



Revisiting Crowdfunding: general terms of the existing legal framework one year after the approval of Law 24 August 2015 (Law no. 102/2015)

What is Crowdfunding?

Crowdfunding is a form of financing, which allows natural or legal persons, national or foreign, to obtain funding, from one or several individual investors, to an activity or a project, by their publication in an electronic platform.

Similarly to what happens in other countries, crowdfunding, in Portugal, may take one of the following legal forms: (i) donation-based crowdfunding (it may or may not involve a financial consideration); (ii) rewards-based crowdfunding (the investor, as a return for the investment made, has access to the product or the service funded); (iii) equity-based crowdfunding (the financing obtained by this category of crowdfunding is remunerated through a stake in the share capital, dividend distribution or profit sharing) and (iv) loan-based crowdfunding (the financing is remunerated through the payment of interest defined at the moment of the fund raising).

What is Crowdfunding used for?

Crowdfunding appears as an alternative form of financing that, in Portugal, in the past years, has been attracting more and more supporters.

“For the investor, crowdfunding appears as a diversified investment opportunity, since, through the electronic platforms, the investor can have a quicker and less costly access to several projects and activities”

Being the Portuguese entrepreneurial fabric formed largely by small and medium companies and, considering the growing popularity and the increasing number of startups in Portugal, crowdfunding also appears as an opportunity, for these companies, to endow themselves with the necessary means for the development and growth of their activity, since, many times, they are unable to raise the necessary funds when resorting to the traditional forms of financing.

But should crowdfunding be used solely for the financing of startups? No! Any kind of activity or project may be financed through crowdfunding, being certain that there are legal limits regarding the gathered and invested amounts.

It is important to highlight that the legal forms of equity-based and of loan-based crowdfunding, in Portugal, in the near future, may have great interest and relevance as an alternative financial support means for the productive activity, such as an alternative to the traditional bank loans and even to the venture capital.

For the investor, crowdfunding appears as a diversified investment opportunity, since, through the electronic platforms, the investor can have a quicker and less costly access to several projects and activities.

Crowdfunding in Portugal – legal framework

Although the Crowdfunding Legal Framework has been approved on August 24th 2015 (Law no. 102/2015), it is important to revisit this matter, since the CMVM Regulation no. 1/2016, which densifies its framework regarding the equity-based and the loan-based crowdfunding modalities, was approved on May 5th, 2016.

It should also be noted that, currently, only the provisions related to the donation-based and rewards-based crowdfunding modalities are in force. The provisions regarding to the other modalities, equity-based and loan-based crowdfunding, will only enter into force on the date of entry into force of the relevant sanctions framework, which has not been approved yet.

In relation to the donation-based and rewards-based crowdfunding legal forms, the law prescribes that the platforms which offer these legal forms shall communicate in advance the beginning of their activity to the Portuguese Consumer General Direction, in accordance with the Ministerial Order no. 344/2015, of October 12th.

In relation to the maximum limit for fund raising for these two legal forms of crowdfunding, it is established that it cannot exceed ten times the global value of the activity to be financed.

In order to ensure that the investors are provided with full, true, updated, clear, objective and licit information, enabling them to make substantiated judgments on the offer and on the beneficiary of funding, it is established the obligation of the financing beneficiaries to transmit to the platforms, in order to inform the investors, a set of information regarding the offer, such as the description of the activity or the product to be financed and the timing and the amount of the fund raising.

On the other hand, and in relation to the equity-based or loan-based crowdfunding, the above mentioned CMVM Regulation establishes that the access to the crowdfunding intermediation business entails the conclusion of a pre-registration process with the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*, hereinafter referred to as the “CMVM”), and the entities (natural or legal persons) that intend to manage crowdfunding platforms are required to demonstrate to CMVM that the minimum patrimonial requirements set out in the Regulation are met by them. Moreover, the members of the Management Body and the (direct or indirect) holders of qualified participations in the share capital of the managing entities of the crowdfunding platforms will be evaluated by CMVM in what concerns their integrity and suitability.



[Back to top](#)

The entity responsible for the regulation and the supervision of the equity-based and loan-based crowdfunding platforms' activity is, thus, CMVM.

In the same way as for credit institutions, the Regulation stresses the concern to ensure a sound and prudent management of the entities that manage the crowdfunding electronic platforms and, therefore, it establishes the adoption, in writing, of the appropriate and effective policies and procedures which regulate, among other matters, the internal control inherent to the activity and the prevention of fraud, money laundering and financing of terrorism. The platforms shall also adopt, in writing, internal organisation measures in order to prevent conflicts of interest.

In relation to the investment limits, it is prescribed that the investors cannot exceed the amount of € 3.000 per offer and € 10.000 in total of the investments made through crowdfunding over a period of one year. However, these two limits are not applicable to (i) legal persons, (ii) natural persons with an annual income equal to or higher than € 70.000 and (iii) qualified investors pursuant to subparagraphs a) to k) of article 30 of the Portuguese Securities Code (hereinafter "CVM"), such as the banks.

In relation to the information duties, the managing entities shall disclose in the platforms all the necessary information to allow an informed investment decision, being included in the Regulation an illustrative list of information. Like the managing entities, the beneficiaries have also to provide information.

In relation to the offers, the beneficiary of the investment shall provide to the crowdfunding platform a document containing the "key crowdfunding investors' information" (IFIFC), to be made available to the investors, in relation to and prior to each offer. The format of the IFIFC can be found in Annex II of the Regulation and shall include the information regarding the offer, as set out in article 19 of the Crowdfunding Legal Framework, such as the description of the activity or the product to be financed, the amount and the timing of the fund raising, the price of the values of each unity to be subscribed and the way to determine the price. In addition to these elements, the IFIFC shall also contain the information foreseen in the subparagraphs of paragraph 2 of article 16 of the Regulation, such as, warnings on the risk of partial or total loss of the invested amounts and warnings on the fact that neither the products nor the activities to be financed through crowdfunding are subject to the authorization or supervision of CMVM or of any other financial supervision entity, nor these entities have approved the information disclosed in the IFIFC.

The main goal of the IFIFC is to include the necessary information for the investor to take an informed and substantiated investment decision on the characteristics and risks of a certain offer. It is also for this reason that the Regulation establishes that the IFIFC shall be written in Portuguese, in a brief manner and in non-technical language.

The IFIFC shall be released free of charge to the investor, prior to the acceptance of the offer, and the managing entity of the platform shall assure its authenticity, comprehensibility and also the proof of its receipt by the investor and the respective knowledge of the warnings, prior to the subscription of the offer.

Finally, the Regulation establishes that the maximum amount of the fund raising, per offer, is of € 1.000.000, not being allowed to an activity or product, under the equity-based or loan-based crowdfunding, to exceed this limit over a period of one year, being possible to reach such limit by a single offer or by the total amount of several offers in the European Union.

If the offers are to be subscribed, exclusively, by investors who are legal persons, qualified investors or natural persons with an annual income equal or higher than the amount of € 70.000, the maximum limits are increased to the amount of € 5.000.000.

[Back to top](#)

“The modalities of equity-based and loan-based crowdfunding, in Portugal, in the near future, may also have great relevance as an alternative financial support mean for the productive activity, namely as an alternative to the traditional bank loans and even to the venture capital”

Conclusion

One year after the publication of Law no. 102/2015, of August 24th, which approved the legal framework applicable to crowdfunding and, after the definition of the legal framework applicable to the equity-based and loan-based crowdfunding by the CMVM Regulation CMVM no. 1/2016, published in the Portuguese Official Gazette on 25 May 2018, we believe that the initiative of introducing into the Portuguese legal system the regulation of crowdfunding, in its four legal forms, has contributed, undoubtedly, to promote even more this form of financing.

If the capacity of the legislator and the regulator to properly anticipate and respond to the main problems and risks that this innovative way to provide financial support will entail is important, it will also be important that the relevant agents (among which the traditional financing partners may be included) adopt the appropriate practices, models and structures for the recurring and confident implementation of this new and innovative way of raising financial means.

Joana Pereira Dias | joanapdias@ctsu.pt

Ana Cruz da Fonseca | acfonseca@ctsu.pt

www.ctsu.pt

[Back to top](#)