



# Review of Crowdfunding Regulation ► 2017

Interpretations of existing regulation  
concerning crowdfunding in Europe,  
North America and Israel

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## IMPRESSUM

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## Foreword

This third edition of our Review of Crowdfunding Regulation published at the end of 2017 marks five years since we first commented the European regulatory landscape for crowdfunding and four years since our cooperation with law firms across Europe and beyond to deliver this detailed overview.

In those five years we have witnessed some 11 EU countries implement national level regulations for securities-based and lending-based crowdfunding, as well as in other markets. This has helped to create local markets and first professional standards. It has not helped to create a European market that would allow investors to allocate assets across borders easily, and it did not help small and medium sized companies to raise funding from those investors.

Yet, the discussion around crowdfunding has resulted in detailed regulatory actions in many countries and to a deeper understanding of crowdfunding in the European institutions. We also have seen very positive and specific regulatory actions regarding crowdfunding at EU level, specifically in the new Prospectus Laws. But we are still far from a single market for crowdfunding. The increase in national regulation has made a more aligned pan-European market less likely. We have today what the EC in 2013 warned member states should avoid. The next five years will therefore be vital for the industry to engage in the political discourse.

Today, when we talk about crowdfunding, we of course also talk about alternative finance, fintech, initial coin and token offerings, and digital platforms. The scope of what crowdfunding was five years ago has changed at least in the use of terminology. And we have seen crowdfunding players in search for scale working closely with new types of investors and new types of asset classes over the past years. Over time, some platforms have shown little prudence with regards to their retail investors – and others no prudence regarding their professional investors. The majority of platforms we work with, though, are constantly working on improving their professional services and are increasingly setting institutional standards for the sector.

Regulation cannot create safeguards for every situation. It can only create a framework in which professional businesses can operate and investors can find a relevant level of risk protection. Within such framework the crowdfunding sector must establish its own professional sets of behaviours, in alignment with different stakeholders and law makers. For the crowdfunding sector this remains an increasingly difficult challenge. With small margins in competitive markets, platforms fail regularly to reach scale with regards to operational and financial sustainability. Even more reason to engage with all relevant stakeholders in shaping a regulatory framework across Europe that is enabling and protecting at the same time.

At ECN, we are proud to be able to work with our members and the many stakeholders around us in establishing a professional crowdfunding industry, be it our work on the legal review, guidelines of best practices, transparent key performance indicators, market analysis or networking and exchange of knowledge. But we need to be realistic about the effect of such



work in a still fragmented Europe, as so painfully is being experienced through Brexit. We also need to understand that crowdfunding touches upon many regulatory aspects that are not and will likely not be under the supervision of the European Commission any time soon.

We therefore ask policy makers and regulators, both on national and European level, and especially the President of the European Commission and his team and his Commissioners to engage into a dedicated discourse. We need to work on the framework and conditions for success that will ultimately enable our entrepreneurs, innovators and our private investors to help build a growing economy across Europe and within each member state. Education, equality and economic success may help to eliminate some of the political frictions that have flared up over the past two years. Crowdfunding, that is economic co-creation beyond borders, may be able to play a small part in delivering this.

The work of the European Commission on the Capital Market Union (CMU) will likely contribute to a better allocation of private funds and, as a consequence, to the development of small and medium sized enterprises which in turn will again lead to increased job creation. Crowdfunding has a dedicated part in the CMU and we shall expect specific actions addressing cross border transactions by the European Commission soon. With this, crowdfunding will be able to better support small and medium sized enterprises, which are the backbone of the European economy and the main source for employment and value creation across the continent.

The European Crowdfunding Network is extremely grateful to every single contributor to this paper, who has given her or his expertise free of charge and in a very short time frame. There are too many people involved to mention them all here, but the reader can find their contact details at the end of each contribution. Tanja Aschenbeck-Florange of Osborne Clarke, Germany, and her colleague Thorger Drefke, have assumed all initiative and work in creating this extraordinary paper and we would like to thank them for this. There are many other people that have helped in other ways and we are grateful for their support, too.

Details of how crowdfunding of all types is treated under national regulation across Europe and beyond can be found in this publication. With this paper we can only give a small insight in the complexities of European legislation keeping back, but also enabling private capital allocation into entrepreneurship, innovation and job creation. We trust that this paper will be once again a key tool for regulators across Europe and beyond, for entrepreneurs, investors and any other interested stakeholders working on delivering economic growth to Europe.

Oliver Gajda, Executive Director, European Crowdfunding Network, Belgium



## Introduction

Crowdfunding (as well as its most prominent “subtypes” Crowdinvesting and Peer2Peer Lending) evolved to a considerable alternative financing source during the last years – and especially since the last edition of our ECN Crowdfunding Review in December 2014.

With the economic growth and increasing importance – especially for start-ups and SMEs – also the regulatory challenges of Crowdfunding gained weight – on national and especially European level. The rag rug of national Crowdfunding regulation not only results in unfair European playing fields for Crowdfunding stakeholders but also hampers further economic growth for cross-border offers of Crowdfunding. This third edition of the ECN Crowdfunding Review 2017 demonstrates the development of Crowdfunding regulation in the EU as well as shows the developments made in third countries important for Crowdfunding. Also, this edition focuses on cross-border Crowdfunding which – as described – is becoming increasingly important.

We would like to seize this opportunity to thank very much our legal partners for participating and the ECN for making the third edition of the ECN Crowdfunding Review 2017 possible. We hope you will enjoy reading.

Tanja Aschenbeck-Florange, LL.M. (San Francisco), Partner, Osborne Clarke, Germany

# Estonia

## 1 Recent developments in the market of Crowdfunding in Estonia

During the last years there were the following significant developments in Estonia regarding Crowdfunding:

### 1.1 The Equity Model (individuals make investments in return for a share in the profits or revenue generated by the company/project)

Based on our research and analysis there are two operating Crowdfunding platforms based on the Equity Model in Estonia.

One platform enables investors to back companies while receiving equity in return. There are few successful campaigns rising funds from about EUR 20,000 to EUR 100,000 have been completed during the last years.

The second platform enables investors to invest in start-up syndicate loans receiving tokens from the syndicate which are tradable on the same platform. It means that investors can trade with their tokens and decide whether to increase or decrease their investments on daily basis. Over EUR 2,300,000 have been raised from investors so far. This platform is a mixed platform operating both based on the Equity model and Lending Model.

As of today the Estonian Equity Model Crowdfunding market to date has a very limited size compared to the overall Crowdfunding market in Estonia.

### 1.2 The Lending Model (individuals lend money to a company or project in return for repayment of the loan and interest on their investment)

There are several peer-to-peer lending platforms in Estonia where the individuals and businesses can invest and borrow money according to the terms (e.g. investment rate, interest, etc.) they agree on.

As far as we are aware there are at least two operating platforms that focus on investing in real estate. Such platforms provide the possibility to give variable interest (the interest of which depends on the return of the real estate investment project) loans for the financing in real estate projects.

The activity of the platforms is loan brokerage and loan handling. The platforms control and analyse to a certain extent borrowers' loan history, payment defaults, financial status and / or bank account statements. In case of platforms enabling the lending to finance real estate projects the platform may also do a pre-assessment of the real estate investment projects for which the loan is applied. The platforms enable the meeting of lending and borrowing interests and mediate payments between lenders and borrowers.

There are also two new platforms which provide companies to sell their receivable invoices at the auction to investors with the highest bid. By investing in these invoices investors will

obtain new short-term investment instruments. The platforms select the companies which can sell its invoices to investors. These platforms are mediating factoring services as bank with the difference that invoices are sold at the auction to individual investors.

Overall peer to peer lending is very popular in Estonia. The market volume in 2015 was approximately EUR 17,000,000 with almost 17 000 active investors involved in investing in Crowdfunding platforms. We do not have yet the numbers for 2016 but it is expected to increase substantially.

### **1.3 The Donations or Rewards Model (individuals provide money to a company or project for benevolent reasons or for a non-monetary reward)**

The Donations or Rewards Model is currently used by three platforms to finance creative projects (including design, music, art, film & photo, theatre, sport). No financial investment or return is involved. Investors fund projects or companies and get no return at all or a non-monetary reward (e.g. tickets, books, thank you notes in publications etc.). In many cases these rewards are of a symbolic value only.

### **1.4 Real Estate Crowdfunding / Renewable Crowdfunding**

A Crowdfunding platform does not raise capital from investors for its own business. Moreover, the platform does not manage the underlying investment but merely arranges investments into projects or companies or intermediates loans between natural persons.

Currently there are two main Crowdfunding platforms who presenting real estate projects. According to information available to public these two platforms have raised over EUR 35,000,000 combined. In 2016 the highest Real Estate Crowdfunding project raised EUR 1,500,000 within only three days which clearly indicates that investors have great trust in Real Estate Crowdfunding projects in Estonia.

The Renewable Crowdfunding is not so popular in Estonia. As far we are aware there have been only one project raising funds for bio-methane plant constructions. The project raised EUR 200,000 from 265 investors as a loan for two year within 15% annual interest rate.

### **1.5 International approach**

There are few foreign Crowdfunding platforms from other European countries (mainly from Baltics) which are trying to enter or already operate in the Estonian market. As a result of a market size there is no indications at the moment that any US/Canadian or other European platform would be interested in enter and provide its services in the Estonian market.

## **2 Recent developments regarding Crowdfunding regulation in Estonia**

Creditors and Credit Intermediaries Act (*krediidiandjate ja vahendajate seadus*) came into force in March 2015 and it imposes a licence obligation on creditors and credit intermediaries. This act applies to those Crowdfunding platforms which are providing or intermediating

credits to consumers. They have an obligation to obtain a licence from the Estonian Financial Supervision Authority and comply with the requirements set out in the Creditors and Credit Intermediaries Act.

There have been no developments regarding Crowdfunding regulation directly by any other new legislation.

However, Finance Estonia, a public-private cluster organisation in Estonia gathering companies from financial sector, has created together with market participants a non-binding Best Practice for the Crowdfunding industry (hereinafter the “Best Practice”) in order to provide the code of conduct to all the internet-based Crowdfunding platforms in Estonia that have joined the Best Practice at hand. The compliance with the Best Practice does not exempt a Crowdfunding platform provider from following the requirements provided by law. The Best Practice operates based on the principle of „comply or explain“, which means that a Crowdfunding platform provider shall notify the public on its website of whether the Best Practice principles are being complied with or not. In case a Crowdfunding platform provider that has joined the Best Practice does not follow a principle provided for in the Best Practice, the platform provider shall explain on its website, which principles are not being followed and why. As the Best Practice is not a binding regulation, it will not be discussed below.

Moreover, the Estonian Financial Supervision Authority has also drafted a draft law to regulate Crowdfunding platforms. Their aim with this draft is to regulate all platforms providing for financial gain, i.e. to exclude non-profit platforms. As this initiative has not developed into an act yet, this will not be discussed below under Section 3.

### 3 Current Regulation of Crowdfunding in Estonia

#### 3.1 Licence under the Estonian Securities Market Act (*väärtpaberituruseadus*) and Credit Institutions Act (*krediitiasutuste seadus*)

##### 3.1.1 Equity Model

Investment services and activities include, inter alia, reception and transmission of orders related to securities, execution of orders related to securities in the name of or for the account of the client and organising an offer or issue of securities. Activity licences are required if such services are provided on professional basis as a permanent activity.

Securities are, inter alia, (a) shares in public limited companies (*aktsiaselts*) and other transferable securities equivalent to such shares; (b) bonds or other forms of securitised debt; (c) investment fund units; or (d) any other securities giving the right to acquire or sell any such transferable securities or the price of which is determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

It is worth noticing that shares in Estonian private limited companies (*osajuhing*) are often not transferable securities due to the pre-emptive right of other shareholders under the Commercial Code (*äriseadustik*).

In summary, where an online Crowdfunding platform facilitates the offering of transferable securities, or its operator acts as a securities broker, most likely, the operator of the platform will be deemed to provide investment services within the meaning of the Securities Market Act and therefore will require an investment firm licence by the Estonian Financial Supervision Authority.

However, as mentioned above, the licencing requirements only apply if services are provided in relation to transferable securities. Therefore, if the equity model entails offering or brokerage of securities which are not transferable (e.g. shares in private limited companies where the pre-emptive right of other shareholders exists) or facilitating the formation of limited partnerships (*usaldusühing*) or the joining of additional partners into such limited partnerships, such activities do not constitute provision of investment services. Therefore, no licencing requirement under the Securities Market Act would apply.

None of the Crowdfunding platform based on Equity model existing currently in Estonia has a licence under the Securities Market Act.

### 3.1.2 Lending Model

Depending on the detailed structure of how the Lending Model is used, loans issued using the Lending Model are generally not considered as transferable securities and their offering or brokering would therefore not qualify as provision of investment services under the Securities Market Act.

Pursuant to the Credit Institutions Act, a company intending to receive cash deposits or other repayable funds from the public in any other manner and to grant loans for its own account and provide other financing, is a credit institution. The right to receive money from the public for the purposes of depositing is the exclusive right of the credit institution. In order to exercise this right the credit institution must hold a corresponding authorisation granted by the EFSA.

In Estonia, the Lending Model is based on loans between individuals and companies or individuals and is represented by private limited companies providing lending brokerage. Under Estonian models, the companies operating the platforms do not grant loans on their own account. Instead, they provide relevant information between potential borrowers and lenders. The whole process of investing and lending is under platform clients' own control.

Normally, the operators of platforms using the Lending Model receive money from lenders/borrowers, to pay the money on to, respectively, the borrowers as disbursement of the loan or the lenders as repayment of loan or interest.

However, in case a lending and borrowing interest do not meet, it may happen that the person who wanted to lend money may demand repayment of the funds from the platform operator, which may be deemed receipt of repayable funds from the public on part of the operator. On the other hand, the sums transferred to the operator are repaid only under exceptional circumstances and the repayment of sums is not the essence of the business.

Therefore, we would conclude that the risk that such platform operators are considered to receive money from the public for the purposes of depositing is not great.

Consequently, these broking companies are not credit institutions within the meaning of the Credit Institutions Act and do not require a licence for operation. However, if a company wishes to use the Lending Model in Estonia by gathering money from lenders and borrowing it on its own account, such activity would most probably require a credit institution licence.

### **3.1.3 Donations or Rewards Model**

Depending on the detailed structure it could be stated that these kinds of investments do not qualify as investment services as they do not relate to securities.

Also, as the money is donated rather than lent, such activity should not require a banking licence. In case the platform operator, under certain circumstances, repays the money donated to the donator, the analysis of whether such activity would constitute receipt of repayable funds from the public above would equally apply here. Similarly to the above analysis, in our opinion, it should not be deemed as receipt of repayable funds from the public.

## **3.2 Licence under Creditors and Credit Intermediaries Act**

### **3.2.1 Equity Model**

Crowdfunding platforms operating under the Equity model do not engage in crediting nor credit intermediating, thus, such platforms are not obliged to obtain a licence under the Creditors and Credit Intermediaries Act.

### **3.2.2 Lending Model**

Since March 2016, in order to operate as a creditor in Estonia, a licence must be held. In order to operate as a credit intermediary, a legal or natural person shall hold a licence. For the purposes of Creditors and Credit Intermediaries Act, granting of credit means also the postponement of a due date for a charge, leasing or any other similar financial accommodation, including the entry into credit agreements and performance of acts needed for this purpose in the person's own name and on the person's own account. Intermediation of credit means:

- intermediating the granting of credit or indicating the possibility to enter into a credit agreement to a consumer for a charge;
- assisting consumers in acts preliminary to entering into a credit agreement or in entering into the agreement and any other activities related thereto which have not been specified in clause 1) of this section;
- in the interests of and for the benefit of the creditor, negotiating or entering into agreements on behalf and on the account of the creditor independently and on a permanent basis.

Thus, when a Crowdfunding platform grants credit to consumers or intermediates granting of credit, it should obtain a licence under Creditors and Credit Intermediaries Act.



Currently 4 platforms have obtained a licence as credit intermediaries and at least 2 platforms have obtained a licence as creditor.

There is also one exception from licence obligations that can be exercised by a creditor or a credit intermediary whose parent company is a credit institution founded in a state which is a contracting party to the EEA Agreement and the creditor or the credit intermediary is a company controlled, within the meaning of article 10 of the Securities Market Act, by such credit institution and the creditor or the credit intermediary is subject to the consolidated supervision of the Financial Supervision Authority or the financial supervision authority of another EEA country. In such case the Crowdfunding platform does not need to obtain a licence, it is nevertheless obliged to follow certain rules and obligations from the Creditors and Credit Intermediaries Act.

### 3.2.3 Donations or Rewards Model

Such companies do not engage in granting of loans, thus, such Crowdfunding Platforms would not require a licence.

## 3.3 Prospectus requirements

If securities (including tradable shares and/or bonds) are publicly offered to investors, the company issuing the securities has to publish a prospectus. The prospectus can be published only after the EFSA approves it. Where securities are publicly offered through a Crowdfunding platform, the operator of the Crowdfunding platform should ensure that the securities are publicly offered through the Crowdfunding platform only after the prospectus is published.

Requirements for the preparation, submission and approval of the prospectus and exemptions from the requirement to publish the prospectus are established by the Securities Market Act. In contrast to several other countries, where the prospectus requirement does not apply to the offering of securities with a value of EUR 5 million or less within a one-year period, in Estonia specific requirements towards the prospectuses in such offerings are established by a regulation of the Minister of Finance (*Nõuded väärtpaberite avaliku pakkumise, kauplemis- ja noteerimisprospektile*) instead of the Prospectus Regulation (Commission Regulation (EC) No 809/2004). Therefore, publicly offering securities using a Crowdfunding platform in Estonia is likely to require publication of a prospectus, subject to certain exemptions.

The prospectus is not required if securities are not offered publicly. An offer of securities is not deemed to be public in the case of:

- an offer of securities addressed solely to qualified investors, or
- an offer of securities addressed to fewer than 150 persons per EEA Contracting State, other than qualified investors, or
- an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer, or



- an offer of securities with the nominal value or book value of at least EUR 100,000 per security, or
- an offer of securities with a total consideration of less than EUR 100,000 per all the EEA Contracting States in total calculated in a one-year period of the offer of the securities.

Also, the prospectus requirement does not apply if the offering does not concern securities (e.g. it involves shares in an Estonian private limited company). However, in case a foreign Crowdfunding instrument constitutes an investment fund, we note that public offering of non-tradable units of such non-Estonian investment fund may be subject to Estonian law regulation on the public offering of investment fund units.

The platforms operating Lending Model and Donations and Rewards Model are not subject to prospectus requirements.

### 3.4 Regulation of Crowdfunding under the AIFMD regime

The Law enabling alternative investment fund managers (AIFM) from other EU countries marketing EU AIFs to passport to Estonia was passed on 20 June 2013, effective of 22 July 2013. Further amendments to the Investment Funds Act (*investeerimisfondide seadus*) were passed on 9 May 2014, effective of 19 May 2014. The aim of the amended Investment Funds Act was to transpose other provisions of the AIFMD into Estonian law. The new legislation does not introduce any new provisions that would explicitly deal with Crowdfunding, however, depending on the nature and the scope of services provided by a Crowdfunding platform it might qualify as an AIFM and therefore each situation should be evaluated on case by case basis. If the platform qualifies as an AIFM it will require a licence from EFSA.

### 3.5 Licence under the Payment Institutions and E-money Institutions Act (*makseasutuste ja e-raha asutuste seadus*)

In addition to the requirements set out above, any transfer of funds through the operator of a Crowdfunding platform may generally constitute payment services (if a payment account is opened) or money remittance services (if no payment account is opened) within the meaning of the Payment Institutions and E-money Institutions Act. Transfer of funds could occur if the investors pay their investment amounts to the operator of the Crowdfunding platform who then passes the funds to the person taking advantage of the Crowdfunding financing scheme, or back to the investor in case the funding transaction fails.

The platform operator might rely on the exemption for commercial agents under the Payment Institutions and E-money Institutions Act. However, there is no established practice in Estonia regarding when the commercial agents exemption applies.

As an alternative - in order to avoid such licencing or the need to apply for an exemption, as a case may be, requirements - the operator of a Crowdfunding platform might use an external provider or partner for processing payments rather than acting as an intermediary himself.

We are not aware of any cases in Estonia where a Crowdfunding platform holds a payment institution licence or where either of above exemptions has been applied to a Crowdfunding platform. Thus, in each situation where any of these exemptions is considered we strongly recommend that beforehand respective project the structure of each platform is coordinated with the EFSA and/or local counsel is involved.

### 3.6 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- The Law of Obligations Act (*võlaõiguseadus*);
- Money Laundering and Terrorist Financing Prevention Act (*rahapesu ja terrorismi rahastamise tõkestamise seadus*);
- Estonian Advertising Act (*reklaamiseadus*);
- Personal Data Protection Act (*isikuandmete kaitse seadus*);
- Consumer Protection Act (*tarbijakaitse seadus*)

## 4 Regulatory barriers for Crowdfunding crossing borders

### 4.1 Applicable law

As described above there is no single law governing the activities of the Crowdfunding platforms in Estonia. Therefore, the Crowdfunding platforms must closely monitor which laws are applicable to them as a result of their business structure. This could seem as a general regulatory barrier for Crowdfunding platforms wishing to provide their services in several states.

As a general rule, the laws of Estonia become applicable to foreign Crowdfunding platforms if they approach, offer or provide their services to persons whose place of residence or location is in Estonia. As a result, the Crowdfunding platforms may need to apply for a permit for operating in Estonia if referred so below.

Similarly, the Crowdfunding platforms operating in Estonia may need an approval from the Estonian FSA and the supervisory authority of a foreign state where the Crowdfunding platform wishes to pursue its activities in that foreign state.

The barriers to the Crowdfunding have been more closely reviewed below.

### 4.2 Inbound

In this situation European Crowdfunding platform enters Estonian market and therefore addresses Estonian investors.

### **4.2.1 Foreign Crowdfunding platform addresses investors in Estonia**

As mentioned above according to the Estonian legislation the laws of Estonia become applicable to foreign Crowdfunding platforms if they approach, offer or provide their services to persons whose place of residence or location is in Estonia.

#### **4.2.1.1 Crowdfunding platforms**

##### **(1) Licence obligations**

The applicable regulatory law largely depends on whether Crowdfunding platform has a licence from another EEA Contracting State.

##### **(a) MiFID licence**

As stated under section 3.1 above if an online Crowdfunding platform facilitates the offering of transferable securities or its operator acts as securities broker, the operator of the platform is considered to provide investment services. If a foreign Crowdfunding platform and its operator provides such investment services in Estonia then their activities are subject to the regulation resulting from the Estonian Securities Market Act (implementing the MiFID). The investment services of a foreign Crowdfunding platform and its operator may be deemed to be provided in Estonia if the investment services are provided to persons whose place of residence or location is in Estonia or the services are advertised in Estonia or if the manner of the offer or the contents thereof enable to conclude that the offer is aimed at persons whose residence or location is in Estonia. Therefore, if the operator wishes to provide the investment services described above to the persons in Estonia it has to follow the requirements provided in the Estonian Securities Market Act.

Thus, if the operator of a Crowdfunding platform holding the licence of an investment firm from another EEA Contracting State wishes to found a branch or to start providing cross-border services in Estonia it can passport its licence of the home state to provide services in Estonia. Therefore, the Crowdfunding platform operator is required to inform the securities market supervisory agency of the EEA Contracting State and submit required information and documents.

If the operator of the foreign Crowdfunding platform does not hold an authorisation to provide investment services in its home state the foreign Crowdfunding platform is not able to apply the passporting or the authorisation requirements set above. This will most likely result in applying the full licencing process under the Estonian law in order to provide its services in Estonia.

##### **(b) Granting or intermediate granting of credit licence**

Where the foreign Crowdfunding platform approaches the investors in Estonia (consumers) to raise money through a Crowdfunding platform which constitutes for the platform as granting or intermediate granting of credit the Crowdfunding platform has to follow the requirements resulting from the Creditors and Credit Intermediaries Act.

If the foreign Crowdfunding platform is allowed to grant credit or intermediate granting the credit based on the legislation of its home state and holds a licence for providing such services from its home state competent authority then the Crowdfunding platform may provide the same services also in Estonia. For this purpose the foreign Crowdfunding platform may establish a branch in Estonia or provide its services cross-border. In order to establish a branch or provide its services cross-border in Estonia the foreign Crowdfunding platform is required to apply for a permit from the Estonian Financial Supervision Authority.

However, if the foreign Crowdfunding platform does not hold an authorisation to grant or intermediate granting the credit from its home state the foreign Crowdfunding platform is not able to apply to the permit based on the above. This will result in applying the full licencing process under the Estonian law in order to provide its services to Estonian consumers.

Also, the concept of credit intermediary under the Estonian law does not have clear borders. As a result, the range of services falling under this concept is wide. Therefore, the Crowdfunding platforms which are in any way involved in intermediating credit to consumers should consider whether their activities would fall under the credit intermediary.

### **(c) AIFM licence**

If the Crowdfunding platform offers its services to Estonian investors and qualifies as an AIFM it will be subject to the requirements arising from the Estonian Investment Funds Act.

A Crowdfunding platform of an EEA Contracting State which qualifies as an AIFM and holds the licence to operate as an AIFM in another EEA Contracting State can passport its licence to provide services to investors in Estonia. The Crowdfunding platform should notify the Estonian Financial Supervision Authority through its home state supervisory authority.

### **(d) Payment service licence**

The fund transfer is an ancillary service to Crowdfunding platforms when approaching Estonian investors. However, the activity is under the supervision of the Estonian Financial Supervision Authority.

The foreign Crowdfunding platform that allows the investors located in Estonia to transfer any of the funds through the operator of Crowdfunding platform and holds a licence for such services in a home state is required to establish a branch or provide services cross-border in Estonia in accordance to the Payment Institutions and E-money Institutions Act. Based on the origin of the state where the licence is granted the requirements for providing payment services in Estonia vary.

If the payment or e-money institution holds a licence of an EEA Contracting State then the institution is able to passport its licence in order to found a branch or provide cross-border services in Estonia. Therefore the payment or e-money institution of another EEA Contracting State has to inform and submit required information to the Estonian Financial Supervision Authority thereof through the financial supervision authority of the EEA Contracting State.

## **(2) Other financial regulation**

If the Crowdfunding platform is operating under any of the licenced activities referred to above through a branch they are subject to Estonian anti-money laundering regulation (Estonian Money Laundering and Terrorist Financing Prevention Act). Crowdfunding platforms offering cross-border services are not currently clearly stated to form a part of the obligated persons pursuant to Estonian anti-money laundering regulation. However, the Estonian Financial Supervision Authority has been of the opinion they are under the anti-money laundering regulation.

Note, that the Estonian anti-money laundering regulation is currently under revision and according to the new regulation the service providers above which offer cross-border services in Estonia are clearly within the scope of anti-money laundering obligations.

### **4.2.1.2 Company / project**

#### **(1) Estonian prospectus regulation**

If the securities are publicly offered to investors in Estonia by a foreign company/project it has to follow the requirements of public offering according to the Securities Market Act. Thus, the company has to publish a prospectus and the Estonian Financial Supervision Authority must approve it.

The issuer of securities of another EEA Contracting State can offer its securities in Estonia based on the prospectus registered by the securities market supervisory agent of another EEA Contracting State member state who has to confirm that the prospectus has been prepared pursuant to the requirements for prospectuses provided for in EEA legislation.

#### **(2) Other financial regulation**

Foreign companies issuing securities that are admitted to trading on a regulated market are subject to wider information disclosing requirements under the Estonian Securities Market Act.

If the issuing entity does not fall under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act then the issuer is not required to comply with the anti-money laundering regulation in Estonia.

## **4.2.2 Foreign Crowdfunding platforms addressing companies/projects in Estonia**

### **4.2.2.1 Crowdfunding platforms**

#### **(1) Licence**

Where the Estonian investors are not addressed or the service of the Crowdfunding platform is not offered in Estonia but the Estonian companies/projects are involved in the

Crowdfunding platform it will not trigger the licencing obligations as described under section 4.2.1. above.

Therefore, the MiFID licence in Estonia is not required if the investment services are not provided to persons whose place of residence or location is in Estonia or the services are not advertised in Estonia or if the manner of the offer or the contents thereof do not enable to conclude that the offer is aimed at persons whose residence or location is in Estonia.

The granting or intermediating of granting of credit do not require licencing in Estonia if the investors (consumers) from Estonia are not approached to raise money through a Crowdfunding platform.

The AIFM licence in Estonia is not required if the Crowdfunding platform does not offer it services to Estonian investors.

The licence of payment institution in Estonia is not required if the Estonian investors do not transfer funds through the Crowdfunding platform.

## **(2) Other financial regulation**

If the Crowdfunding platform does not require a licence pursuant to section 4.2.2.1 (1) above and therefore does not operate in Estonia through a branch or providing cross-border services then the anti-money laundering regulation in Estonia does not apply.

### **4.2.2.2 Companies / projects**

#### **(1) Estonian prospectus regulation**

If the securities are not publicly offered to investors in Estonia as described under section 4.2.1.2 (1) above the Estonian prospectus regulation does not apply. It should be clearly followed by the company that the securities are not offered to investors in Estonia.

#### **(2) Other financial regulation**

If the issuing entity does not fall under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act then the issuer is not required to comply with the anti-money laundering regulation in Estonia.

## **4.3 Outbound**

In this situation Estonian Crowdfunding platform enters European markets and therefore addresses foreign investors.

### **4.3.1 Estonian Crowdfunding platform addresses EEA investors**

As mentioned above according to the Estonian legislation the laws of Estonia become applicable to the Crowdfunding platforms approach, offer or provide their services to persons whose place of residence or location is in Estonia. However, if the Crowdfunding platform only provide their services to persons outside of Estonia and the provision of services does not let



to doubt that the services are only provided to investors outside of Estonia (e.g. usage of foreign language) then the Estonian legislation shall not apply.

#### **4.3.1.1 Crowdfunding platform**

##### **(1) Licence obligations**

###### **(a) MiFID licence**

If the operator of a Crowdfunding platform is holding the licence of investment firm in Estonia and wishes to provide the investment services provided for in its activity licence cross-border or to found its branch in another EEA Contracting State, the operator is able to passport its licence. However, the operator should notify the Estonian Supervision Authority of its intention and submit required information and documents to the Supervision Authority.

In addition, the Estonian operator of the Crowdfunding platform has to fulfil any of the legal requirements of the state where it wishes to start providing investment services and may therefore be subject to barriers.

###### **(b) Licence of granting or intermediate of granting credit**

If the Estonian Crowdfunding platform holding the licence to grant or inter-mediate granting of credit in Estonia wishes to start granting credit or inter-mediate credit granting outside of Estonia on their Crowdfunding platform, it may provide its services based on the authorisation from Estonia. However, for such activities the Estonian Crowdfunding platform has to apply for the respective permit from the Estonian Financial Supervision Authority.

In addition, the Estonian Crowdfunding platform has to fulfil any of the legal requirements of the state where it wishes to start granting or intermediate granting of credit and may therefore be subject to barriers.

###### **(c) AIFM licence**

An Estonian Crowdfunding platform which qualifies as an AIFM and holds the licence to operate as an AIFM in Estonia can passport its licence to provide its services to investors in another EEA Contracting State. The Crowdfunding platform is therefore required to notify the Estonian Financial Supervision Authority.

In addition, the Estonian Crowdfunding platform has to fulfil any of the legal requirements of the state where it wishes to start providing its services and may therefore be subject to barriers.

###### **(d) Payment institution licence**

If the Estonian Crowdfunding platform holds the licence of payment or e-money institution to allow also other EEA investors to transfer any of the funds through the operator of Crowdfunding platform it may provide such services to investors outside of Estonia after meeting certain criterions.



A payment or e-money institution holding a licence under Estonian law is able to passport its licence if it intends to found a branch in another EEA Contracting State. Therefore, the payment and e-money institution must inform the Estonian Financial Supervision Authority of its intention and submit required information and documents. Also if a payment or e-money institution holding a licence under Estonian law wishes to start providing payment or e-money services on a cross-border basis in a foreign state (EEA Contracting State) it has to inform the Estonian Financial Supervision Authority thereof and shall submit required information and documents.

In addition, the Estonian Crowdfunding platform has to fulfil any of the legal requirements of the state where it wishes to start offering any payment or e-money services and may therefore be subject to barriers.

## **(2) Other financial regulation**

The Estonian anti-money laundering regulation is applicable to the extent that the Crowdfunding platform established under any of the licences listed above offers its services in Estonia.

### **4.3.1.2 Company / project**

#### **(1) Prospectus regulation**

If an Estonian Crowdfunding platform presents an issuer registered in Estonia then pursuant to the Estonian Securities Market Act the Estonian issuer has the right to offer securities to the public in all other EEA Contracting State on the basis of a prospectus and supplements to the prospectus registered with the Estonian Financial Supervision Authority. In addition, the Estonian issuer has to fulfil any of the legal requirements of the state where it wishes to start offering securities and may therefore be subject to barriers.

#### **(2) Other financial regulation**

If the issuing entity does not fall under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act then the issuer is not required to comply with the anti-money laundering regulation in Estonia.

### **4.3.2 Estonian Crowdfunding platform addresses foreign companies/projects**

#### **4.3.2.1 Crowdfunding platform**

##### **(1) Licence Obligation**

In case the Estonian Crowdfunding platform approaches Estonian investors and presents foreign companies/projects the regulation the Estonian Crowdfunding platform is subject to general licencing process under the Estonian Securities Market Act. The Estonian Crowdfunding platform may be subject to additional requirements of the foreign state where the companies/projects are from, however this shall not be analysed under the Estonian law.

In case the Estonian Crowdfunding platform approaches EU investors and presents foreign companies /projects the regulation under section 4.3.1.1. (1) applies. Similarly to above, the Estonian Crowdfunding platform may be subject to additional requirements of the foreign state where the companies/projects are from, however this shall not be analysed under the Estonian law.

## **(2) Other financial regulation**

The Estonian anti-money laundering regulation applies if the services are provided to investors located in Estonia.

### **4.3.2.2 Company / project**

#### **(1) Prospectus regulation**

If the Estonian Crowdfunding platform presents foreign company/project to Estonian investors the Estonian Securities Market Act applies to the requirements on the prospectus in addition to the requirements of the home state of the foreign company/project pursuant to section 4.2.1.2. above. If the Estonian Crowdfunding platform however presents foreign company/project to foreign investors the Estonian prospectus requirements do not apply.

If the Estonian Crowdfunding platform presents Estonian company/project to Estonian investors the general prospectus requirements apply under the Estonian Securities Market Act.

#### **(2) Other financial regulation**

If the issuing entity does not fall under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act then the issuer is not required to comply with the anti-money laundering regulation in Estonia.

## **4.4 Impact of EU regulation**

### **4.4.1 Prospectus regulation**

The prospectus regulation has been implemented in Estonia in the Securities Market Act. The prospectus regulation has relatively high impact on the Crowdfunding market as it sets the requirements on the public offering of securities and to the prospectus to be published.

### **4.4.2 AIFMD**

The AIFMD has been implemented in the Estonian Investment Funds Act, which was revised in January 2017. Based on the AIFMD regulation the operators of Crowdfunding platforms which qualify as the AIFM-s are subject to unified regulation. It also allows the Crowdfunding platforms operating in other EEA Contracting State based on the AIFM licence to passport their licence and operate in Estonia without burdensome licencing process except if under the Estonian law it does not qualify as the AIFM. Therefore, the AIFMD simplifies

the process of operating Crowdfunding platforms cross-border and has thus high impact on the Estonian Crowdfunding market.

#### 4.4.3 MiFID and MiFID II

MiFID has been implemented in Estonia in the Estonian Securities Market Act. MiFID II comes into effect January 2018 and is changing the Estonian Securities Market Act. However, the impact of MiFID II on Estonian Crowdfunding platforms is rather limited as there are currently no Crowdfunding platforms in Estonian that operate based on a licence under the Estonian Securities Market Act.

#### 4.4.4 PSD and PSD II

The Payment Services Directive (PSD) was implemented in Estonia in January 2009 in the Payment Institutions and E-money Institutions Act and the Law of Obligations Act. The PSD II has to be implemented by January 2018. As described above then any transfer of funds through the operator of a Crowdfunding platform may generally constitute payment services or money remittance services and therefore the changes in the respective directives will also have impact on the Crowdfunding platforms. However, as stated above there are currently no Crowdfunding platforms that would operate in Estonia under the licence of payment or e-money institution. Therefore, the changes to the regulation could be deemed to have moderate impact in Estonia.

### 4.5 Summary

The main barriers to the inbound and outbound of operating Crowdfunding platforms result from the fragmented level of laws applicable to the Crowdfunding in different jurisdictions. As referred to above there is no single or general law in Estonia applying to Crowdfunding but several different laws which have to be followed depending on the model of the Crowdfunding platform. Thus, the Crowdfunding platforms wishing to operate cross-border have to follow carefully the requirements from the law possibly influencing the provision of their services.

The other main barriers to the inbound and outbound of Crowdfunding platforms result from the requirements of authorisation or notification of the competent authorities, as follows:

- Inbound
  - The Crowdfunding platforms holding the licence of an AIFM, payment or e-money institution from another EEA member state may passport their licence when offering their services in Estonia except if the platform having the AIFM or payment or e-money institution licence do not qualify as such under the Estonian law. Only these Crowdfunding platforms that hold the licence as creditors and credit intermediaries in their home state and wish to provide their services in Estonia have to apply for a permit. Therefore, the barriers to the Crowdfunding platforms qualifying as creditors or credit intermediaries are more extensive in comparison with other models of the Crowdfunding platforms.

- The Estonian prospectus regulation applies if the securities are offered to investors in Estonia.
- If Crowdfunding platform or the company/project falls under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act and is offering its services in Estonia through a branch or cross-border then the Crowdfunding platform or the company/project is required to comply with the anti-money laundering regulation in Estonia.
- Outbound
  - The Crowdfunding platforms holding the licence of an AIFM, payment or e-money institution from Estonia may passport their licence when offering their services another EEA member state. However, if the Crowdfunding platform operating in Estonia under the licence of creditor or credit intermediary then it has to apply for a permit from the Estonian Financial Supervision Authority to operate in another EEA member state and the authorisation from the competent authority of this state where the services are provided. Similarly to above, the Estonian Crowdfunding platforms which are operating in Estonia under the licence of a creditor or credit intermediary are not able to passport their licence and are therefore subject to more extensive barriers in comparison with other models of Crowdfunding platforms.
  - The Estonian prospectus regulation applies if the securities are offered to investors in Estonia.
  - The Estonian Crowdfunding platform has to take into account any of the legal requirements or barriers of the third country where it wishes to start providing its services.
  - If Crowdfunding platform or the company/project falls under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act and is offering its services in Estonia through a branch or cross-border then the Crowdfunding platform or the company/project is required to comply with the anti-money laundering regulation in Estonia.

## **5 Lessons learned from Estonia's regulation for a possible harmonized European Crowdfunding regulation**

### **5.1 Role model ("dos")**

There is no special regulation governing Crowdfunding in Estonia, therefore no legal provisions or practice can be presented as examples.

### **5.2 Aspects that should be avoided ("don'ts")**

There is no special regulation governing Crowdfunding in Estonia, therefore no legal provisions or practice can be presented as examples.

## 6 Conclusion

There have been no substantial developments in relation to Crowdfunding in Estonia and currently there is still no regulatory regime that is specifically adapted to Crowd-funding in Estonia. There are two platforms operating Equity Model in Estonia, but this type of model might be subject to investment services or securities market regulation and thus be supervised by the FSA if the platform provides investment services such as securities brokering or organising an offer or issue of securities. In addition, those securities that are publicly offered are subject to the prospectus requirements.

As a change the lending based platforms in Estonia are governed by the Creditors and Credit Intermediaries Act as of March 2015.

The Donations and Rewards Model falls outside of the financial services scope and the corresponding regulation.

In case of Crowdfunding platforms using any of the above models, it should be analysed on a case by case basis whether a payment institution licence or applying for an exemption from the licencing obligation is needed. This will also apply to the crowd-funding platforms that wish to operate cross-border.

To conclude, the two models of Crowdfunding platforms operating in Estonia operate based on the licence of Creditors and Credit Intermediaries Act and are under the supervision of the Estonian Financial Supervision Authority.

## 7 Summary – Crowdfunding regulation

Country	Estonia
Summary	
<b>Recent developments in Crowdfunding regulation</b>	Creditors and Credit Intermediaries Act (hereinafter “CCIA”) came into force in March 2016 and it imposes a licence obligation on creditors and credit intermediaries. This act applies to those Crowdfunding platforms which are providing or intermediating credit to consumers. Moreover, there is non-binding soft regulation regarding Crowdfunding platform which was drafted by a cluster organisation Finance Estonia together with important market players.
<b>Current / planned Crowdfunding regulation</b>	
<b>General regulation</b>	<ul style="list-style-type: none"> <li>• If Crowdfunding platform organises offering of securities or acts as a securities broker, it provides investment service → FSA authorisation required</li> <li>• Crowdfunding platforms granting or intermediating credit to consumer need a licence from the FSA as a creditor or credit intermediary.</li> <li>• Crowdfunding platform operating the Donations/Rewards Model is not subject to financial services regulation.</li> </ul> <p>Currently 4 platforms have obtained a licence as credit intermediaries and 2 platforms have obtained a licence as creditor.</p>
<b>Prospectus requirement</b>	<ul style="list-style-type: none"> <li>• Prospectus requirement for public offering of securities (securities do not include shares in Estonian private limited companies).</li> <li>• Exceptions apply, e.g. if the number of investors less than 150 per EEA country or total amount of investments less than EUR 100,000.</li> </ul>
<b>AIFMD-regulation</b>	<ul style="list-style-type: none"> <li>• AIFMD regulation was implemented in the Investment Funds Act in 2013 and 2014.</li> <li>• Implementing act does not introduce any provisions that would explicitly deal with Crowdfunding.</li> </ul>
<b>Payment service regulation</b>	<ul style="list-style-type: none"> <li>• Transfer of funds through operator may constitute payment service or money remittance service → FSA activity licence or application to use exemption required.</li> <li>• “Commercial Agents” exemption may be applicable to operators of Crowdfunding platforms.</li> <li>• Cooperation with payment institute / bank is necessary.</li> </ul>
<b>Further possible requirements</b>	<ul style="list-style-type: none"> <li>• The Law of Obligations Act (võlaõiguseadus);</li> <li>• Money Laundering and Terrorist Financing Prevention Act (rahapesu ja terrorismi rahastamise tõkestamise seadus);</li> <li>• Estonian Advertising Act (reklaamiseadus);</li> <li>• Personal Data Protection Act (isikuandmete kaitse seadus);</li> <li>• Consumer Protection Act (tarbijakaitse seadus).</li> </ul>



Regulatory barriers	
<b>Inbound</b>	<ul style="list-style-type: none"> <li>• Fragmented laws</li> <li>• Requirements of permitting the activities for Crowdfunding platforms falling under the concept of creditor or credit intermediary inbound from other EEA Contracting States</li> <li>• Subject to prospectus regulation if the securities are offered to investors in Estonia</li> <li>• If Crowdfunding platform or the company/project falls under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act and is offering its services in Estonia through a branch or cross-border then the Crowdfunding platform or the company/project is required to comply with the anti-money laundering regulation in Estonia</li> </ul>
<b>Outbound</b>	<ul style="list-style-type: none"> <li>• Fragmented laws</li> <li>• Requirements of permitting the activities for Crowdfunding platforms falling under the concept of creditor or credit intermediary to outbound to other EEA Contracting States</li> <li>• Subject to prospectus regulation if the securities are offered to investors in Estonia</li> <li>• If Crowdfunding platform or the company/project falls under the definition of an obligated person pursuant to Estonian Money Laundering and Terrorist Financing Prevention Act and is offering its services in Estonia through a branch or cross-border then the Crowdfunding platform or the company/project is required to comply with the anti-money laundering regulation in Estonia</li> </ul>
Impact of EU regulation	
<b>Prospectus regulation</b>	Relatively high impact as the changes to the Prospectus regulation would influence the regulation regarding the public offering of securities in Estonia.
<b>AIFM-Directive</b>	The AIFMD has been implemented in the Estonian law and is therefore applicable to the Crowdfunding platforms that wish to operate in Estonia as AIFM-s. As the AIFMD simplifies the process of operating Crowdfunding platforms cross-border the change in the AIFMD would have high impact on the Estonian Crowdfunding market.
<b>MiFID / MiFID II</b>	As there are currently no Crowdfunding platforms in Estonia which operate based on a licence under MiFID then the impact to the Crowdfunding market in Estonia from the change in regulation would be limited.
<b>PSD / PSD II</b>	As there are currently no Crowdfunding platforms that would operate in Estonia under the licence of payment or e-money institution the changes to the regulation could be deemed to have moderate impact on the Crowdfunding market in Estonia.

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# Latvia

## 1 Recent developments in the market of Crowdfunding in Latvia

Latvia was identified as the top seventh country globally in alternative finance volume per capita in the 2016 study by KPMG and University of Cambridge.<sup>1</sup> Yet Crowdfunding is still a fairly new alternative financing vehicle in Latvia with few examples from practice.

### 1.1 The Equity Model

Currently there are no known Crowdfunding platforms based on Equity Model in Latvia.

### 1.2 The Lending Model

To date, the most considerable sector within the Latvian Crowdfunding market is composed by peer-to-peer lending platforms (although not in a classical sense). There are four known such platforms: *Mintos*, *Twino*, *Viventor* and *Viainvest*. All of these are claim right assignment platforms, meaning that investors can acquire claim rights from loan originators deriving from already concluded credit agreements. The loan originators can be the platforms themselves, as well as third party non-bank lenders, including consumer lenders. *Mintos*, the first platform of its kind in Latvia, began operating in January 2015. The state authorities, namely, the Consumer Rights Protection Centre of Latvia (*Patērētāju tiesību aizsardzības centrs* - 'CRPC') took a conservative stance towards the peer-to-peer loan concept, requesting the platform to cease issuing loans to consumers and publicly declaring that due to lack of regulation the investors who invest in loans offered on the platform would not be protected by any of the financial schemes of protection existing in Latvia. The Financial and Capital Market Commission (*Finanšu un kapitāla tirgus komisija* - 'FCMC') - the financial services regulator of Latvia - also endorsed this position. Since then FCMC has developed a more liberal approach towards peer-to-peer lending platforms, on a condition that they were not falling under any of the regulated types of activity and were informing their customers that these platforms were not supervised by the financial services authority and that the customers did not enjoy protection under any of the schemes available to customers of regulated financial market participants. However, most recent development is that FCMC has been considering whether these platforms should obtain investment firm licenses under the Financial Instrument Market Law (implementing MIFID I).

In the end of 2016 the first Lending Model Crowdfunding project, which is not a peer-to-peer platform, was kicked-off in Latvia – *Bulkestate*. It invests in real estate (see Section 1.4. below).

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<sup>1</sup> Published in October 2016, available at: <https://home.kpmg.com/content/dam/kpmg/uk/pdf/2016/10/global-alternative-finance-report-web.pdf>, accessed on 13.04.2017.

### 1.3 The Donations or Rewards Model

Recently two new reward model Crowdfunding platforms commenced their operation in Latvia, of which one is solely devoted to financing creative or scientific projects, whilst the other has got broader spectrum and expressly provides for a consideration to be offered by the authors of the project to donators, without specifying the type of such consideration. Also, Crowdfunding for separate one-time projects has become increasingly popular.

### 1.4 Real Estate Crowdfunding and Renewables Crowdfunding

On December 2016 the first Real Estate Crowdfunding platform in Latvia – *Bulkestate* – began operating. *Bulkestate* has been created for those willing to invest into real-estate either by providing loans to real-estate companies (collective investment – lending based Crowdfunding) or through collective purchase of real estate. *Bulkestate* claims to have already successfully funded two real estate objects – apartment buildings. However, most recent development is that FCMC has been considering whether such platforms should obtain licenses under the AIFMD regime.

Currently in Latvia there are no known Crowdfunding platforms investing in renewable energy.

### 1.5 International approach in Latvia

Some Crowdfunding platforms from other countries have invested in real estate in Latvia, for instance the Estonian *EstateGuru* and *Crowdestate*. Investing via these platforms is available to investors from Latvia, as well.

## 2 Recent developments regarding Crowdfunding regulation in Latvia

Crowdfunding-specific regulation has not yet been introduced in Latvia, although the government publicly confirmed the plan of establishing such regulation a couple of years ago. Since 2015 Latvian Ministry of Finance has been engaged in drafting a law on Crowdfunding and peer-to-peer lending. It is envisaged that the law will set forth certain criteria as regards the statutory capital, members of the management board of the platforms, information provided to investors, etc. In addition, the law will put the said platforms under the supervision of FCMC which will issue licenses accordingly. Possibly the law might be adopted till the end of the year 2017.

To sum up, a reform of the Crowdfunding regulation is being awaited, which might open new horizons for the development of the Crowdfunding market.

## 3 Current regulation of Crowdfunding in Latvia

Currently Crowdfunding as such is not a specifically regulated activity, yet, it might fall under one of the regulations applicable to financial and capital market participants in general.

### 3.1 Licence under the Financial Instrument Market Law (in Latvian – *Finanšu instrumentu tirgus likums*)

#### 3.1.1 Equity Model

Pursuant to the Financial Instrument Market Law (“FIML”), anyone intending to provide investment services in Latvia commercially or on a scale which requires a commercially organised business undertaking requires a licence from the FCMC. Also a licence issued in another EU member state passported to Latvia satisfies this requirement, as long as this licence covers the type of investment services the person provides in Latvia is covered by the licence.

Investment firms must have a certain initial capital, and also, depending of the relevant activity – have risk-management plans, ensure the disclosure of information and fulfil other requirements.

Investment services are, inter alia, the brokering of business involving the purchase and sale of financial instruments or their documentation (investment brokerage), the purchase and sale of financial instruments in the name of and for the account of others (contract brokerage) and the placement of financial instruments without commitment to underwrite those instruments (placement of financial instruments).

Under the FIML a “financial instrument” means an agreement, which concurrently creates financial assets for one person, but financial liabilities or capital securities for another. Transferable securities (in Latvian – *pārvedami vērtspapīri*) are covered by this definition of a financial instrument.

Transferable securities are, inter alia, (a) shares in joint stock companies and other securities equivalent to shares in companies (shares in private limited liability companies would not count as transferrable) including convertible securities; (b) bonds or other forms of securitised debt; or (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

In summary, where an online Crowdfunding platform facilitates the offering of financial instruments, most likely, the operator of the platform will be deemed to provide investment services within the meaning of the FIML and therefore will require a licence by the FCMC. Where the securities in issue do not qualify as financial instruments to which FIML applies, this may well fall outside the scope of investment services regulation (although guidance from the FCMC would be advised since there are few, if any, precedents of such activity resembling investment services but dealing in non-financial instruments).

### 3.1.2 Lending Model

Depending on the structure in detail loans are considered as “debt” (in contrast to equity) and would not qualify as investment services under the FIML.

Nonetheless, according to most recent developments FCMC has been considering treating the services offered by existing marketplace lending platforms operating in Latvia described in Section 1.2 as investment services falling under FIML. The investment services provided by the platform operators in the opinion of FCMC could be, for example, execution of orders on behalf of clients, dealing on own account, as well as operation of multilateral trading facilities (depending on the exact model chosen). In that case the requirements described in Section 3.1.1. above may also apply (including the necessity to obtain an investment firm license under FIML).

To our knowledge, currently no Crowdfunding platform operating on the Latvian market holds an investment services license.

### 3.1.3 Donations or Rewards Model

Depending on the structure in detail there are good reasons to state that donations or rewards model Crowdfunding does not qualify as investment service and thus should fall outside the scope of Latvian investment services regulation.

## 3.2 Prospectus requirements

### 3.2.1 General rule

Where transferable securities are offered to public and the offer is expressed to more than 150 individuals in each EU Member State, it might be subject to a prospectus requirement, namely a requirement to publish a prospectus approved by the FCMC under the FIML. Again, if the securities in question do not qualify as transferable (negotiable) securities, then the prospectus requirement might not be triggered.

Depending on the structure, loans do not generally qualify as financial instruments under the FIML and therefore no prospectus is required. The same should apply to investments where individuals provide money to a company or project for benevolent reasons or for a non-monetary reward (Donations or Rewards Model).

### 3.2.2 Exceptions from prospectus requirement

The general prospectus requirement does not apply where (a) the offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per member state are addressed, (c) the offering is made in respect of transferable securities with the nominal value at least EUR 100,000, or (d) in offering each investor must acquire transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited.



A prospectus must include the information required by the Prospectus Regulation ((EC) No 809/2004), such as information on the securities offered, information of the offeror, and other information that would allow the investor to evaluate the offeror as well as the investment in general.

### 3.3 Regulation of Crowdfunding under the AIFMD regime

According to the “Law on Alternative Investment Funds and its’ Managers” (in Latvian - *Alternatīvo ieguldījumu fondu un to pārvaldnieku likums*) (“AIFM Law”) the extensive AIFMD regulation of funds and fund managers applies when there is an alternative investment fund (“AIF”) managed by an alternative investment fund manager (“AIFM”). The FCMC has not provided any guidelines on whether a Crowdfunding platform would qualify as an AIFM.

On most occasions a company seeking financing by means of Crowdfunding should not qualify as an AIF. At the same time, a project company established to finance a single project (for example, a movie, a computer game, a wind farm or a solar park) that does not operate the facility or production itself might constitute an AIF within the meaning of the Latvian AIFMD regulation. The aforementioned applies if the project company seeks funding in return for a share in the profits or revenue generated by the project (within the Equity Model) provided that the funding is envisaged for its own project and does not distribute the funding to other companies/entities to finance their projects.

As a general rule the operator of a Crowdfunding platform does not raise capital from investors for its own business. Therefore, the operator of a Crowdfunding platform should not qualify as an AIFM. However, it might depend on the scope of services provided by a Crowdfunding platform. A Crowdfunding platform might qualify as an AIFM if it performs investment management or other functions that under the law can be performed only by licenced or registered AIFMs. For instance, under the AIFM Law one of ancillary services of an AIFM is distribution of units or shares of an AIF. This could apply if the underlying investment (e.g. a project company) qualifies as an AIF and the relevant Crowdfunding platform in fact distributes the shares of that AIF. Each situation should be evaluated separately to establish whether a Crowdfunding platform qualifies as an AIFM.

As outlined above, FCMC has recently been considering treating platforms operating under the Real Estate Crowdfunding model as operating under the AIFMD regime.

### 3.4 Licence under the Payment Services regulation

A transfer of funds through the operator of a Crowdfunding platform might constitute money remittance services within the meaning of the Payment Services and E-Money Law (in Latvian - *Maksājumu pakalpojumu un elektroniskās naudas likums*). Such transfer of funds could occur if the investors pay their investment amounts to the operator of a Crowdfunding platform which then passes the funds to the entrepreneur. The mentioned activity requires either a licence from, or registration with, the FCMC.

In order to avoid such licensing or registration, as the case may be, requirements - the operator of a Crowdfunding platform might use an external provider or partner for processing payments and keeping money rather than acting as an intermediary himself: a payment institution, credit institution or electronic money institution. This is the approach used by the platforms operating in Latvia and to date the FCMC has taken the view that such a setup does not require the platform to obtain a payment services or e-money license itself.

As an alternative, a platform operator might rely on the exemption for commercial agents under the Payment Services and E-Money Law, but this approach is untested in practice.

Thus, in each situation where any of the above exemptions is considered, before starting the respective project, advice from legal counsel shall be sought on the structure of each platform.

### 3.5 Licence under the Credit Institutions Law

Under the Credit Institutions Law (in Latvian – *Kredītiestāžu likums*) only credit institutions are permitted to advertise (in Latvian – *izsludināt*, which in English means to advertise, to announce, to proclaim) the acceptance of deposits and other repayable funds, and to receive them. Besides, most likely an entity managing a Crowdfunding platform, which is not a credit institution, cannot hold sums of money due to third parties because such sums might be qualified as deposits, unless the money is kept in an account opened with a credit institution and the said account is not opened on the name of the platform operator.

### 3.6 Possible additional Regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include, but is not necessarily limited to, the following laws and regulations.

#### 3.6.1 Consumer Rights Protection Law (in Latvian – *Patērētāju tiesību aizsardzības likums*)

If a Lending Model Crowdfunding platform wishes to directly issue loans to Latvian consumers, then it would be required to obtain a consumer credit license with the CRPC. Also, if a third-party loan originator is granting loans to Latvian consumers, such originator must hold a consumer credit license.

If the Crowdfunding platform is issuing loans to Latvian consumers as a consumer lender itself and has obtained a consumer credit license, then it has to obtain the evidence that the receiver of the loan has sufficient funds to repay the loan.. However, according to the CRPC making loans granted to Latvian consumers available for investment through peer-to-peer lending platforms (by assigning them to investors) is a violation of the law. Therefore, several licensed Latvian consumer credit providers have been requested to cease this activity. Some of them have complied with the request, while the others have disputed the position of the CRPC with the court with the cases currently pending before the court. This only affects peer-to-peer lending platforms assigning claims that have originated from consumer credit providers licensed in Latvia

If the activity of the lending-based Crowdfunding platform falls under the regulation applicable to credit intermediaries, it should obtain a credit intermediary license with the CRPC.

Crowdfunding platforms are also subject to other consumer rights protection rules, such as rules on fair contract terms, on distance contracting etc.

### **3.6.2 Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian - *Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums*);**

If the Crowdfunding platform qualifies as an investment or other type of financial service provider, or a consumer creditor provider pursuant to rules described before, it is also subject to anti-money laundering rules. However, the law does not provide a clear answer whether a Crowdfunding platform which does not fall under any of licensing regimes can be regarded an obliged entity under Latvian anti-money laundering legislation.

### **3.6.3 The Cabinet of Ministers regulations and/or FCMC regulations in relation to any of the licensed activities (where applicable).**

If the Crowdfunding platform qualifies as an investment or other type of financial service provider, or a consumer creditor provider pursuant to rules described before, it is also subject to the regulations by the Cabinet of Ministers and/or FCMC.

### **3.6.4 Further possible regulation**

Finally, as any commercial entities, Crowdfunding platforms are subject to laws related to non-misleading and fair advertising, fair commercial practices, data privacy and protection, namely, but not exclusively:

- Law on Advertising (in Latvian – *Reklāmas likums*);
- Unfair Commercial Practices Prohibition Law (in Latvian – *Negodīgas komercprakses aizlieguma likums*);
- Natural Persons' Data Protection Law (in Latvian – *Fizisko personu datu aizsardzības likums*);
- Commercial Law (in Latvian – *Komerclikums*);
- Civil Law (in Latvian – *Civillikums*);
- Law on Corporate Income Tax (in Latvian – *Likums "Par uzņēmumu ienākuma nodokli")*.

## **4 Regulatory barriers for Crowdfunding crossing borders**

### **4.1 Applicable law**

The following Latvian financial regulation laws might apply:

- A. Depending on the registration (seat) - if the Crowdfunding platform wishes to establish itself in Latvia -
- licence requirements under FIML / Payment Services and E-Money Law / AIFM Law / Consumer Rights Protection Law/ Credit Institution Law (where the Crowdfunding platform falls within the scope of the respective licence);
  - notification requirements under FIML / Payments institutions law / AIFM Law / Credit Institution Law (where the Crowdfunding platform falling within the scope of the respective licence intends to provide its services also in other EU member states);
  - the Cabinet of Ministers regulations and/or FCMC regulations;
  - AML rules - Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing;
- B. Depending on the marketing – if the Crowdfunding platform approaches investors in Latvia:
- Requirements to notify FCMC on the provision of financial services without creating an establishment in Latvia under FIML / Payments institutions law / AIFM Law (where the Crowdfunding platform falls within the scope of the respective law);
  - Prospectus requirements under FIML;
  - Consumer crediting rules under the Consumer Rights Protection Law;
  - Rules on consumer protection, advertising and other rules.

## 4.2 Inbound

### 4.2.1 Crowdfunding platform from another EU country addresses investors in Latvia

If a Crowdfunding platform from another EU country addresses investors in Latvia, the following Latvian regulatory requirements may apply.

#### 4.2.1.1 Crowdfunding platforms

To the Crowdfunding platforms the requirement to obtain the relevant licence or to notify the FCMC on an existing licence in another EU member state, as well as all the other requirements identified above in Section 4.1. might apply, depending on whether the Crowdfunding platform falls within the scope of the respective law. It should be stressed that the application of the obligation to notify on an existing licence is uncertain, as the necessity for a licence in Latvia for Crowdfunding is highly fact-specific.

We can also highlight the following barriers which may create significant legal obstacles for Crowdfunding in Latvia:

- Latvian law does not recognize the concept of “security trustee” allowing an agent to hold and enforce security on behalf of multiple lenders;

- The assignment of claims through peer-to-peer lending platforms is not fully clear from the taxation perspective.

#### **4.2.1.2 Foreign companies or projects**

To foreign companies or projects prospectus regulation and AIFMD regulation might apply, depending on the circumstances, as described above in Sections 3.2.2. and 3.3. respectively.

#### **4.2.2 Crowdfunding platform from another EU country addresses companies or projects in Latvia**

No specific regulatory barriers are associated with this situation.

### **4.3 Outbound**

#### **4.3.1 Crowdfunding platform from Latvia addresses investors in another EU country**

If a Crowdfunding platform from Latvia addresses investors in another EU country, the following Latvian regulatory requirements may apply.

##### **4.3.1.1 Crowdfunding platforms**

To the Crowdfunding platforms the requirement to obtain the relevant licence from the FCMC, as well as other requirements identified above in Section 4.1.(a) and (b) might apply (apart, of course, from the requirement to notify on the provision of services in Latvia). The requirements apply to the same extent as if the platforms were to address investors in Latvia, apart from the rules on consumer protection, which are determined by the laws of the home state of the consumers. Thus, consumer crediting rules of Latvia would not apply.

##### **4.3.1.2 Foreign and domestic companies and projects**

To foreign as well as domestic companies or projects prospectus regulation and AIFMD regulation might apply, as described above in Sections 3.2.2. and 3.3. respectively.

#### **4.3.2 Crowdfunding platform from Latvia addresses companies or projects in another EU country**

No specific regulatory barriers are associated with this situation.

### **4.4 Impact of EU regulation**

Latvian FIML generally mirrors the prospectus rules provided in the Prospectus Regulation ((EC) No 809/2004).

AIFMD Directive has been implemented in Latvia since August 2013. So far, no known Crowdfunding platforms have been subject to the Latvian rules implementing the directive.

MIFID II Directive is planned to be implemented in Latvia by the extended deadline, via amendments in the FIML, which currently implements the MIFID I. Thus, there has not yet been an impact to Crowdfunding platforms by the directive. planned to be transposed.

PSD II Directive is planned to be implemented in Latvia by the deadline, that is, January 2018. Thus, there has not yet been an impact to Crowdfunding platforms by the directive. PSD II is planned to be transposed via amendments in the Payment Services and E-Money Law, which currently implements the PSD I regime.

## 4.5 Summary

Most significant regulatory obstacles in Latvia in practice currently are posed by the strict stance of the supervisory authorities, mostly the CRPC towards the peer-to-peer lending platforms and the lack of specific regulation governing Crowdfunding platforms. In the future, the most important regulatory restraints might be posed by the new regulation on Crowdfunding.

## 5 Lessons learned from Latvia

### 5.1 Role model ("dos")

Since the Crowdfunding regulation is yet to be adopted, it is unclear whether it will provide a good example for European Union regulation.

### 5.2 Aspects that should be avoided ("don'ts")

The hostile position of Latvian authorities at the onset of development of peer-to-peer lending platform market, is not an example to be followed. However, since then FCMC has developed a much more nuanced and liberal approach.

## 6 Conclusion

- Latvian assignment-based marketplace (peer-to-peer) lending platforms have established themselves on the peer-to-peer lending market in Europe. Apart from them, Crowdfunding is in the early stages of development in Latvia.
- There is currently no regulatory regime that is specifically adapted to Crowdfunding in Latvia.
- Nonetheless, regulation of Crowdfunding will be submitted to the Latvian Parliament in late autumn 2017.
- In principle, Latvian law allows for the implementation of Crowdfunding projects.
- Yet the application of the existing financial services regulation is uncertain and highly case-specific, which hinders the cross-border activities of Crowdfunding platforms.
- Also, up to date regulatory authorities have taken a restrictive stance regarding peer-to-peer lending.



- In each situation taking legal advice before any Crowdfunding project is started is highly recommended.

## 7 Summary – Crowdfunding Regulation

Country	Latvia
<b>Summary</b>	
<b>Recent developments in Crowdfunding regulation</b>	Draft legislative amendments aimed at regulating Crowdfunding might be submitted to the Latvian Parliament in 2017.
<b>Current / planned Crowdfunding regulation</b>	
<b>General regulation</b>	<ul style="list-style-type: none"> <li>• No regulatory regime specifically adapted to Crowdfunding. In principle, Latvian law allows for the implementation of Crowdfunding projects. In each situation it is recommended to involve local counsel.</li> <li>• If Crowdfunding platform facilitates offering of securities or other financial instruments or holds money belonging to third persons, operator of the platform most likely provides investment or financial services <ul style="list-style-type: none"> <li>→ FCMC authorisation required</li> </ul> </li> <li>• Where securities do not qualify as financial instruments, this may fall outside the scope of investment services regulation, although guidance from FCMC would be advised.</li> <li>• Depending on the structure in detail: there are sound arguments that contributions under Donations/Rewards Model do not constitute provision of investment or financial services</li> <li>• According to the position of FCMC, assignment-base peer-to-peer lending Crowdfunding falls under the provisions of investment services</li> <li>• Most likely an entity managing a Crowdfunding platform which is not a credit institution cannot hold sums of money belonging to third parties <ul style="list-style-type: none"> <li>→ sums might be qualified as deposits</li> <li>→ Credit Institutions Law only permits credit institutions to advertise receipt of deposits and other repayable funds, and to receive them.</li> </ul> </li> </ul>
<b>Prospectus requirement</b>	<ul style="list-style-type: none"> <li>• Prospectus requirement for a public offer regarding transferable securities (i.e., offer is expressed to more than 150 individuals in one EU Member State)</li> <li>• Exemptions of Prospectus requirements (a) offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per member state are addressed, (c) the offering is made in respect of transferable securities with the nominal</li> </ul>

	<p>value at least EUR 100,000, or (d) each investor must acquire transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited.</p> <ul style="list-style-type: none"> <li>Depending on the structure in detail: there are no prospectus requirements for loans or contributions under Donations/Rewards Model</li> </ul>
<b>AIFMD-regulation</b>	<ul style="list-style-type: none"> <li>Typical start-up company in general does not constitute an AIF</li> <li>A project company might constitute AIF <ul style="list-style-type: none"> <li>→ extensive AIFMD regulation for AIF and its manager</li> <li>→ manager (AIFM) requires FCMC authorisation</li> </ul> </li> <li>Depending on the structure in detail: funding by means of or contributions under Donations/Rewards Model should not entail an AIF</li> <li>Depending on the scope of the services provided by the Crowdfunding platform, Crowdfunding platforms might qualify as AIFM.</li> </ul>
<b>Payment service regulation</b>	<ul style="list-style-type: none"> <li>Transfer of funds through operator may constitute money remittance service <ul style="list-style-type: none"> <li>→ FCMC licensing or registration with the FCMC required.</li> </ul> </li> <li>"Commercial Agents" exemption probably not applicable to operators of Crowdfunding platforms</li> <li>Other exemption might be that the operator of a Crowdfunding platform uses an external provider or partner for processing payments rather than acting as an intermediary himself</li> </ul>
<b>Consumer credit regulation</b>	<p>If consumer borrowers are permitted on a platform (Lending Model) there are implications for licence for consumer crediting, form and content of the lending agreements.</p>
<b>Further possible requirements</b>	<ul style="list-style-type: none"> <li>Civil Law (in Latvian – <i>Civillikums</i>)</li> <li>Commercial Law (in Latvian – <i>Komerclikums</i>)</li> <li>Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian – <i>Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums</i>)</li> <li>Natural Persons' Data Protection Law (in Latvian – <i>Fizisko personu datu aizsardzības likums</i>)</li> <li>The Cabinet of Ministers regulations and FCMC regulations in relation to investment services and payment institutions</li> <li>Consumer Rights Protection Law (in Latvian – <i>Patērētāju tiesību aizsardzības likums</i>)</li> <li>Unfair Commercial Practices Prohibition Law (in Latvian – <i>Negodīgas komercprakses aizlieguma likums</i>)</li> </ul>

	<ul style="list-style-type: none"> <li>• Law on Advertising (in Latvian – <i>Reklāmas likums</i>)</li> <li>• Law on Corporate Income Tax (in Latvian – <i>Likums “Par uzņēmumu ienākuma nodokli”</i>)</li> </ul>
<b>Regulatory barriers</b>	
<b>Inbound</b>	<p><b>Foreign Crowdfunding platform addresses Latvian investors</b></p> <ul style="list-style-type: none"> <li>• Crowdfunding platforms <ul style="list-style-type: none"> <li>– may be required to obtain a licence under FIML / Payment Services and E-Money Law / AIFM Law / Consumer Rights Protection Law/ Credit Institution Law; or</li> <li>– may be required to notify the FCMC on an existing licence in another EU member state;</li> <li>– the obligations to obtain a specific licence or to notify on an existing licence are highly uncertain and fact-specific</li> <li>– may be subject to other requirements, such as AML/CTF, consumer crediting rules and other regulations applicable to entities holding a particular licence;</li> <li>– Latvian law does not recognize the concept of “security trustee” allowing an agent to hold and enforce security on behalf of multiple lenders;</li> <li>– the assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective.</li> </ul> </li> <li>• Foreign companies or projects - Prospectus requirement and AIFMD regulation might apply, depending on the circumstances.</li> </ul> <p><b>Foreign Crowdfunding platform addresses Latvian investors, companies or projects in Latvia</b></p> <p>No specific regulatory barriers.</p>
<b>Outbound</b>	<p><b>Latvian Crowdfunding platform addresses foreign investors</b></p> <ul style="list-style-type: none"> <li>• Crowdfunding platforms <ul style="list-style-type: none"> <li>– may be required to obtain a licence under FIML / Payment Services and E-Money Law / AIFM Law / Consumer Rights Protection Law/ Credit Institution Law</li> <li>– the obligation to obtain a specific licence is highly uncertain and fact-specific</li> <li>– may be subject to other requirements, such as AML/CTF and other regulations applicable to entities holding a particular licence</li> <li>– the assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>Foreign and domestic companies and projects - prospectus requirement and AIFMD regulation might apply.</li> </ul> <p><b>Latvian Crowdfunding platform addresses foreign companies or projects</b></p> <p>No specific regulatory barriers.</p>
<b>Impact of EU regulation</b>	
<b>Prospectus regulations</b>	<p>Latvian FIML generally mirrors the prospectus rules provided in the Prospectus Regulation ((EC) No 809/2004).</p> <p>Thus, if Crowdfunding platform is considered as an investment service provider, it is subject to prospectus rules provided in the Regulation.</p>
<b>AIFM-Directive</b>	<p>So far, no known Crowdfunding platforms have been subject to the Latvian rules implementing the AIFM Directive.</p>
<b>MiFID / MiFID II</b>	<p>Financial Instrument Markets Law implements the MIFID I.</p> <p>MIFID II Directive is planned to be implemented in Latvia by the extended deadline. Thus, there has not yet been an impact to Crowdfunding platforms by the directive.</p>
<b>PSD / PSD II</b>	<p>PSD II Directive is planned to be implemented in Latvia by the deadline, that is, January 2018. Thus, there has not yet been an impact to Crowdfunding platforms by the directive.</p>

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# Lithuania

## 1 Recent developments in the market of Crowdfunding in Lithuania

During the last years there were the following significant developments in Lithuania regarding Crowdfunding:

### 1.1 The Equity Model (individuals make investments in return for a share in the profits or revenue generated by the company/project)

Since adoption of the Law on Crowdfunding of the Republic of Lithuania (*Lietuvos Respublikos sutelktinio finansavimo įstatymas*; the “Law on Crowdfunding”) in November 2016, the Crowdfunding, including equity based Crowdfunding, became legal in Lithuania. After the Law on Crowdfunding came into effect, only few operators of Crowdfunding platforms were included into the Public List of Crowdfunding Platform Operators (the “List”) and obtained the right to engage in Crowdfunding activities. None of these operators of Crowdfunding operators declared their intentions to engage in equity based Crowdfunding due to several reasons:

- A. Equity model can be used only by public limited liability companies, which share capital must be at least EUR 50,000.
- B. Legal uncertainty if it is possible to increase the share capital without physical participation of the Crowdfunding investors (requirement to provide the signed share subscription agreements to the notary public).

### 1.2 The Lending Model (individuals lend money to a company or project in return for repayment of the loan and interest on their investment)

The trend of lending based Crowdfunding in Lithuania becomes more popular due to a new regulation on Crowdfunding and peer-to-peer consumer lending. New regulation led to a development of lending based Crowdfunding platforms and peer-to-peer consumer lending platforms that now have the biggest piece in the rather small Crowdfunding market in Lithuania.

The lending based Crowdfunding in Lithuania developed as follows:

- A. Investors (individuals) lend funds to the individual in return for repayment of the loan and interest on their investment (the “P2P Consumer Lending”). This form of lending based Crowdfunding is regulated by the Law on Consumer Credit of the Republic of Lithuania (*Lietuvos Respublikos vartojimo kredito įstatymas*; the “Law on Consumer Credit”).
- B. Investors (either individuals or legal entities) lend funds to the company / project in return for repayment of the loan and interest on their investment (the “P2P Business Lending”). This form of lending based Crowdfunding is regulated by the Law on Crowdfunding.

- C. The project owner (legal entity) offers debt securities (i.e. bonds) to the investors. This form of lending based Crowdfunding is also regulated by the Law on Crowdfunding.

In Lithuania there are currently three operating lending based Crowdfunding platforms and according to the market rumours many more are willing to apply to the Lithuanian financial supervisory authority the Bank of Lithuania in order to be included into the List and start their operations. This shows a great interest in lending based Crowdfunding market in Lithuania, which is expected to grow each month. One Crowdfunding platform – *Myriad Capital* – should soon start its operations and invite limited liability companies to raise funds by publicly offering debt securities (i.e. bonds) to the investors.

In the past few months (i.e. March – May 2017) investors together have invested each month approximately EUR 800,000 through the lending based Crowdfunding platforms in Lithuania. Furthermore, P2P Consumer Lending became more popular in Lithuania. In 2015 lenders have provided approximately 2 thousand consumer credits that amounts to EUR 2.3m. There is no official statistics of P2P Consumer Lending in 2016, thus the numbers shall be higher due to a fast development of P2P Consumer Lending in Lithuania.

### **1.3 The Donations or Rewards Model (individuals provide money to a company or project for benevolent reasons or for a non-monetary reward)**

There are no Crowdfunding platforms operating in Lithuania based on donations or rewards model.

A Crowdfunding platform based on donations or rewards would be governed by the Civil Code of the Republic of Lithuania (*Lietuvos Respublikos civilinis kodeksas*; the “Code”). Under the Code, relationships between the parties where individuals provide money to a company or project for benevolent reasons can be qualified as a contract of gift and those provided for a non-monetary reward can be qualified as a sale and purchase agreement. Tax implications for the recipient of funds should be assessed when implementing the donations or rewards model since the received funds would likely be considered as taxable income.

However, for example, lending based Crowdfunding platform are not prohibited to offer a project where individuals may provide money for benevolent reasons.

### **1.4 Real Estate Crowdfunding / Renewables Crowdfunding**

There are no specific real estate Crowdfunding platforms operating in Lithuania. Yet, there are no limitations for Crowdfunding platforms to offer real estate Crowdfunding. The real estate Crowdfunding in Lithuania would fall under the scope of the Law on Crowdfunding.

Currently the trend of real estate Crowdfunding is highly increasing in the market taking into consideration the amount of projects on real estate in lending based Crowdfunding platforms. Therefore, we expect that new participants in the Crowdfunding market

specialising in real estate Crowdfunding will start their operations in the near future due to a rather favourable regulation.

Crowdfunding platform Rontgen announced that it has filed application to the Bank of Lithuania to be included into the List, with the aim to start real estate Crowdfunding activities. Furthermore, an Estonia Crowdfunding platform Estate Guru specialising in real estate Crowdfunding is an active participant in Lithuanian market where Lithuanian real estate projects are crowdfunded.

There was no initiative regarding renewables Crowdfunding in Lithuania. In addition, there are no Crowdfunding platforms or projects related to renewables Crowdfunding in other platforms.

### **1.5 International approach**

There is no publicly available information that foreign country based Crowdfunding platforms are planning to expand into Lithuania.

## **2 Recent developments regarding Crowdfunding regulation in Lithuania**

### **2.1 Law on Crowdfunding**

The Law on Crowdfunding came into force on 1<sup>st</sup> December 2016. The law eliminated regulatory obstacles in Lithuania on establishing and running debt based and equity based Crowdfunding platforms. The Law on Crowdfunding has also established a regulation of marketplace lending platforms engaged in assignment of claim rights deriving from already concluded agreements, which could be used, for example, in invoice trading models.

The regulatory regime has been adopted in order to help organising easier ways for companies to attract funding through loans or in other monetary form; and issuance of financial instruments. For example, Lithuanian private limited liability companies are finally allowed to issue bonds and offer them publicly, including distributing them through Crowdfunding platforms. Before the Law on Crowdfunding came into force, according to the opinion of the Bank of Lithuania, the Crowdfunding platform operators engaged in equity or lending based Crowdfunding needed to obtain a credit institution licence.

#### **2.1.1 Key features of the Law on Crowdfunding:**

- A. Legal entities are allowed to raise capital through Crowdfunding platforms using one of four different instruments: (i) simple loan agreement; (ii) issue of debt securities (i.e. bonds); (iii) issue of equity securities (i.e. shares); or (iv) assignment of claim rights deriving from already concluded agreements. However, private limited liability companies are not allowed to publicly offer their shares.
- B. Legal entities are allowed to act as operators of Crowdfunding platforms. Before starting their activities, operators must be included in the Lists managed by the Bank of Lithuania.

- C. Investors are able to freely invest in Crowdfunding projects without limitations. Investors have to do an appropriateness test. If the results of the test are negative, the Crowdfunding platform operator must provide a warning / disclaimer and then the investor can start investing on its own risk.
- D. The secondary market on the Crowdfunding platform for securities distributed through the Crowdfunding is qualified as a multilateral trading facility and falls under regulation of the Law on Markets in Financial Instrument (Lith. Lietuvos Respublikos finansinių priemonių ir rinkų įstatymas; the “Law on MiFI”), which in turn implements the Markets in Financial Instruments Directive (the “MiFID”). This requirement for the secondary market applies only for the secondary market in financial instruments other than claim rights deriving from loan agreements.
- E. Crowdfunding platform operator falls under exemption of Article 3 of MiFID and has the right to provide the following investment services: (i) execution of orders; and (ii) provision of investment recommendations.
- F. If the offering is up to EUR 5m, the project owner must prepare an information document which must be approved by the Crowdfunding platform operator. There is no need to prepare a prospectus – “light prospectus regime”. An information document is a simple form document that contains general information about the project owner and risks related to the offering. Offerings above EUR 5m require preparation of the prospectus, which must be approved by the Bank of Lithuania.
- G. The capital requirement for the Crowdfunding platform operator amounts to EUR 40,000. However, the own capital cannot be lower than the bigger of the following amounts: EUR 40,000 or the need of own capital, which must be at least 0.2% of the amount of outstanding funds financed through the Crowdfunding platform and not repaid to investors.

## 2.2 Law on Consumer Credit

The P2P Consumer Lending in Lithuania falls under regulation of consumer credit. Regulation of the P2P Consumer Lending entered into force as of 1 February 2016.

The amended Law on Consumer Credit introduces regulation on P2P Consumer Lending. This type of lending is currently not separately regulated in Lithuania. Existing Lithuanian P2P Consumer Lending platforms are associated with consumer activities and must be included in the Public List of Peer-to-Peer Consumer Lending Operators, managed by the Bank of Lithuania.

In general P2P Consumer Lending activities are regulated in the same way as consumer lending. For example, the operator of a P2P Consumer Lending platform is required to comply with the same requirements set for consumer credit providers, such as advertising limitations, pre-contractual information requirements, creditworthiness assessment rules, etc.

Moreover, the amended Law on Consumer Credit contains some specific requirements for operators of the P2P Consumer Lending platforms:

- A. The authorised capital of a P2P Consumer Lending platform's operator should be at least EUR 40,000.
- B. An operator must prepare and approve a business continuity plan setting measures and procedures to ensure that P2P Consumer Lending platform activities are carried out continuously and without interruption, as well as ensuring the smooth functioning of consumer credit contract administration and continuous implementation of contractual obligations in case of unforeseen circumstances.
- C. An operator must publish certain information about itself and the lending process on its website as well as disclose certain information to the lender prior to concluding a loan agreement.

However, the amended Law also contains some controversial provisions:

- A. Legal persons cannot be lenders on the P2P Consumer Lending platforms.
- B. Each lender may lend to a particular borrower up to EUR 500 for any 12-month period.
- C. An operator of a P2P Consumer Lending platform may calculate its commission fee only from repayments already paid by the borrower to the lender.

### 2.3 Remote identity verification

On 26 October 2016 the Lithuanian Government amended its resolution establishing client identity verification methods by adding additional methods for remote identification. The amended resolution came into effect on 1 December 2016. This regulatory development was crucial for Crowdfunding development. Without a modern regulation on non-face-to-face identification, Lithuanian Crowdfunding platforms would be local and with low possibilities to be fully online solutions.

Under the amended resolution, remote identification is possible in the following ways:

- A. When information about a person's identity is certified by a qualified electronic signature which complies with the requirements of Regulation (EU) No 910/2014.
- B. When information about a person's identity is confirmed by electronic identification means issued in the European Union and functioning under electronic identification schemes with high or substantial assurance level under Regulation (EU) No 910/2014.
- C. Using electronic means, allowing direct view transmission, in one of the following ways: (i) Identity document or residence permit in Lithuania captured using video-streaming and identity confirmation using at least an advanced electronic signature, meeting the requirements of Regulation (EU) No 910/2014; or (ii) Client's facial image and original identity document or residence permit in Lithuania captured using video-streaming.

Detailed arrangements for the use of electronic means for video-streaming are confirmed by the Lithuanian Financial Crime Investigation Unit. There is a requirement for video-streaming to be direct and live, which means that videos or photos not taken during the live video-streaming are not accepted.

### **3 Current Regulation of Crowdfunding in Lithuania**

#### **3.1 Banking / Financial Service licence requirements**

##### **3.1.1 Equity / Lending model**

As mentioned above, only legal entities are allowed to act as operators of Crowdfunding platforms. Before starting their activities, operators must be included in the List. For more information, please refer to Section 2.1 above.

Operators included in the List are considered to be financial advisory firms under the Law on MiFI. In other words, a financial advisory firm is a firm that enjoys exemption from Article 3 of the MiFID. According to the Law on MiFI, a financial advisory firm may provide:

- A. Execution-only services (i.e. reception and transmission of orders).
- B. Offer investment recommendations.

According to the Law on Crowdfunding, an operator that wishes to provide investment services other than execution-only services and provision of investment recommendations must be licensed under the Law on MiFI as a financial brokerage firm.

The Crowdfunding platform does not need to separately apply for the financial advisory firm's licence, if the investment services specified in the Law on MiFI (i.e. execution-only services and offering of investment recommendations) are related to Crowdfunding agreements.

##### **3.1.2 P2P Consumer Lending**

The operator of a P2P Consumer Lending platform is required to be listed on the Public List of P2P Consumer Lending Platforms' Operators administered by the Bank of Lithuania only. For more information, please refer to Section 2.2 above.

##### **3.1.3 Donations or Rewards Model**

As mentioned above, the Crowdfunding platform based on donations or rewards is governed by the Code. Under the Code, relationships between the parties where individuals provide money to a company or project for benevolent reasons can be qualified as a contract of gift and those provided for a non-monetary reward can be qualified as a sale and purchase agreement. Therefore, there is no specific regulation regarding licence requirements for donations or rewards model based Crowdfunding platforms. The Law on Crowdfunding explicitly excludes such platforms from the regulation.



## 3.2 Prospectus requirements

### 3.2.1 Equity / Lending Model

#### 3.2.1.1 Securities

If securities (shares and / or bonds) are publicly offered to investors, the company issuing the securities has to publish a prospectus. The prospectus can be published only with the approval of the Bank of Lithuania. The requirements for the preparation, submission and approval of the prospectus as well as the exemptions from the requirement to publish the prospectus are established in the Law on Securities of the Republic of Lithuania (*Vertybinių popierių įstatymas*; the “Law on securities”).

The obligation to publish a prospectus does not apply in the presence of at least one of the following conditions:

- A. An offer of securities addressed solely to professional investors.
- B. An offer of securities addressed to fewer than 150 natural or legal persons in each Member State of EEA, other than professional investors.
- C. An offer of securities addressed to investors who acquire securities for a total amount of at least EUR 100,000 for each separate offer.
- D. An offer of securities with the nominal value amounting to at least EUR 100,000 per unit.
- E. An offer of securities with a total amount less than EUR 100,000 calculated over a period of 12 months.

Moreover, the requirement to publish a prospectus is also not applicable if the securities are offered through a Crowdfunding platform and the project owner is willing to raise below EUR 5m in a 12 month period. In such case Lithuanian laws applies the light prospectus regime where project owner must prepare an information documents, which must be approved by the Crowdfunding platform operator.

In case of offerings through Crowdfunding platform above EUR 5m, the prospectus regime is applicable in accordance with the Law on Securities. Where the securities are publicly offered via the Crowdfunding platform, the operator of the platform is not responsible for publishing the prospectus. However, the operator shall make the prospectus public on the platform and easily accessible to each investor.

#### 3.2.1.2 P2P Business Lending

In accordance with the above mentioned and the Law on Securities, if a project owner is willing to raise above EUR 5m through a Crowdfunding platform in a 12 month period, it is allowed to do so only by issuing securities (i.e. shares or bonds). In such case the prospectus regime is applicable and the prospectus must be prepared and approved by the Bank of Lithuania.

If the project owner raises below EUR 5m, it could use simple loan instrument or debt securities (i.e. bonds). In such case the project owner must prepare only an information document. Regulation of information document is fully applicable in lending model and only if the project amount exceeds EUR 100 thousand information document shall be prepared.

### **3.2.1.3 P2P Consumer Lending**

As mentioned above, the Law on Consumer Credit is applicable for P2P Consumer Lending activities. The regulation on prospectus is not applicable for P2P Consumer Lending since an individual is seeking to borrow funds through the P2P Consumer Lending platform.

Borrowing limits are set by compliance with the credit-worthiness assessment requirements. When entering into a credit agreement the creditworthiness assessment shall be done not only of a borrower, but also of his/her spouse. It is required to obtain the spouse's approval to perform such checks and it makes online business difficult.

### **3.2.2 Donations and Rewards Model**

The regulation on prospectus is not applicable for donations and rewards model since the Crowdfunding platform based on donations or rewards is governed by the Code. The Code determines the form of a contract of gift based on a gift amount:

- A. If the amount of a gift exceeds EUR 1,500 the contract of a gift shall be concluded in a written form.
- B. If the amount of a gift exceeds EUR 14,500 the contract of a gift shall be notarized.

## **3.3 Regulation of Crowdfunding under the AIFMD regime**

AIFMD regime which was implemented in Lithuania by means of the Law on Managers of Collective Investment Undertakings for Professional Investors of the Republic of Lithuania (Lietuvos Respublikos profesionaliesiems investuotojams skirtų kolektyvinio investavimo subjektų valdymo įmonių įstatymas; the "Law on Managers of Funds").

According to the Law on Managers of Funds, the AIFMD regulation of funds and fund managers applies when there is an alternative investment fund (the "AIF") managed by an alternative investment fund manager (the "AIFM"). The Law on Managers of Funds provides that AIFs include a collective investment undertaking which:

- A. Raises capital (through equity-based securities) from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.
- B. Is not an operating company conducting business outside the financial sector.
- C. Does not require authorisation pursuant to Article 5 of Directive 2009/65/EC (UCITS).

### 3.3.1 Equity Model

Lithuanian AIFMD regulation should not apply to companies issuing equity securities through the Crowdfunding platform that qualify as operating companies outside the financial sector. Taking this into account, projects that are seeking funding by means of a Crowdfunding platform could be qualified as operating companies outside the financial sector, if:

- A. Their business strategy is simply the commercial success of their business.
- B. They do not intend to follow any defined investment policy, but want to finance their on-going day-to-day business.
- C. They operate the facility, production or project themselves within their day-to-day business or make use of the service of an intra-group company or an external service provider (as long as the day-to-day discretion remains at the company).

The above list of criteria is non-exhaustive and in practice might be amended and/or supplemented accordingly by the Bank of Lithuania.

### 3.3.2 Lending Model

Investments by means of debt securities, i.e. bonds, and loans can generally be structured as non-AIF investments, since the investors do not share liability for any losses – and, therefore, do not invest in a collective investment undertaking. Consequently, such projects should be excluded from any possible regulation under the AIFMD.

### 3.3.3 Donations and Rewards Model

Donations and / or rewards based Crowdfunding projects may offer in return some non-financial rewards as an alternative to any kind of revenue. In such event it can be argued that the funds are not invested for the benefit of those investors and the funding therefore contains no collective investment undertaking and no AIF. Thus, such Crowdfunding project should be excluded from any possible regulation under the AIFMD.

In a nutshell, a Crowdfunding platform arranges investments into projects or companies. Since, an operator of a Crowdfunding platform usually does not raise capital from investors for its own business, it should not qualify as an AIF. Therefore, the operator of a Crowdfunding platform should not be qualified as an AIF or an AIFM and the AIFMD shall not be applicable.

## 3.4 Regulation under the Payment Services Directive

The Payment Services Directive was implemented in Lithuania by the Law on Payments of the Republic of Lithuania (*Lietuvos Respublikos mokejimų įstatymas*; the “Law on Payments”). The provision of payment services is subject to the licencing requirements in Lithuania. In accordance with the Law on Payments, the transfer of funds, for example, between the Crowdfunding platforms, may be considered as a payment service and the Crowdfunding platform therefore will be a subject of licencing requirements (i.e. payment service provider).

Moreover, if the funds of users of a Crowdfunding platform are held in the account of the operator of a Crowdfunding platform for indefinite period, the operator is required to have a licence of at least an electronic money institution. Electronic money institution's licence allows the provision of payment services referred to in Law on Payments. Such licence is issued based on the Law on Electronic Money and Electronic Money Institutions of the Republic of Lithuania (*Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas*).

Since the licencing procedure may take approximately three months to complete and includes a significant amount of paperwork, EU-licensed payment service providers may choose to provide payment services on a cross-border basis without establishing a branch (i.e. to passport their licence) by notifying about the intention to provide payment services in Lithuania through its home Member State supervisory authority to the Bank of Lithuania.

Furthermore, the Crowdfunding platforms are allowed to conclude outsourcing agreements and outsource funds' handling function to other licensed institution – credit institution, payment and/or electronic money institution. In such way Crowdfunding platform would avoid licencing requirement for provision of certain payment services.

### 3.5 Possible additional regulations

Other common regulations to which the operator of a Crowdfunding platform may be subject include:

- A. Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (Lith. Lietuvos Respublikos Pinigų plovimo ir teroristų finansavimo prevencijos įstatymas);
- B. Law on Legal Protection of Personal Data Protection of the Republic of Lithuania (Lith. Lietuvos Respublikos Asmens duomenų teisinės apsaugos įstatymas);
- C. Law on Electronic Money and Electronic Money Institutions of the Republic of Lithuania (Lith. Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas).

## 4 Regulatory barriers for Crowdfunding crossing borders

### 4.1 Applicable Law

According to unofficial interpretation of the Lithuanian regulator, financial regulation applies in case Lithuanian investors are approached by foreign financial institutions. Although there is no official position or guideline on provision of cross-border financial services, the marketing focussed approach is applicable in Lithuania. This means that only providers of financial services that have their registered office or ordinary residence in Lithuania fall under Lithuanian regulatory law but also in case the financial institution targets the Lithuanian market in order to offer financial services to companies / persons in Lithuania. Few indicators to assume that financial services are pointed to the Lithuanian market:

- A. Addressing of potential Lithuanian investors by direct contact (through mail, fax, e-mail, etc.).
- B. A series of factors show that products are targeted to potential Lithuanian investors: domain name, website language, contact details, disclaimers, etc.

## 4.2 Inbound

### 4.2.1 Crowdfunding platform addresses Lithuanian investors

According to Part 2 of Article 6 of the Law on Crowdfunding, person engaged or willing to engage in the activities of an operator of a Crowdfunding platform in the Republic of Lithuania must have a residence in the Republic of Lithuania, except the case when a person registered in other EU Member State have the right in accordance with the laws of the Republic of Lithuania governing provision of investment services to intermediate in conclusion of financial transactions without a registered office or through an established branch in the Republic of Lithuania. Therefore, foreign Crowdfunding platform willing to address Lithuanian investors must either establish a subsidiary in Lithuania and include it in the List, or it must have the right in accordance with the laws of the Republic of Lithuania governing provision of investment services to intermediate in conclusion of financial transactions without a registered office or through an established branch in the Republic of Lithuania. In other words, if the foreign Crowdfunding platform has the MiFID licence, it can engage in Crowdfunding activities in the Republic of Lithuania after it passports its licence into the Republic of Lithuania.

Foreign companies / projects willing to attract funds in the Republic of Lithuania through the Crowdfunding platform must comply with requirements deriving from the Law on Crowdfunding. The main requirement for the companies / projects would be to prepare an information document or a prospectus, depending on the offering size. For more information please refer to Section 2.1 above.

### 4.2.2 Crowdfunding platform wants to present Lithuanian companies / projects on its platform

Regulatory barriers would depend on the applicable law for the offering. In case the Lithuanian company issues securities through the Crowdfunding platform, the prospectus regime is applicable. Regarding exemptions from the prospectus regulation applicability, please refer to Section 3.2.1.1 above.

If the Lithuanian company needs to prepare a prospectus, it must be registered with the Bank of Lithuania. The requirement to register the prospectus with the Bank of Lithuania would not be applicable according to Part 3 of Article 4 of the Law on Securities if the issues of non-equity securities' (or for any issues of non-equity securities, provided that the issuer of non-equity securities is not the issuer of the underlying securities and is not related to the issuer of the underlying securities) denomination per unit amounts to at least EUR 1,000. In such case the issuer can select the home Member State for the offering other than the Republic of Lithuania.

## 4.3 Outbound

### 4.3.1 Lithuanian Crowdfunding platform addresses investors in another EU country

If Lithuanian Crowdfunding platform addresses investors in another EU country, the Crowdfunding platform should comply with the law of another EU country. Neither the Law on Crowdfunding nor the Law on Consumer Credit regulates such activity. However, if the investors from another EU country initiate the contact, the reverse solicitation principle should be applied.

If natural or legal persons approach the Lithuanian Crowdfunding platform and register in order to invest into Crowdfunding projects, such approach should be regarded as reverse solicitation and the provision of services on the basis of such approach should not trigger other EU country regulation. Since neither the Lithuanian law nor the EU law determines clear rules on reverse solicitation, for the purpose of determining whether the services are provided within or outside the territory of Lithuania the Commission Interpretative Communication – Freedom to provide services and the interest of the general good in the Second Banking Directive (SEC(97) 1193 final) should be taken into account.

Nevertheless, in case the services were provided due to the client initiating the contact, the question as to whether services fall within the category of reverse solicitation is subject to the nature of the services, the actions of the Crowdfunding platform and the client. The provision of services by way of reverse solicitation must be carried out exclusively on the basis of the client's unsolicited approach and no promotion may be performed by the Crowdfunding platform.

### 4.3.2 Lithuanian Crowdfunding platform addresses companies / projects in another EU country

If Lithuanian Crowdfunding platform addresses companies / projects in another EU country, the Crowdfunding platform should comply with the law of another EU country. Neither the Law on Crowdfunding nor the Law on Consumer Credit regulates such activity. However, if the company / project from another EU country initiate the contact, the reverse solicitation principle should be applied. For more information about the reverse solicitation principle, please refer to Section 4.3.1 above.

## 4.4 Impact of EU regulation

As for the EU regulation, please refer to the above Sections. However, it must be noted that MiFID II and PSD II have not been transposed into Lithuanian laws yet. Once the latter EU laws will be transposed, we might expect changes in the regulation on Crowdfunding.

## 4.5 Summary

With the growing number of countries implementing specific Crowdfunding regulation it is becoming more burdensome for European market participants to develop a pan-European



Crowdfunding business and for foreign Crowdfunding platforms to enter into the European market. Only those Crowdfunding platforms that are in the List or have the MiFID licence and have passported it to Lithuania can engage in Crowdfunding activities within the territory of the Republic of Lithuania. Moreover, not clear interpretation of the reverse solicitation principle brings legal uncertainty what is aloud and what is not for a Crowdfunding platform when targeting investors and/or companies / projects from another EU country. These developments are contrary to the aim of establishing a European single market and promoting Crowdfunding as a method of financing on a European level.

## **5 Lessons learned from Lithuania regulation for possible harmonised European Crowdfunding regulation**

### **5.1 Role models (“dos”)**

For possible harmonised European Crowdfunding regulation, the following aspects can serve as a role model:

- A. Exception from prospectus requirement for offerings up to EUR 5 million
- B. Information document requirement for offerings up to EUR 5 million
- C. Unlimited investment amounts
- D. Application of the appropriateness test
- E. Crowdfunding platform operator has the right to provide execution of order services and investment recommendations
- F. The right for the Crowdfunding platform operator to act as the mortgage security agent

### **5.2 Aspects that should be avoided (“don’ts”)**

The following aspects should not be inherited:

- A. Prohibition to distribute convertible securities through the Crowdfunding platform
- B. Lack of regulation on conclusion of Crowdfunding contracts through the Crowdfunding platform (notary public questions legality of the contracts concluded through the Crowdfunding platform by conclusive actions).

## **6 Conclusion**

Lack of single EU regulation on Crowdfunding, different interpretation of EU laws applicable to Crowdfunding activities and local Crowdfunding regimes hinder all Crowdfunding platforms to extend their activities to cross-border businesses. The increasing fragmentation of the national Crowdfunding regulations amplifies obstacles for cross-border Crowdfunding.

Creation of a single EU regulation on Crowdfunding would create a level playing field around the EU. Such single EU regulation on Crowdfunding should take into account:

- A. Regulation of all types of financial instruments used in Crowdfunding.

- B. Clarification whether MiFID licence and its passport would allow provision of Crowdfunding on cross-border basis.
- C. Clarification how other EU laws affect Crowdfunding.

## 7 Summary – Crowdfunding regulation

Country	Lithuania
<b>Summary</b>	
<b>Recent developments in Crowdfunding regulation</b>	<ul style="list-style-type: none"> <li>• The Law on Crowdfunding of the Republic of Lithuania (<i>Lietuvos Respublikos sutelktinio finansavimo įstatymas</i>) came into force on 1 December 2016. It has eliminated regulatory obstacles in Lithuania on establishing and running debt based and equity based Crowdfunding platforms.</li> <li>• P2P Consumer Lending in Lithuania falls under regulation of consumer credit. Regulation of P2P Consumer Lending platforms entered into force as of 1 February 2016.</li> </ul>
<b>Current / planned Crowdfunding regulation</b>	
<b>General regulation</b>	<ul style="list-style-type: none"> <li>• To engage in lending based and / or equity based Crowdfunding, the Crowdfunding platform operator must be included in the Public List of Crowdfunding Operators, managed by the Bank of Lithuania.</li> <li>• To engage in P2P Consumer lending, the P2P Consumer Lending platform operator must be included into the Public List of P2P Lending Platforms, managed by the Bank of Lithuania.</li> <li>• Reward based and donation based Crowdfunding is unregulated activity which falls under the scope of the Civil Code of the Republic of Lithuania (Lith. Lietuvos Respublikos civilinis kodeksas).</li> </ul>
<b>Prospectus requirements</b>	<p>Prospectus requirement for the public offering of securities. The obligation to publish a prospectus does not apply in the presence of at least one of the following conditions:</p> <ul style="list-style-type: none"> <li>• An offer of securities addressed solely to professional investors;</li> <li>• An offer of securities addressed to fewer than 150 natural or legal persons in each Member State of EEA, other than professional investors;</li> <li>• An offer of securities addressed to investors who acquire securities for a total amount of at least EUR 100,000 for each separate offer;</li> <li>• An offer of securities with the nominal value amounting to at least EUR 100,000 per unit;</li> <li>• An offer of securities with a total amount of less than EUR 100,000 in all Member States calculated over a period of 12 months.</li> </ul> <p>Moreover, offerings of securities through a Crowdfunding platform below EUR 5 million in a 12 month period does not fall under prospectus requirement. In such case Lithuanian laws applies the light prospectus regime where project owner must prepare an information documents, which must be approved by the Crowdfunding platform operator.</p>
<b>AIFMD-regulation</b>	<p>As collective investment undertakings are defined in a very comprehensive way, RES projects can easily serve the purpose of such definition and could therefore fall within the AIFMD regulation which is implemented in</p>

	Lithuania through the Law on Managers of Collective Investment Undertakings for Professional Investors of the Republic of Lithuania ( <i>Lith. Lietuvos Respublikos profesionaliesiems investuotojams skirtų kolektyvinio investavimo subjektų valdymo įmonių įstatymas</i> ). However, there is no practice in Lithuania, nor are there any regulatory explanations as to how AIFMD could be applied with respect to RES projects.
<b>Payment service regulation</b>	Transfer of funds via the operator may be considered as payment services, thus, may be subject to licensing requirements in Lithuania in accordance with the local legislation on payment services, which implements the Payment Service Directive.
<b>Consumer credit regulation</b>	Amended Law on Consumer Credit of the Republic of Lithuania ( <i>Lietuvos Respublikos vartojimo kredito įstatymas</i> ; the “Law on Consumer Credit”) is applicable in the case of P2P Consumer Lending
<b>Further possible requirements</b>	<ul style="list-style-type: none"> <li>• Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (<i>Lietuvos Respublikos pinigų plovimo ir teroristų finansavimo prevencijos įstatymas</i>).</li> <li>• Law on Legal Protection of Personal Data of the Republic of Lithuania (<i>Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas</i>).</li> <li>• Law on E-money and E-money Institutions of the Republic of Lithuania (<i>Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas</i>).</li> <li>• Law on Consumer Credit of the Republic of Lithuania (<i>Lietuvos Respublikos vartojimo kredito įstatymas</i>).</li> </ul>
<b>Regulatory barriers</b>	
<b>Inbound</b>	<ul style="list-style-type: none"> <li>• According to the Law on Crowdfunding, person engaged or willing to engage in the activities of an operator of a Crowdfunding platform in the Republic of Lithuania must have a residence in the Republic of Lithuania, except the case when a person registered in other EU Member State have the right in accordance with the laws of the Republic of Lithuania governing provision of investment services to intermediate in conclusion of financial transactions without a registered office or through an established branch in the Republic of Lithuania.</li> <li>• In case the Lithuanian company issues securities through the foreign Crowdfunding platform, the prospectus regime is applicable.</li> </ul>
<b>Outbound</b>	<ul style="list-style-type: none"> <li>• If Lithuanian Crowdfunding platform addresses investors in another EU country, the Crowdfunding platform should comply with the law of another EU country. Neither the Law on Crowdfunding nor the Law on Consumer Credit regulates such activity. However, if the investors from another EU country initiate the contact, the reverse solicitation principle should be applied.</li> <li>• If Lithuanian Crowdfunding platform addresses companies / projects in another EU country, the Crowdfunding platform should comply with the law of another EU country. If the company / project from another EU</li> </ul>

	country initiate the contact, the reverse solicitation principle should be applied.
<b>Impact of EU regulation</b>	
<b>Prospectus regulations</b>	Please see above
<b>AIFM-Directive</b>	Please see above
<b>MiFID / MiFID II</b>	According to the Law on Crowdfunding, the operator of the platform is considered to be financial advisory firm which falls under Article 3 of MiFID exemption and has the right to provide the following investment services without additional licence: execution of orders and provision of investment recommendations.
<b>PSD / PSD II</b>	For fund's handling activities the Crowdfunding platform must obtain payment or electronic money institutions licence or outsource this function to another financial institution able to provide respective financial services.

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