



May 2017

The Regulation of Crowdfunding in Ireland

▣ What is Crowdfunding?

Crowdfunding involves individuals and businesses, in particular start-ups and SMEs, raising finance, usually in small monetary amounts from multiple sources, rather than by means of traditional bank finance. It is generally carried out via online platforms which match individuals or businesses seeking finance with potential investors or lenders. These online platforms also arrange for the payment and repayment of such investment.

▣ The Benefits and Risks of Crowdfunding

Crowdfunding is an innovative and relatively quick and cost efficient method for raising capital. Given that crowdfunding platforms are almost invariably online, unlike banks, they require no physical presence in the area in which they operate, resulting in low overhead costs. These cost savings can be passed on to both the borrower and the lender. In addition, crowdfunding is a particularly useful means for SMEs and start-up companies to access finance in circumstances where they may find it difficult to raise capital via traditional methods.

There are also a number of risks associated with

www.dilloneustace.ie

For further information on any of the issues discussed in this article please contact:



Conor Houlihan

DD: 353 1 673 1719

conor.houlihan@dilloneustace.ie



Kate Curneen

DD: 353 1 673 1738

kate.curneen@dilloneustace.ie

crowdfunding as a method of raising finance. For example, crowdfunding platforms are exposed to possible fraud by individuals who offer fake or misleading investment opportunities online. It can be difficult for lenders to obtain accurate and independent information regarding the reputation of any particular investment as there are no mandated disclosure requirements. Moreover, there is a lack of any adequate complaints process to, for example, a statutory body, meaning that a disgruntled party may be left without any dispute resolution process and without receiving adequate redress. The absence of prudential requirements means that investors have increased risk of exposure in the event that the platform fails.

Crowdfunding at an EU level

According to a report published by the European Commission in September 2015¹, crowdfunding projects were ongoing in every Member State during 2013 and 2014. Many EU countries, such as the United Kingdom, Germany and France have introduced domestic legislation in this area. However, there is currently no legislation specifically aimed at regulating crowdfunding at an EU level, nor does the European Commission have any immediate plans to introduce any legislation in the area. This position seems to be based on the fact that, at present, there is very little EU cross-border crowdfunding activity. However, earlier this year, in the context of its mid-term review of the Capital Markets Union, the European Commission indicated that it will continue to monitor developments in the industry, to evaluate whether any necessary EU regulatory action may be needed in the future. Both the European Securities and Markets Authority and the European Banking Authority have expressed the view that a review of the possibility of introducing some legislation in this area at an EU level would be desirable.

Regulatory position in Ireland at present

Crowdfunding is a relatively new and expanding industry in Ireland and is not regulated unless the crowdfunding platform also carries out some other related regulated services, such as payment services or MiFID investment services. In 2014, the Central Bank of Ireland issued a consumer notice, the purpose of which was to warn consumers about the lack of regulation in the industry and to highlight the possible risks associated with crowdfunding faced by potential investors.

Pursuant to the International Financial Services 2020 Action Plan 2017, the Irish

¹ European Commission, 'Crowdfunding: Mapping EU markets and events study', 2015

government committed to undertake a public consultation on crowdfunding in the context of the European Commission's Action Plan for the establishment of a Capital Markets Union. In April 2017, the Department of Finance (the "**Department**") issued a consultation paper and commenced a public consultation on the regulation of the area in Ireland. The consultation will run until 2nd June, 2017.

The Consultation Process

The objective of the consultation process is to gather the opinions of interested parties in relation to the possible regulation of the crowdfunding sector. The consultation aims to ascertain whether regulation would serve to benefit this emerging industry or whether it would inhibit the future development of the area. Interested parties are invited to submit their views on a number of issues, including:

- (a) consumer and investor protections, such as whether (i) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations, 2015 should apply to crowdfunding; (ii) there should be certain restrictions on retail investors investing in crowdfunding business; and (iii) crowdfunding platforms should be the subject of prudential rules such as in relation to conduct of business and capital and liquidity requirements;
- (b) crowdfunding as a viable alternative source of finance and its potential implications for financial stability; and
- (c) the costs and benefits of a regulatory regime for crowdfunding, bearing in mind the risk that unsuitable regulation could hinder innovation and impede the growth of the crowdfunding industry if the financial cost of compliance with regulation for crowdfunding platforms is too high.

The paper also requests the views of participants on whether, in circumstances where the decision is made not to regulate the area, non-regulatory incentives / supports should be put in place to further promote crowdfunding as a source of finance in Ireland.

The Department has also invited interested parties to submit their views on existing EU financial services legislation (such as the MiFID, the Alternative Investment Fund Managers Directive and the Payment Services Directive) in terms of how this legislation applies to online crowdfunding platforms in Ireland.

Next Steps

Following the end of the consultation period, the Department will evaluate the submissions made by interested parties and these will be used to inform future regulatory development of crowdfunding in Ireland.

How can Dillon Eustace help?

Should you have any queries or require any further information in respect of crowdfunding in Ireland and the potential implications that it may have for your business and the sector in which you operate, please contact the authors of this briefing note or your usual Dillon Eustace contact.

Dillon Eustace
May 2017

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:
© 2017 Dillon Eustace. All rights reserved.