of proposed regulatory frameworks exist in the form of the Cybercrimes and Cybersecurity Bill of 2017 and the Intergovernmental FinTech Working Group (IFWG) consultation paper on policy proposals for crypto assets by the Crypto Assets Working Group (CARWG), published in January 2019.
The consultation paper by CARWG proposes a number of applicable recommendations for the future regulation of crypto assets. Currently, in terms of the ECTA, the Director-General of the Department of Communications would have the applicable regulatory authority to oversee and implement regulation pertaining to crypto assets.

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

South Africa does not directly regulate crowdfunding. It may, however, be indirectly regulated through the potential application of the legislation and proposed legislation mentioned above.
In terms of the Companies Act, the Companies and Intellectual Property Commission (CIPC) would

have regulatory powers over crowdfunding-seeking entities. In terms of FICA, the Financial Services Commission (FSC) would have the requisite regulatory powers. In terms of CISCA, the registrar would have the requisite regulatory powers.
In this regard, the consultation paper by CARWG proposes that existing bodies should either be given new powers to deal with cryptocurrencies (thus crowdfunding as applicable) or, alternatively, new bodies should be established if adaptation is not possible.

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

There are currently no limits in place.

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

There are currently no restrictions inasmuch as the shares are understood to be normal shares being offered for subscription to the public in terms of the Companies Act. The only restrictions that may be created are restrictions in terms of the MOI of the entity offering them.

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?

Offers of shares in companies to the public are restricted in that they must be accompanied by registered prospectuses made available to prospective buyers. If these documents are not made available, the sale and issue of shares can be invalidated.

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?

It may be argued that an equity crowdfunding platform or operator is offering a cryptography service or product which is designed to facilitate the use of cryptographic techniques for the purposes of ensuring that: the authenticity or integrity of such data or data message is capable of being ascertained; the integrity of the data or data message is maintained; the data or data message can be accessed or can be put into an intelligible form only by certain persons; and the source of the data or data message can be correctly ascertained. In any of these circumstances, the equity crowdfunding platform falls to be registered with the Minister of Communications in terms of the ECTA.

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

Currently, South Africa has only taken steps toward adopting legislation aimed at the regulation of cybercrimes and cryptocurrencies. In a country such as South Africa where a large portion of the populace do not have bank accounts, it is clear that regulatory priorities are aimed at encouraging the use of informal banking and business sectors such as crowdfunding to provide greater financial inclusivity. It may be unwise for South Africa to overregulate this space and potentially hamper the exponential growth that could occur.

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

For further information regarding equity crowdfunding in South Africa, please contact **Ryszard Lisinski** (email: rlisinski@fluxmans.com; tel: +2711 328 9333) or **Jonathon Beard** (email: jbeard@fluxmans.com; tel: +2711 328 9384).

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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.

South African Regulation of Equity Crowdfunding and Peer-to-Peer Lending – Provided for information purposes only and not intended to constitute legal advice.

1.Has your country introduced specific legislation or regulations governing peer-to-peer lending, or is it regulated under generally applicable laws?

Peer-to-peer lending is not specifically regulated in South Africa. However, there are pending amendments to certain acts that could expressly regulate peer-to-peer lending. The Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS) may be applicable and has pending amendments that would bring peer-to-peer lending more squarely into its ambit. The Electronic Communications and Transactions Act 25 of 2002 (ECTA) may also apply where peer-to-peer lending is facilitated through the use of cryptography services. In addition, the National Credit Act 34 of 2005 (NCA) is likely to apply should a platform match lenders with borrowers in order to facilitate unsecured loans.

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

To the extent that the NCA applies, the National Credit Regulator and National Consumer Tribunal will regulate peer-to-peer lending. Should FAIS apply, the Office of the Ombud for Financial Service Providers will regulate peer-to-peer lending, while the registrar so named in FAIS will also have certain assigned regulatory powers.

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

To the extent that the NCA applies, the amount lent may be limited in that it cannot be more than the borrower can afford to pay back. In this regard, an affordability assessment must be conducted and credit extended in line with the result of this assessment. In the event that this assessment is not conducted, the extension of credit by the lender may amount to reckless lending as defined in the NCA.

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?

If the amount lent exceeds ZAR 1 million and/or the lender regularly lends money to others, the lender may have to be registered as a credit provider in terms of the NCA and would not be entitled to lend in this scenario if this formality has not been complied with. In addition, the borrower would only be entitled to borrow money in terms of the NCA if an affordability assessment has been conducted and the borrower can legitimately afford to pay back the amount lent.

Moreover, a credit agreement may often require consumers to pay service fees, initiation fees, collection costs, cost of credit insurance and administration charges, in addition to interest. Section 103(5) of the NCA provides that the aggregate or sum total of such amounts (as contemplated in sections 101(1)(b) to (g) of the NCA) may not exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.

The maximum amount that may be charged in fees or interest on a credit agreement is limited to the

amount as decided and proclaimed by the Minister in the government gazette from time to time. In any event, in terms of South African common law, the amount of interest may not amount to double the capital amount lent.

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?

If the online platform is merely facilitating deals between lenders and borrowers, then the platform must comply with the registration requirements of FAIS. To the extent that FAIS applies, the lender must be registered as a financial services provider.
In the event that the lending is facilitated by providing cryptography services, the lender would have to be registered as a cryptography provider with the Minister of Communications in South Africa.
Insofar as the NCA applies as detailed above, the lender may have to be registered as a credit provider.

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

The NCA places restrictions on the types of marketing practices that may be conducted in marketing credit agreements. In this regard, a platform seeking to facilitate agreements may not use negative option marketing and must offer an opt-out function in all unsolicited communications.
This opt-out requirement is similarly set out in section 45 of the ECTA and section 11 of the Consumer Protection Act 68 of 2008 (CPA).

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

There are certain provisions that may apply as outlined roughly above under FAIS, the NCA and the CPA. These provisions impose limits on intermediaries, the types of credit agreements that may be concluded and the marketing thereof.

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

The scope for conducting true peer-to-peer lending in South Africa is limited. In practice, an entity considering moving into this space will need to explore all of the potential legislative restrictions as highlighted above.

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

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SOUTH KOREA
BARUN LAW

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?

No specific laws or regulations governing equity crowdfunding have been enacted. Instead, a new section governing equity crowdfunding has been added to the Financial Investment Services and Capital Markets Act (the FISCMA).

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

In terms of registration for the brokerage of crowdfunding, the Financial Services Commission (FSC) reviews the applications and determines who can be registered as crowdfunding brokers. The Korea Securities Depository (KSD), on the other hand, supervises investment orders, investment inquiries and provision of information regarding issuers of online small-value securities and investors.

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

Yes. The investment cap of a crowdfunding company is KRW 1.5 billion a year.

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

There are no personal restrictions, but an annual investment cap exists.

Type	Investment cap per fund	Investment cap per fund
General Investor	KRW 5 million	KRW 10 million
Qualified Investor*	KRW 10 million	KRW 20 million
Professional Investor	No limits	

*(Individual: 1) a person subject to aggregate taxation on financing income, 2) a person whose business income and earned income exceed KRW 100 million, or 3) a person who has a financial licence and has a history of practicing using that licence Corporation: a corporation whose equity capital of the most recent business year exceeds KRW 1 billion)

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?

In principle, crowdfunding brokers cannot advertise by a means other than websites established by themselves. However, exceptionally, by a means other than their own websites, crowdfunding brokers can provide information regarding the following:
1) The address of the website where the investment advertisement has been posted
2) The method of accessing the website where the investment advertisement has been posted

3) The name of the crowdfunding broker, type of the fund, period of equity subscription etc.

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?

Companies which are not registered with the FSC as crowdfunding brokers cannot engage in the brokerage of crowdfunding. The major requirements for the registration include:

1) A stock company shall be incorporated under the Commercial Act, or foreign crowdfunding brokers shall have branch offices necessary for crowdfunding.
2) Equity capital shall be not less than KRW 500 million
3) The company's business plan shall be feasible and sound
4) The company shall have human resources, electronic computer systems and other physical facilities sufficient to protect investors and conduct the financial investment business in which it intends to engage;
5) None of the company's executive officers shall be those provided for in article 5 of the Act on Corporate Governance of Financial Companies;
6) The foreign financial investment business entity shall have sufficient investment capabilities, good financial standing and social credibility
7) A system for preventing conflicts of interest between the financial investment business entity and investors, as well as between a specific investor and other investors, shall be in place.

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

Recently, the FSC has not only been deregulating crowdfunding, but also reforming the system in order to promote crowdfunding as a platform for raising funds for small and medium-sized companies.

Especially with the recent amendment to the act, crowdfunding is likely to grow even faster. Thanks to the amendment, the amount of funds which a company can raise through crowdfunding increased from KRW 700 million to KRW 1.5 billion. The range of companies that qualify for crowdfunding also expanded. Before, crowdfunding was limited to start-ups, venture capitals and unlisted small and medium-sized companies. After the amendment, even companies listed on the Korea New Exchange (KONEX) can take advantage of crowdfunding within three years from the listing if they did not raise funds through public offerings.

According to the act, those who obtained securities through crowdfunding cannot sell such securities or otherwise transfer them to a third person for six months. However, by relaxing the restriction on sales of securities of companies registered with the KRX Startup Market, the FSC is planning to revitalise the market.

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?

There are no specific legislations or regulations governing peer-to-peer (P2P) lending. Bills regarding P2P lending have been proposed and are being reviewed by the standing committee of the National Assembly.

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

As mentioned, there are no specific laws or regulations governing P2P lending, but the FSC has been regularly updating the P2P Lending Guideline (the Guideline) since February of 2017. The nature of the Guideline is to provide administrative guidance and therefore the Guideline is not legally binding. Its main purpose is to prevent any violations of law which may occur during the course of conducting P2P lending business.

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

In the Guideline, the FSC has published the following investment caps:
- Individual investor (excluding corporate and individual professional investors):

KRW 10 million per P2P lending business (with regards to the identical borrower, KRW 5 million). If investing in a product other than a real estate PF loan or a real estate mortgage loan, an additional KRW 10 million per P2P lending business.

- a person subject to aggregate taxation on financing income, whose business income and labour income exceed KRW 100 million or who has a financial licence and has a history of practicing using that licence: KRW 40 million per P2P lending business (with regards to the identical borrower, KRW 20 million)

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 on the types of persons who can lend and/or borrow. However, the interest rate cannot exceed 24% per annum, which is the maximum interest rate allowed under a loan contract prescribed by the Act on Registration of Credit Business Etc and Protection of Finance Users and the Interest Limitation Act.

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?

As mentioned, there are no specific legislations or regulations governing P2P lending. However,

currently pending bills at the standing committee of the National Assembly all propose a registration system as a form of regulation. If a credit business or loan brokerage business is involved in the P2P transaction, the business must register with the Financial Services Commission under the Act on Registration of Credit Business Etc and Protection of Finance Users.

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

In the Guideline, the FSC provides that, with regards to marketing and promotional documents and activities, a P2P lending business:

1) Shall not advertise false or exaggerated information
2) Shall not make any statements regarding uncertain items which may lead to conclusive determination
3) Shall list the name of the P2P lending product as well as the name of the company and shall notify that the product is not subject to financial regulations currently in place and therefore has corresponding risks, if the company is advertising the P2P lending product through a website other than its own.
4) Shall inform the investors about how they can check the company's business information, if the company is advertising the P2P lending product through a website other than its own
5) Shall not engage in any other conduct that may mislead or confuse investors

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

In the Guideline, the FSC has published the following recommendations.
With regards to the information provided to borrowers, a P2P lending business shall provide information that can facilitate the borrowers' use of the loan, such as the interest rate and commission fee, in a way easily understandable by the borrowers.
With regards to the information provided to the investors, a P2P lending business shall post the following information on its website in order to facilitate the investors' decision-making process:
1) Risks to the investment
2) Information about borrowers
3) Information regarding calculation of expected return
4) Matters investors should be aware of
5) In the case of a real estate PF loan investment product, information reviewed by external professionals (lawyers, accountants etc.)
6) Identical borrower's[1] status on the loan
7) Other material provisions of the contract

When signing the investment contract, a P2P lending business shall confirm that the investor understood the information provided by the company by investor's signature, email or other equivalent methods.

With regards to conduct of business conduct, a P2P lending business
1) Shall not participate in the lending as an investor.
2) Shall not use P2P lending to benefit as a large shareholder or related persons[2]

[1](Identical borrower under the Mutual Savings Bank Act: a person or an enterprise group defined under the Monopoly Regulation and Fair Trade Act which shares credit risks prescribed by Presidential Decree with the individual borrower)
[2]Large shareholder and related persons under the Act on Corporate Governance of Financial Companies: 'A person who holds the greatest number of outstanding voting shares (or equities; hereafter the same shall apply) of a financial company, when all shares (including depository receipts related to the shares) held by the person and persons who have a special relationship specified by Presidential Decree'

3) Shall inform investors about late payment and the reason for it without delay and publicly announce the current status and maintenance of the debt collection.
4) Shall have a follow-up procedure in place.
5) Shall ensure that the borrower's maturity and the investment product's maturity match.

With regards to separation of investment funds and loan payments, a P2P lending business shall maintain separate bank accounts for funds received from the investors and the company's assets in order to prevent commingling of funds. In case of a significant event, such as liquidation or declaration of bankruptcy, which disables further continuance of the business, the company shall ensure that the deposited investment funds and loan payments take priority over other claims and be distributed to the investors first.

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

With the rapid growth of the loan market, the Guideline has been operating as the regulation safeguarding the rights of investors and its contents has been more specified. Given the FSC's attitude stressing the protection of the investors, the regulation of P2P lending is likely to be more specific and enhanced in the future. Moreover, once the currently pending bills at the standing committee of the National Assembly pass the plenary session, the P2P lending business is likely to become more systematic and transparent.

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

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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 are 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.

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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?

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 expressively 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.

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SWEDEN
HELLSTROM

Crowdfunding

INNEHÅLL

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.

TURKEY
GUN+PARTNERS

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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UK
MISHCON DE REYA

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?

No specific laws or regulations have been introduced in the UK to govern equity crowdfunding. General principles of securities law imposed under the Financial Services and Markets Act 2000 (FSMA) and relevant statutory instruments are applied in this context.

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

The Financial Conduct Authority (FCA) is responsible for the regulation of equity crowdfunding in the UK.

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

The FCA does not impose limits on the amounts that can be raised by crowdfunding companies. However, limits are typically imposed by the platforms themselves to ensure that the companies fall outside the scope of the Prospectus Regulations (issues of up to €8 million are currently exempt).

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

Yes. Companies may only offer shares (categorised as non-readily realisable securities in an equity crowdfunding context) to the following categories of investor:

- retail clients who are certified or self-certify as sophisticated investors;
- retail clients who are certified as high net worth investors;
- retail clients who confirm before a promotion is made that, in relation to the investment promoted (i.e. the shares), they will receive regulated investment advice or investment management services from an authorised person; and
- retail clients who certify that they will not invest more than 10% of their net investible portfolio in unlisted shares or unlisted debt securities (i.e. excluding their primary residence, pensions and life cover).

Appropriateness checks must also be undertaken for non-advised sales.

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?

Assuming the offer of shares falls outside the scope of the Prospectus Regulations, marketing materials

do not need to be registered or approved by the FCA. However, any communications made to potential investors by a crowdfunding platform to promote or offer an investment will constitute financial promotions and must comply with the FCA's rules in this regard. This includes rules to ensure that any promotion received by a retail client will comply with certain disclosure obligations, including in relation to information regarding the shares being offered. It may also include a summary of the taxation of any investment to which it relates and the consequences for the average member of the group to whom it has been promoted.

Any promotions made by the company itself (on the assumption that the company is unauthorised) would need to comply with the general restriction on financial promotions and either be approved by an authorised person (such as the platform operator) or fall within an exemption. In this respect, it is worth noting that the UK rules are technology neutral and the FCA has released specific guidance regarding the application of financial promotion rules in the context of social media.

All promotions should be clear, fair and not misleading.

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?

We would typically expect the operator of the crowdfunding platform (or, in certain circumstances, the platform itself) to be undertaking regulated activities for the purposes of FSMA and, therefore, need to be FCA authorised or exempt (i.e. become an appointed representative of an existing FCA authorised firm).

The authorised firm would then need to comply with the FCA's Handbook of Rules and Guidance.

In addition to the above, the Companies Act 2006 prohibits private limited companies from making an offer of shares to the public. In our view, this would mean that a company raising investment through a crowdfunding platform would, in most cases, need to convert to a public limited company before offering its shares.

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

NA

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

For equity crowdfunding-related enquiries, please contact **Charlotte Wilson Charlotte**.Wilson@mishcon.com

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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 UK has introduced specific rules that apply where the operator of the P2P platform is conducting the regulated activity of 'operating an electronic system in relation to lending'. Where the activities fall outside the scope of this activity, existing securities law/regulation would apply.

In summary, the activity of 'operating an electronic system in relation to lending' involves operating an electronic system which enables the operator (A) to facilitate persons B and C becoming the lender and borrower where:

- The system operated by A is capable of determining which agreements should be made available to each of B and C (whether in accordance with general instructions provided to A by B or C or otherwise);
- A, or another person acting under an arrangement with A or at A's direction, undertakes to receive payments in respect of interest or capital or both due under the agreement from C, and make payments in respect of either interest or capital or both due under the agreement to B; and
- A, or another person acting under an arrangement with A or at A's direction, undertakes to perform, or A undertakes to appoint or direct another person to perform, either or both of the following activities: (a) taking steps to procure the payment of a debt under the agreement or (b) exercising or enforcing rights under the agreement on behalf of B.

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

The Financial Conduct Authority (FCA) is responsible for the regulation of equity crowdfunding in the UK.

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

No.

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?

Lenders:

There are no current rules relating to who can lend.

However, in July 2016, the FCA published a call for input to the post-implementation review of its crowdfunding rules. The subsequent policy statement, issued on 4 June 2019, summarises the

feedback received to the consultation and sets out the final policy position reached (and the rules to implement those policy decisions). The new rules will, for the most part, come into effect in December 2019. As at this date, P2P platforms will broadly be subject to the same marketing restrictions as equity crowdfunding platforms in terms of the investors they are permitted to target.

Borrowers:

There are no current rules relating to who can borrow. However, under the new rules that will come into effect in December 2019, where the P2P platform takes on the responsibility of determining the price of the loans on behalf of investments, it will be required to conduct a credit risk assessment of the borrower.

Interest Rates:

No restrictions.

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?

Please see above regarding regulation of the platform operator.

Depending on the nature of the lender (and the underlying loans) the lender may also need to be authorised for the purposes of either the regulated mortgage or consumer credit regimes.

In addition, if the borrowers are using the funds raised to on-lend for business purposes, they may also need to be authorised.

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

As noted above under section 4, with effect from December 2019 new rules will come into effect regarding which categories of retail investor the loans can be marketed to.

Rules will also apply in relation to specific information to be provided to lenders (for example, in relation to a firm's role in facilitating P2P agreements, what happens in case of platform failure, and access to the Financial Services Compensation Scheme).

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

Not over and above the protections built into the applicable rules and regulations (for example, in relation to financial promotions generally and who can access the platform itself).

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

NA

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

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UNITED KINGDOM
WEIGHTMANS

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?

Investment-based models of funding which involve people buying shares or debt securities or units within an unregulated collective investment scheme such as those usually sold via equity crowdfunding platforms fall within the scope of UK regulations, which are set out in the Financial Services and Markets Act 2000 (FSMA) and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).

In accordance with section 19 of FSMA, a person must not carry on a regulated activity in the UK unless they are authorised by the FCA or an exempt person. A regulated activity is a specified kind of activity if it is carried on by way of business and relates to a specified investment or property of any kind. There is also a general prohibition on financial promotion in section 21 of FSMA (see question 5 below).

Articles 25(1) and 25(2) of the ROA confirm that arranging deals in investment is a specified activity. The specified activity covers both arranging deals in investment and making arrangements with a view to participation in deals in investment. To be a specified activity, the activity must relate to a specified investment. Article 25 confirms several types of specified investment, including securities such as shares. Equity crowdfunding therefore falls within the definition of specified activities and, as a result, the authorisation of the Financial Conduct Authority (FCA) is required to carry on legally the activity in the UK.

There are threshold conditions that must be satisfied to successfully obtain FCA authorisation. The conditions cover matters such as legal status, office location, supervision, resources and the applicant's suitability and business model. For more information please see https://www.handbook.fca.org.uk/handbook/COND/1/?view=chapter.

Due to the potential for capital losses, investment-based crowdfunding is regarded as a high-risk investment activity by the regulator, the FCA. On 1 October 2014 the FCA introduced new Conduct of Business Source Book (COBS) rules regarding financial promotions relating to 'non-readily realisable securities', which by definition include shares sold via equity crowdfunding platforms. The rules were created to ensure sufficient regulation of equity crowdfunding and include marketing restrictions, so firms may only make direct offer promotions to retail consumers who meet certain criteria and must check whether customers understand the risks if they do not take regulated advice (see answer to question 5 below for further details).

The FCA Handbook (published online) also provides rules applicable to equity crowdfunding activities,

some of which have been created specifically to ensure adequate protection is in place for those investing in equity crowdfunding.

Unlike loan-based crowdfunding (see below), the FCA has not published a summary of the FCA Handbook rules relevant to equity crowdfunding. However, it appears that most of the rules listed will apply to both types of crowdfunding. The FCA summary can be found at https://www.fca.org.uk/firms/project-innovate-innovation-hub/loan-based-crowdfunding-platforms-summary-our-rules.

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

The Financial Conduct Authority is the main regulator responsible for regulating investment-based crowdfunding.

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

There are no general limits in the UK to the amount that can be raised by equity crowdfunding, but if the amount raised exceeds the thresholds set out in the prospectus rules, additional requirements apply (see answer to question 5 below for further information on the prospectus rules).

There are certain restrictions regarding the financial promotions that can be made to retail clients who have not received regulated advice, i.e. less than 10% of their net assets (please see answer to question 4 below for further details).

Certain crowdfunding platforms themselves may limit (if not prohibit) equity crowdfunding amounts.

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

COBS

The COBS rules are contained in the FCA Handbook (https://www.handbook.fca.org.uk/handbook/COBS/4/?view=chapter) and contain a prohibition on direct offers of financial promotion. A firm must not communicate or approve a direct-offer financial promotion relating to a non-readily realisable security to or for communication to a retail client unless certain conditions are met.

The conditions to be met are specified in COBS 4.7.7 R as follows:

- Condition 1: Unless 4.7.8 R applies (see below), the retail client recipient of the direct-offer financial promotion is one of the following:
  (a) certified as a 'high net worth investor' in accordance with COBS 4.7.9 R;

  (b) certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;

  (c) self-certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;

  (d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.

- Condition 2: the firm itself, or the person who will arrange or deal in relation to the non-readily realisable security, will comply with the rules on appropriateness (see COBS 10 and 10A) or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.

In addition, each of the categories of investor in COBS 4.7.9 must have signed, within the period of 12 months ending with the day on which the communication is made, a statement in the form set out in COBS 4.12.6 R, 7 R and 8 R respectively.

A restricted investor is a retail client who certifies, within the period of 12 months ending with the day on which the communication is made, that they will not invest more than 10% of their net assets in non-readily realisable securities in accordance with 4.7.10 R.

COBS 4.7.8 R allows direct-offer financial promotions to retail clients if:

- The firm itself will comply with the suitability rules (COBS 9 and 9A) in relation to the investment promoted; or

- The retail client has confirmed before the promotion is made that they are a retail client of another firm that will comply with the suitability rules (COBS 9 and 9A) in relation to the investment promoted; or

- The retail client is a corporate finance contact or a venture capital contact.

Effectively 4.7.8 R provides an exception for those retail clients that receive regulated investment advice or investment management services from a regulated person. If this does not apply, then the financial promotion can only be made if the retail clients satisfy the two conditions in 4.7.7 R.

- A 'retail client' is a client who is neither a professional client nor an eligible counterparty (investment firm, credit institution etc.).

- A 'direct-offer financial promotion' is a financial promotion containing an offer by a firm/another person to enter into a controlled agreement with any person who responds to the communication or an invitation to any person who responds to the communication to make an offer to the firm or another person to enter into a controlled agreement. Equity crowdfunding would fall within this definition.

- A 'non-readily realisable security' is a security which is not a readily realisable security, a packaged product, a non-mainstream pooled investment or a mutual society share. A 'readily realisable security' includes securities which are admitted to listing/regularly traded on an exchange in an EEA state. Equity crowdfunding will likely involve 'non-realisable securities' for start-up companies, and therefore the new FCA rules will apply.

Companies Act 2006 (CA)

The CA restricts the marketing of shares. In accordance with section 755, a private company limited by shares or limited by guarantee and having a share capital must not offer to the public any securities of the company, or allot or agree to allot any securities of the company with a view to their being offered to the public. Companies must therefore ensure when participating in equity crowdfunding that offers are not being made to the public.

Pursuant to section 756(3), an offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as:

a) Not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer, or
b) Otherwise being a private concern of the person receiving it and the person making it.

Private companies who intend to raise funds via equity crowdfunding could potentially rely on section 756(3)(a) above. It is common practice for investors to have to set up an account and sign into a crowdfunding website. The platform may be structured in such a way that there is a clear process that has to be followed/accepted for setup, and offers are only made to those with registered accounts. It could therefore be argued that the offer is not made to the general public as a whole.

A potential flaw in this argument is that section 756(2) provides that an offer to the public includes an offer to 'any section of the public, however selected'. As crowdfunding becomes more popular and the number of registered investors receiving offers increases, it is likely that companies will be unable to rely on this argument. Other options may need to be considered, for example, converting from a private limited company to a public limited company so that one of the exemptions in the Public Offers of Security Regulations 1995 would apply (the list of exemptions has recently been revised to implement the EU Prospectus Regulation 2017/1129 as of 21 July 2018).

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?

Prospectus Rules

Section 85 of FSMA confirms that it is unlawful for transferable securities to be offered to the public unless a prospectus approved by the FCA has been made available to the public before the offer. However, FSMA also provides exceptions to this requirement. A person/firm does not have to make an approved prospectus available to the public if:

- the offer is made to/directed at solely qualified investors;
- the offer is made to/directed at fewer than 150 people per EEA state (other than qualified investors);
- the offer is within a minimum total consideration per investor of €100,000.
- the offer is within a minimum specified denomination per unit of €100,000.
- the offer is within a total consideration in the EEA of less than €8 million (increased from the previous limit of €5 million).

If a prospectus is required, section 87A of FSMA sets out what content must be included within the

prospectus. A prospectus will not be approved by the FCA unless the prospectus contains all necessary information. This includes information necessary to enable investors to make an informed assessment of the issuer of the transferable securities (assets, liabilities, finances, prospects) and the rights attaching to the transferable securities.

The Prospectus Rules in the FCA Handbook summarise the requirements of FSMA and provide guidance on the drawing up of a prospectus and the process for obtaining approval from the FCA.

Financial Promotion

Section 21 of FSMA provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity or to engage in claims management activity, unless:

- That person is authorised under FSMA (authorised by the FCA in accordance with section 31 of FSMA).
- The content of the communication has been approved (specifically for the purposes of enabling the financial promotion to be communicated by the unauthorised person free of the restriction under section 21 of FSMA) by an authorised person in accordance with the FCA rules.
- The communication is covered by an exemption. Exemptions from the financial promotion restriction are contained in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (FPO).

There are over 70 exemptions in the FPO. These apply to certain types of communication (e.g. introductions, one-off communications), communications to certain people (e.g. investment professionals, certified high-net-worth individuals, sophisticated investors), communications from certain people (e.g. journalists, insolvency practitioners) and company communications. It is worth considering the exemptions to see if the particular promotion used for crowdfunding falls within their scope. However, to ensure compliance with FSMA it would be best to ensure that financial promotions come from or are approved by an authorised person.

A company raising funds via equity crowdfunding will prepare marketing documents which will constitute a financial promotion. The content of such financial promotion must be authorised in compliance with section 21 unless it falls within one of the three exemptions above.

Chapter 8 of the Perimeter Guidance Manual (PERG) provides the FCA's guidance on the financial promotion restriction. The content of PERG is just guidance and is not binding on the courts but may be considered.

COBS 4 of the FCA Handbook (discussed above) also sets out rules in relation to financial promotions and should be complied with by equity crowdfunding platforms.

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?

Please see the answer to question 1. If the platform is deemed to be carrying out a specified activity, FCA authorisation will be required and the FCA Handbook (where applicable) must be complied with.

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

Social Media

The FCA has issued guidance on social media and customer communications. Social media is a key facility for lots of crowdfunding platforms. It is therefore important to ensure that its use also complies with FCA regulation.

To be within the scope of FCA regulation, a financial promotion must be 'in the course of business'. If a platform is seeking capital for a company already in operation, this will be 'in the course of business', whereas contacting family/friends via social media to raise start-up capital prior to formation of the company will not be a financial promotion and will not be the concern of the FCA.

It is important when using personal social media accounts to ensure that any posts that are personal should be made distinguishable from communications of the company 'in the course of business.'

The same FCA rules are applicable to financial promotions via social media. Users should be mindful of the FCA rules when using social media for this purpose, including in relation to:

- Restricted word/character limits- financial promotions must still be 'clear, fair and not misleading' (principle 7 of Principles of Business) despite these limits. Promotions must also include risk warnings, which can consume a large chunk of the allowed words/characters.
- Multiple communications - even if an array of tweets, posts and web pages have been used to promote an investment, each communication will be considered as a standalone promotion and must comply with the FCA rules.
- Unsolicited promotions - social media is a method for easily making unsolicited promotions. The FCA guidance provides a reminder that the same FCA rules apply.

This should also be considered for loan-based crowdfunding discussed below.

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

A combination of specific and general rules relating to peer-to-peer lending (also commonly referred to as loan-based crowdfunding) is incorporated into UK law.

In 2013, the FCA introduced article 36H of the RAO to improve the regulation of loan-based crowdfunding. Article 36H introduced a new regulated activity of 'operating an electronic system in relation to lending' and, given certain conditions are met, this will be a specified activity requiring FCA authorisation.

The conditions that must be met are as follows:

a) the system operated by the operator must be capable of determining which agreements should be made available to the lender and borrower (whether in accordance with general instructions provided to the operator by the lender and borrower or otherwise).

b) the operator, or another person acting under an arrangement with the operator or at its discretion, receives payments due under the agreement from the borrower, and makes payments due under the agreement to the lender.

c) the operator, or another person acting under an arrangement with the operator or at its discretion, undertakes to perform or to appoint or direct another person to perform either or both of the following activities:
i. taking steps to procure the payment of a debt under the agreement; or
ii. exercising or enforcing rights under the agreement on behalf of the lender.

Article 36H applies to 'agreements' only apply if conditions 5 or 6 are satisfied:

(5) The condition in this paragraph is that the lender is an individual or relevant person.

(6) The condition in this paragraph is that the borrower is an individual or relevant person and—
(a) the lender provides the borrower with credit less than or equal to £25,000, or

(b) the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

Therefore, lending between lenders or borrowers who are not individuals or certain types of non-corporate businesses where the amount borrowed is over £25,000 will not be classed as a regulated activity under article 36H.

If the tests for 'operation of the electronic system in relation to lending' and 'agreement' are satisfied, then the platform will be a carrying out a specified activity under the RAO which is a regulated activity under the FSMA. The platform will therefore require FCA authorisation in order to carry on its business. Charities and authorised representatives of directly FCA authorised firms are exempt from article 36H activity.

The FCA Handbook rules, and specifically those rules confirmed by the FCA as applying to loan-based crowdfunding, must be complied with following authorisation. Guidance should also be followed. The FCA confirmed rules include:

- The Principles for Business (PRIN)
- Senior Management Arrangements, Systems and Controls (SYSC)
- Threshold Conditions (COND)
- Statements of Principle and Code of Practice for Approved Persons (APER)
- The Fit and Proper Test for Approved Persons (FIT)
- General Provisions (GEN)
- Fees Manual (FEES)
- The Interim Prudential Sourcebook for Investment (IPRU(INV))
- Conduct of Business (COBS)
- Client Assets (CASS)
- Supervision (SUP)
- Decision Procedures and Penalties (DEPP)
- Dispute Resolution: Complaints (DISP)
- The Perimeter Guidance Manual (PERG)
- Financial Crime: a guide for firms (FC)
- The Unfair Contract Terms and Consumer Notices Regulatory Guide (UNFCOG)

With regard to the Senior Management Arrangements, Systems and Controls rules, the FCA introduced specific requirements in SYSC 4.1 for firms running loan-based crowdfunding platforms. The rules require firms, amongst other things, to take reasonable steps to ensure that arrangements are in place to ensure that existing loan agreements facilitated by the platform will continue to be managed and administered in accordance with the contract terms, if at any time the firm becomes unable to continue operating the platform.

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

The Financial Conduct Authority regulates peer-to-peer lending in the UK.

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

There are currently no limits in the UK on the amount that can be lent to an individual through a crowdfunding platform. However, new FCA rules are to be introduced in 2019 (see below).

Certain crowdfunding platforms may limit peer-to-peer debt-based crowdfunding (for example, in the

form of a maximum pledge amount per investor/lender).

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?

At question 9 we have set out details of the new FCA rules that come into force at the end of 2019. One of these rules is that the rules relating to a direct-offer financial promotion for non-readily realisable securities (previously only applicable to equity crowdfunding) will now also be applicable to P2P lending. This means that the conditions set out above for equity crowdfunding will also have to be met for loan-based crowding. Direct-offer financial promotions will only be acceptable to the FCA if made to 'retail clients' falling within the categories set out at COBS 4.7.7R.

Restrictions have been introduced in the UK in relation to high-cost short-term credit (HCSTC) (including payday loans).

A HCSTC, as defined by the FCA handbook, is a regulated credit agreement being a borrower-lender agreement or a P2P agreement where the APR is equal to or exceeds 100% and either:

- a financial promotion made indicates that the credit is to be provided for a short term or for up to a maximum of 12 months; or
- the credit is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the credit is advanced.

A HCSTC does not cover:

- credit agreements secured by a mortgage or a charge or pledge;
- credit agreement where the lender is a community finance organisation; or
- a home credit loan agreement, bill of sale loan agreement or overdraft.

If the peer-to-peer crowdfunding satisfies the above definition, the following limits apply:

- an initial cost cap of 0.8% per day, meaning interest and fees charged must not exceed 0.8% per day of the amount lent.
- a £15 cap on default fees – if a borrower defaults, fees must not exceed £15. Firms can continue to charge interest after default but not above the initial rate; and
- a total cost cap of 100% – borrowers must never pay more in fees and interest than 100% of what they borrowed.

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?

Please see question 1 above. FCA authorisation is required if article 36H is satisfied and the platform is conducting specified activity.

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

The Consumer Credit Sourcebook (CONC 3) deals with financial promotions and communications with customers. As discussed in question 7, CONC is only applicable to some peer-to-peer agreements, so not all crowdfunding platforms are required to comply.

CONC 3.7A applies specifically to the financial promotions and communications with borrowers in relation to peer-to-peer agreements. A firm must, in any relevant communication, indicate the extent of its powers, in particular whether it works exclusively with one or more lenders (including, for example, if it works exclusively with lenders who are participants in the electronic system that the firm operates) or whether it works as an independent broker. The rule applies only to a regulated credit agreement in respect of which the lender is/would be acting by way of business.

All other rules in CONC 3 must be complied with for peer-to-peer agreements unless they are expressly stated as not applicable. CONC 3 also deals with promotional matters such as promotions not in writing and a firm's approval of certain financial promotions.
CONC 3.16 confirms that CONC 3 does not apply to a financial promotion or a communication which expressly or by implication indicates clearly that it is solely promoting credit agreements or consumer hire agreements or P2P agreements for the purposes, in each case, of a customer's business.
CONC may not be applicable to some peer-to-peer agreements. However, the peer-to-peer agreement may still be a regulated activity and subject to other FCA rules. As discussed above, COBS 4, which deals with financial promotions, also applies to P2P and should be complied with by all those conducting this type of regulated activity.
For further information, see https://www.handbook.fca.org.uk/handbook/CONC/3/?view=chapter.

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

If the lender is lending to an individual or a relevant recipient of credit (either a partnership consisting of two or three persons, not all of whom are bodies corporate, or an unincorporated body of persons that does not consist entirely of bodies corporate and is not a partnership) in the course of business, the agreement will be subject to the requirements of the Consumer Credit Act 1974 (CCA). The lender will also need FCA authorisation and, where applicable, will be required to comply with the FCA Handbook. The lender must pay particular attention to the FCA rules in CONC.
If the lending is not in the course of business, the agreement would be a 'non-commercial agreement' under the CCA, and FCA authorisation would not be required.
To ensure that consumers were still protected when entering into 'non-commercial' agreements, the FCA introduced new rules within the CONC to cover the risks linked to loan-based crowdfunding non-commercial agreements.
If lending is non-commercial, peer-to-peer platforms are still required to comply with the following FCA rules:

- Provide an adequate explanation prior to entering into the contract of the proposed agreement. The borrower should be made aware of key risks, including the consequences of missing payments or underpaying, including, where applicable, the risk of repossession of the borrower's property (CONC 4.3).
- Undertake a reasonable assessment of the borrower's creditworthiness (CONC 5.5).
- Comply with the rules 7.17-7.19 of CONC relating to arrears, default and recovery.
- Make available to the borrower a 14-day right of withdrawal from the agreement (CONC 11.2).
- Carry out promotion of peer-to-peer agreements in a manner that is fair, clear and not misleading to allow consumers to assess the risks before investing (FCA Principle 7).

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

In 2016 the FCA carried out a post-implementation review of the regulation of the crowdfunding sector. It decided not to change the current rules relating to equity crowdfunding but did suggest new rules relating to peer-to-peer lending. A consultation was carried out in 2018, and in June 2019 the FCA published final new rules for peer-to-peer lending. The rules will come into force on 9 December 2019.

A key change is that the new rules extend the marketing restrictions involving 'non-realisable assets', currently only applicable to equity crowdfunding, to peer-to-peer lending (see question 4).

Additionally, the new rules extend the application of the current rules for the home finance sector to P2P platforms that offer such home finance products, where at least one of the investors is not an authorised home finance provider.

The new rules also:

- Provide more explicit requirements to clarify what governance arrangements, systems and controls platforms need to have in place to support the outcomes they advertise, with a particular focus on credit risk assessment, risk management and fair valuation practices.
- Strengthen rules on plans for the wind-down of P2P platforms if they fail.
- Introduce a requirement that platforms assess investors' knowledge and experience of P2P investments where no advice has been given to them.
- Set out the minimum information that P2P platforms need to provide to investors.

The policy statement published by the FCA also considers whether operators of peer-to-peer platforms should be subject to additional prudential requirements (holding additional regulatory capital). The response to the consultation was that this would be too burdensome. However, the FCA states in the policy statement that it will consider if further action is appropriate.
The policy statement is available for review at https://www.fca.org.uk/publication/policy/ps19-14.pdf.

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

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