

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | CORPORATE LAW

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I THE PORTUGUESE CROWDFUNDING LEGAL REGIME

On October 1, 2015 entered into force Law no. 102/2015, of 24 August, approving the crowdfunding legal regime.

Crowdfunding is a form of funding entities, or their activities and projects, through their registration in electronic platforms accessible via internet, from which the raising of investment from one, or several, individual investors occurs.

Such form of funding is performed through one of the following methods:

- (i) Donation – the funded entity receives a donation, with or without the delivery of non-monetary compensation;
- (ii) Reward – the funded entity is obliged to provide the financed product or service, in return for the funding obtained;
- (iii) Capital – the funded entity remunerates the obtained funding by participating in the respective share capital, distribution of dividends or profit sharing;
- (iv) Loan – the funded entity remunerates the obtained funding through the payment of fixed interest at the moment of the fund raising.

The electronic platforms may proceed through more than one of such methods, provided that they stay bound to the specific requirements applicable to each of them.

Any collective persons or individual establishments with limited liability can be platform holders. On the other hand, any individuals or collective persons, domestic or foreign, interested in raising funds for their activities and projects through this form of funding may resort to crowdfunding platforms.

The admission of a beneficiary to a platform is carried out through the conclusion of a written contract available in a dematerialized form via the platform. The respective contract shall contain the following key elements:

- (i) the identification of parties;
- (ii) the collaborative funding methods that will be used;
- (iii) the identification of the project or activity to be funded;
- (iv) the amount and the term of the fund raising, as well as the financial instruments to be used for the fund raising.

The non-compliance with the mentioned elements constitutes grounds for termination of the contract by either party, notwithstanding the liability of the party that caused the termination of the relationship before third party investors acting in good faith.

The electronic platforms shall (i) ensure the investors' access to information on the products placed through their websites and webportals; (ii) ensure the confidentiality of

information received from investors, as well as the information received from the investment beneficiaries, which is not of public disclosure, as part of the information obligation under the applicable law; (iii) ensure the compliance with the applicable law and other applicable regulations regarding the prevention of conflicts of interest, particularly in regards to the prohibition of financial interests that governing bodies and employees may have in offers made available by them; (iv) not provide advice or recommendations regarding the investments to be made through their websites or webportals; (v) not compensate their managers and employees for the offer or sales volumes of available products or references on the respective portals; (vi) not manage investment funds nor hold securities.

As for the specific elements of the possible financing methods, it should be noted that the crowdfunding methods performed through donation or reward should, previously, notify the commencement of such activities to the Consumer General Directorate, without the need for payment of administrative fees. The fund raising, however, is subject to a maximum limit of 10 (ten) times of the total amount of the activity to be funded.

The crowdfunding methods performed via capital or loan are subject to prior registration of the respective activities with the Securities Market Commission ("CMVM"), which is the entity responsible for their supervision.

In this light, a Regulation proposal was published, according to which crowdfunding requires prior registration of the managing body of the crowdfunding platforms in the CMVM. The investors in crowdfunding are subject to a funding limit of EUR 3,000.00 (three thousand euros) per offer and EUR 10,000.00 (ten thousand euros) for the total of its investments in a 12 month period.

Such limits are not applicable to collective persons or individuals who have an annual income equal or higher than EUR 100,000.00.

The maximum fund raising limit, however, is EUR 1,000,000 (one million euros), not being allowed for an activity or product based funding to exceed this limit in a 12 month period.

An example of the use of this form of funding in Portugal is the fund raising campaign launched by the National Museum of Ancient Art for the acquisition of the painting "*The Adoration of the Magi*", from the Portuguese painter Domingos António Sequeira. The fund raising, valid until April 30, 2016, is carried out through the purchase of pixels at a price of six cents each.

II NATIONAL LEGISLATION

Resolution of the Legislative Assembly of the Madeira Autonomous Region no. 5/2016/M – Official Gazette no. 22/2016, Series I of 02-02-2016

It recommends, to the Government of the Republic, the intransigent defence of the interests of the Portuguese citizens from the autonomous regions, within the privatization procedure of TAP – Transportes Aéreos Portugueses, S.A.

III CASE LAW

Judgment of the Court of Appeal of Porto of February 15, 2016 Revitalisation Plan – Suspension of Proceedings – Pecuniary Obligation – Pension Supplement

In this judgment, it was understood that the suspension or termination of the proceedings provided for in paragraph 1 of article 17-E of the Insolvency and Corporate Recovery Code ("CIRE") refer to the proceedings intended at demanding the compliance of pecuniary provisions, regardless of whether they are conviction or executive proceedings.

Therefore, such proceedings, when suspended or terminated, include the remuneration and compensation credits, arising from just cause employment contract resolutions, due prior to the order appointing the temporary judicial administrator in the Special Revitalisation Proceedings ("PER").

However, under this judgement, the retirement pension and medical supplements, which's recognition is claimed in the conviction proceedings, are not subsumed within the proceedings provided for in paragraph 1 of article 17-E of the CIRE, since they are not, in the strict sense, pecuniary obligations.

In the present case, the plaintiff appealed the Court's decision which, given the judicial approval and confirmation of the defendant's recovery plan, terminated the proceedings brought by the plaintiff, against the defendant, requesting the recognition of the right to the payment of employment and compensations claims arising from the just cause employment contract resolution.

Judgment of the Court of Appeal of Coimbra of February 16, 2016 Insolvency – Credit Claim – Joint Responsibility

The present judgement promotes de understanding that, in accordance with article 95, paragraph 2, of the Insolvency and Corporate Recovery Code ("CIRE"), only when a holder of a credit, with joint debtors or guarantees, does not claim the credit during the insolvency proceedings can the latter do so by claiming a credit derived from possible future payment of the debt on suspensive condition, with the condition of future payment by the debtor or guarantee.

Once the payment in the proceedings is verified, the joint debtor or guarantee assumes the position of the original creditor in relation to the respective payment made in accordance with paragraph 3 of article 47 of CIRE. However, one should emphasize that, if the joint debtor or guarantee only partially covers the debt, it may not obtain the payment in the respective insolvency proceedings while the credit holder is not fully satisfied.

In casu, since the creditor claimed the credit on the insolvent in the bankruptcy proceedings, the Court, therefore, confirmed the inability of the appellant (guarantor) to claim any eventual future credit resulting from the provided guarantee, even as conditional credit.

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