

# French enthusiasm for crowdfunding

In favour of this new means of financing, France has rapidly adopted a secure legislative framework which, by its simplicity and its flexibility, is fostering the creation of crowdfunding platforms.

## What is crowdfunding?

Crowdfunding, literally "funding by the crowd", is a way of raising finance for projects or ventures via an internet platform which puts the entrepreneur (the project sponsor) in touch with a large number of web-users, each for a usually low amount of money. Funds may be raised by way of (i) donations (*crowdgiving*), (ii) loans (*crowdlending*) or (iii) securities or minibonds (*crowdequity*). Following the adoption of a legislative framework for crowdfunding, the French prudential control and resolution authority (*l'Autorité de contrôle prudentiel et de résolution* (ACPR)) and the French financial markets authority (*l'Autorité des marchés financiers* (AMF)) have jointly published a practical guide on participatory financing, addressed to crowdfunding participants. They have also created a joint unit with a view to facilitating the creation of such platforms. In this context of supporting this new way of financing, the French government adopted a decree no. 2016-1453 published on 30 October 2016 in order to make rules regarding crowdfunding more flexible and to precise conditions to issue "minibonds" (*minibons*).

This briefing gives a brief overview of the French legislative framework for crowdfunding as it currently stands.

## Three forms of financing

A business or private individual that wishes to raise funds to finance a project can choose between several types of product offered by the platforms. The entrepreneur will choose the most suitable product, according to the nature of the project, the amount that needs to be raised and the willingness of the entrepreneur to dilute his or her share capital or take on debt. *Crowdlending* is the most frequently used type of financing, representing more than 50% of the funds raised in France.

### P2P lending (*Crowdlending*)

This form of crowdfunding, also called peer to peer (P2P) lending, allows for the lending of money by entities which are not "traditional" banks. France has created an exception to the banking monopoly in order to allow individuals who are not acting in a professional or commercial capacity (legal persons and professionals being excluded) to grant loans to corporates or individuals via an online platform managed by an intermediary in participative financing (*intermédiaire en financement participatif* ("IFP")) under certain conditions.

*What projects can be financed by P2P lending?*

## Key figures

- Euro 628.8 million raised on crowdfunding platforms in France in 2016, of which Euro 233.8 million via loan platforms
- 2.6 million people have already supported a project on a French crowdfunding platform in 2016
- 140 crowdfunding platforms have been created in France in 2015 of which half are active (including 58 IFP platforms)

P2P lending platforms can only put forward projects consisting of a purchase or a series of purchases of assets or the delivery of services contributing to the realisation of a defined transaction having a predetermined goal, target amount and timetable. These projects can be sponsored by individuals or legal persons, acting or not acting in a professional capacity, depending on the type of loan being asked for.

*What types of loan can be extended through the platform?*

Two types of loan are authorised: loans charging interest and loans upon which no interest is charged. If interest is charged on the loan, the rate is contractually fixed with the lender and cannot exceed the usury

rate. However, loans proposed via P2P lending platforms are subject to several limits, recently amended pursuant to the French decree of October 2016:

- when interest will be charged on the loan, the amount which can be borrowed is limited to Euro 2,000 (Euro 1,000 previously) per lender and per project. An interest bearing loan can have a maturity of up to a maximum of 7 years;
- when interest will not be charged on the loan, the maximum borrowing amount limit is raised to Euro 5,000 (Euro 4,000 previously) per lender and per project, without any limitation on the term; and
- whether or not interest is charged on the loan, the project sponsor cannot borrow more than Euro 1 million per project, in aggregate. The French government decided not to increase this limit with respect to IFPs. In relation to this limit, if the same project is financed via several platforms, the amounts raised on each of the platforms are added together cumulatively. However, if a project sponsor has paid back part of a loan granted during a first round of fundraising, he or she can once raise more funds as long as the total outstanding loan debt does not exceed Euro 1 million.

*What status does the loan platform have?*

The law imposes on *crowdlending* platform operators a requirement to register with register of financial and insurance intermediaries maintained by the French *Registre unique des intermédiaires en assurance, banque et finance* ("**ORIAS**"), in the capacity

as IFP. These platforms are thus subject to the ACPR's oversight. Due to such regulated status, IFPs are thus subject to business conduct and organisation rules notably governing the ways projects are described and accessed to their website and to the obligation to subscribe to a professional insurance cover.

#### **Issuance of securities (Crowdequity)**

A project sponsor might prefer to get finance by way of the issuance of stocks or debt securities through a *crowdequity* platform operated by an operator having the status of either *conseil en investissement participatif* ("**CIP**"), investment service provider (i.e a MiFID firm) ("**ISP**") (as to which please see below). Note that if the platform operator is licensed as an ISP, the issuance will not be subject to any maximum amount. The issuance derogates from the obligation to produce a prospectus when the platform has a progressive-access website and the project is raising less than Euro 2.5 million, since 30 October 2016 (Euro 1 million previously), calculated over a period of 12 months. Beyond this threshold, the obligation to draw up a prospectus for a securities issuer is mandatory.

*What types of securities can be proposed by the platform?*

Depending on its status (CIP or ISP (as to which, please see below)), the platform can propose ordinary shares, fixed rate bonds or any other types of securities. These securities can be issued by a joint-stock company (*société anonyme* (SA)) or, under certain conditions, by a simplified joint-stock company (*société par action simplifiée* (SAS)). In principle, an SAS cannot offer its securities to the public, but the law provides for an exception, allowing it to do so *via* a

crowdfunding platform if it meets a number of conditions (it should notably align its articles of association with the rules for SA companies regarding voting rights and general meetings (*assemblées générales*) and inform investors of the rights attached to the shares, including the possible existence of temporary lock up or exclusion clauses). With regards to the maximum amount of the project, as earlier mentioned, it is limitless when the platform is approved as an ISP, but limited to Euro 2.5 million (Euro 1 million previously) when the platform has CIP status.

*What status shall the crowdequity platform have?*

Two statuses allow a platform to propose the sale of securities: the CIP status or the status of an ISP, approved to provide investment advice services. The former only permits the offering of ordinary shares and fixed rate bonds. The latter allows all classes of securities to be offered without limitation.

- **CIP:** in order to obtain CIP status, the platform operator must be registered with ORIAS and be a member of an AMF-approved professional association whose role is to verify the professional competence of CIP directors (where such associations do not exist, this verification is made by the AMF). This status can be combined with the IFP status, with the exception that payment services may not be provided. There is no minimum share capital requirement imposed. However, when CIP status is obtained, business conduct and organisational rules as well as insurance related obligations must be complied with. In

addition, a CIP is only authorised to provide investment advice services and all related ancillary services such as corporate finance and M&A advice and services related to the handling of securities subscription forms, subject to compliance with the AMF Rulebook. CIPs are supervised by the AMF who will ensure compliance with these obligations.

- **ISP:** in order to obtain ISP status, a platform must file an application with the ACPR for a license to provide investment advice services as well as other MIFID services as it may wish. The licensing procedure can take several months which is an important factor compared to the CIP status which does not trigger any licensing procedure. All ISPs are required to have a share capital of at least 50,000 Euros. ISP status entails the compliance with many obligations and requirements deriving from Directive 2004/39/EC on markets in financial instruments (MiFID) generally, notably: prudential requirements, obligations relating to internal procedures, professional conduct and organisational rules and insurance related obligations. ISPs are subject to the joint supervision of both the ACPR and the AMF, who will ensure compliance with these obligations.

#### Issuance of minibonds

As from 1 October 2016, certain platforms may offer web-users the opportunity to invest in projects via special funding bonds called "minibonds" (*minibons*) issued by the project sponsor. The bonds are negotiable securities issued in registration form by the company

whose project is financed via the platform in return for a loan provided by a web-user, the term of which cannot exceed 5 years. The periodicity of repayment due dates regarding these minibonds shall not exceed three months and such due dates shall be constant. With respect to the maximum amount, the issuance of minibonds is limited to Euro 2.5 million per issuer and within a twelve months period as from the first issuance.

Unlike a loan, the issuance proceeds of minibonds can be allocated to any types of projects without limitation.

#### Who can issue minibonds?

Only French joint-stock (*sociétés par actions* (SA)) and French limited liability (*sociétés à responsabilité limitée* (SARL)) companies may issue minibonds provided that they have established a report of their third business year and fully paid their share capital. This crowdfunding possibility given to SARL companies is part of the government's willingness to foster the financing of SMEs.

#### Who can purchase minibonds?

Minibonds may be purchased by individuals who are not acting in a professional or commercial capacity, as well as companies acting for non-business related purposes.

#### On which platforms can minibonds be offered?

Minibonds can only be offered on platforms with CIP or ISP status.

#### Donations (Crowdgiving)

Donations are the least regulated means of financing. They are not limited in terms of amount per donor or project and it is not mandatory to provide the donor with consideration. Moreover, no restriction is imposed

on the allocation of funds that are raised, the status of the donor or the project bearer.

#### What status shall the crowdgiving platform have?

No mandatory status is required to create a crowdgiving platform. The donation may be proposed by a platform registered with the ORIAS as an IFP or by a non-registered platform. If the platform chooses IFP status, it must comply with most of the obligations related to that status (the obligation to take out insurance, obligations related to the platform directors, professional conduct etc.).

### Holding of funds and securities by a platform

Platforms are not authorised to receive funds from investors even where they have CIP, IFP or ISP status. In order to do so, they must be specifically approved by the ACPR to provide payment services (for example as a payment institution, electronic money institution, credit institution, etc.) or mandated as an agent of a payment services provider. In the same manner, platforms cannot hold securities for their clients without having been approved to provide such service.

### Territorial scope of activity of a platform

Platforms which have IFP or CIP status may not offer their services outside of France unless in compliance with local jurisdictions' legislation. However, where the platform is approved as an ISP, it may benefit from the passport to offer the services for which it is licensed for across the European Union. In addition, crowdequity platforms may offer in France securities of non-

French companies, under certain conditions.

### Reporting obligations of platforms and websites

Platforms are subject to many reporting obligations and must respect specific information disclosure rules. Likewise, their websites must comply with a number of legal and regulatory requirements.

### Institutional advertisement and prohibition of solicitations

Crowdfunding platforms with CIP or ISP status are allowed to advertise their services, provided that any advertisement is not aimed at a specific transaction. Any advertisement must be limited to a general communication relating to services offered.

Platforms with IFP status may advertise their services, but where they disclose interest rates or quantitative information, they must do so in a clear, precise and visible manner.

However, platforms cannot canvass prospective clients by way of calling unsolicited contacts, except where such steps relate to securities offered as part of a prospectus approved by the AMF, this being however a rather theoretical possibility.

### New powers granted to the Sanctions Committee of the AMF

The French Sapin II Law (*loi sapin II*) amended the crowdfunding legislative framework. The Sanctions Committee of the AMF is now entitled to sanction any breach by an issuer in connection

with offers made via a crowdfunding website.

### Remuneration

The amount of remuneration of platforms is not capped in any way by the legislation. However, they must ensure that they comply in particular with legally imposed requirements with regards to receiving non-monetary benefits.

For more information: "Alternative financial venues: discussion on regulatory approaches on crowdfunding platforms and bitcoins exchange" ("*Les places financières alternatives : propos relatifs aux approches réglementaires concernant les plateformes de crowdfunding et d'échange de bitcoins*") / Frédérick Lacroix (2016) in *Internet, espace d'interrégulation*, Dalloz edition 2016.

	IFP	CIP	ISP
<b>Creation of the platform</b>	Registration with ORIAS	Registration with ORIAS and membership with a professional association approved by the AMF	Filing of a license application with the ACPR
<b>Minimum share capital</b>	No regulatory requirement	No regulatory requirement	<ul style="list-style-type: none"> <li>■ Euro 50,000 if the platform does not hold client money</li> <li>■ Euro 125,000 if the platform holds client money</li> </ul>
<b>Regulatory capital</b>	None	None	Subject to regulatory capital requirements imposed by Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms
<b>Supervisory authority</b>	ACPR	AMF	ACPR and AMF
<b>Territorial scope of the activity</b>	Domestic	Domestic	France and European Union where European passport rights provided by MiFID are exercised
<b>Services provided via the platform</b>	<ul style="list-style-type: none"> <li>■ Interest bearing loans with a 7 year maximum term or loans carrying no interest</li> <li>■ Granted to individuals acting in a non professional or commercial capacity</li> </ul>	<ul style="list-style-type: none"> <li>■ Ordinary shares</li> <li>■ "Plain vanilla" fixed rate bonds</li> <li>■ Minibonds</li> </ul>	Any class of securities (including bonds with redeemable warrants (OBSA), bonds convertible into shares (OCA), bonds with redeemable equity warrants (OBSC) etc.) and minibonds

<p><b>Maximum amount of financing</b></p>	<ul style="list-style-type: none"> <li>■ Euro 2,000 per lender for interest bearing loans.</li> <li>■ Euro 5,000 per lender for loans carrying no interest.</li> <li>■ Euro 1 million per project over a period of 12 months (including new project finance already financed by the platform)</li> </ul>	<ul style="list-style-type: none"> <li>■ Euro 2.5 million per project</li> </ul>	<ul style="list-style-type: none"> <li>■ No limit per project, however beyond the Euro 2.5 million threshold there is a requirement to issue and distribute a prospectus to investors</li> </ul>
<p><b>Type of project</b></p>	<p>The project must consist of a purchase or a series of purchases of assets or the delivery of services contributing to the realisation of a defined operation with a predetermined goal, target amount and timetable</p>	<p>No project specifics are imposed</p>	<p>No project specifics are imposed</p>

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