



# Update

Momentum



Financeiro e Governace

August 28, 2015

## THE LEGAL REGIME ON COLLABORATIVE FINANCING, OR SO CALLED CROWDFUNDING ON THE PUBLICATION OF LAW NO. 102/2015, OF AUGUST 24

Law No. 102/2015, of August 24, approved the legal regime on collaborative financing, or so called crowdfunding, legislating the forms that this kind of financing can take, the access to these types of activities, the platforms through which these activities can be carried out, who owns said platforms and how beneficiaries of the latter can have access to them, the investors in these activities, the supervision and the penalties that are applicable.

First of all, the law presents the notion of collaborative financing as financing carried out by entities or their activities and projects (beneficiaries) by registering on online platforms through which said beneficiaries raise funds from one or more individual investors.

As for the types of collaborative financing, the law identifies four, namely:

1. financing by donation;
2. financing in exchange for a reward;
3. financing through capital;
4. financing through loan.

The online platforms (which may be owned by any legal person or individual establishment with limited liability) are run by management entities, which must ensure (i) that investors have access to the related



information about the products that are placed on the respective Internet sites or portals, (ii) that all information received from investors and from the beneficiaries of the investment remain confidential, and (iii) that these platforms comply with the norms of this law and with all other applicable legislation on preventing conflict of interest (e.g. preventing any employees or managers of entities related to these platforms, be they the owners or the management companies, from having financial interests in the offers that are placed on these platforms; preventing these same employees and managers from receiving any kind of reward for the sale or offer of the products placed; preventing said employees and managers from offering any kind of advice or recommendation related to the investment to be made through these Internet sites or portals; preventing said employees or managers from managing investment funds or owning stocks and shares).

The beneficiaries of collaborative financing platforms can be any natural or legal persons, be they national or foreign, interested in raising funds for their activities or projects. Toward this end, a beneficiary joins a platform by agreeing to the terms of a written contract that is available in soft form on said platform. This contract must identify: the parties agreeing to the terms of the contract; the types of collaborative financing that are being used; the project or the activity that is the object of the fundraising; the amount that the fundraising is aiming at and the deadline within which this must be achieved, as well as the financial instruments that are to be used for this purpose (the offer). The beneficiaries must also make available on the platforms, and keep updated, specific information that is to be accessible to potential investors (identity, legal nature, contacts, domicile or headquarters, and, when applicable, the identity of management bodies).

The contracts celebrated between beneficiaries and investors are subject to the legal norms applicable to the kinds of contracts in question, namely, donation, sale and purchase, service provision, issuance and transaction of securities, mortgage, as well as intellectual property protection.

In what concerns the supervision of crowdfunding activities, platforms that provide collaborative financing through donation or in exchange for a reward must give prior notification to the Portuguese Office for the Consumer (Direção-Geral do Consumidor) of the start of their activity, according to the



Update

Momentum

Financieiro e Governança

terms and conditions to be defined by ordinance. In order to be able to exercise an activity involving intermediation of collaborative financing through capital or loan, entities managing online platforms must first register before the Portuguese Securities Commission (CMVM - Comissão do Mercado de Valores Mobiliários), which is responsible for regulating and supervising said activity. The registration process, amongst other things, shall be defined by the CMVM, within 90 days after the publication of the law.

As for the penalty regime applicable to the violation of that set out in the legal regime on collaborative financing, this will be provided for by its own related bill.

The norms of the law concerning collaborative financing through donation or in exchange for a reward will enter into force on October 1, 2015, while the norms concerning collaborative financing through capital or loan will only enter into force at the time of the entry into force of the related regulation to be issued by the CMVM.

Sofia Thibaut Trocado

stt@servulo.com

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Rua Garrett, n.º 64 1200-204 Lisboa - Portugal Tel: (+351) 21 093 30 00 Fax: (+351) 21 093 30 01/02  
geral@servulo.com www.servulo.com