



## Law 4416/2016 Establishment of Legislative Framework in relation to Crowdfunding

In Part B' of Law 4416/2016 (Governmental Gazette Issue A' 160/06.09.2016) titled "Amendment of Law 4099/2012 (A' 250) (incorporation to the national legislation of the Directive 2014/91/EU/L 257) and other provisions" (hereinafter "**the Law**"), and specifically in articles 23 and 24, for the first time in Greece, an attempt is made for the establishment of a legislative framework in relation to crowdfunding (hereinafter "**Crowdfunding**").

### Types of Crowdfunding

Crowdfunding is an internationally popular method for fundraising by a large number of stakeholders, through a web platform, and is basically divided in the following models:

- ▶ Crowdfunding with non-financial returns (crowd sponsoring)
- ▶ Crowdfunding for financial returns (crowd lending and crowd investing)

### Necessity for Regulation

Until now in Greece only the donations model has been used, while, due to the absence of special legislation both at EU and national level, the equity model would be obligatorily subject to the already strict legal regime regulating relevant issues.

In this framework, the official "Briefing-Invitation Notice" of the Hellenic Capital Market Commission issued on 04.12.2015, was addressed to "the Investment-based crowdfunding platforms prospective operators" and pointed out that the relevant existing national legal framework is constituted by:

a) Law 3401/2005, which refers to issues of public offering of securities, relevant announcements and approval of prospectus, and

b) Law 3606/2007 on the provision of investment services. In particular, the investment service of reception and transmission of clients orders is applicable, and, depending on the specific functions of the platform, the investment services of provision of investment advice or/and the placing of financial instruments may also apply.

## The new Framework

By virtue of the provisions of the Law, no specific legislation is enacted but instead it is indirectly regulated, as laws 3401/2005 (concerning the issuance of prospectus) and 3606/2007 (concerning the provision of investment services) are amended. Through those amendments, the following are regulated:

- ▶ An electronic system is defined as the electronic platform which presents via the internet the investment proposals of issuers and accepts in the same way investors' orders for the acquisition of transferable securities.
- ▶ Crowdfunding electronic platforms shall only be administered by Investment Services Societies Anonymes (AEPEY), Alternative Investment Fund Managers (AEDOEE) and Credit Institutions, when providing the investment service of reception and transmission of orders.
- ▶ The above providers are obliged to promptly notify the Hellenic Capital Market Commission or the Bank of Greece, as appropriate, of their intention to administer electronic platforms by submitting specific information.
- ▶ The Hellenic Capital Market Commission or the Bank of Greece, as appropriate, may be opposed to this intention in case they consider that the organizational requirements set by the law are not met, within a period of two (2) months after the submission of all necessary information.
- ▶ The above electronic platform providers should provide a minimum of information to the clients or the prospective clients.
- ▶ There is no obligation for the issuance of a prospectus for the public offering of securities, which is conducted through the electronic platform, if specific conditions and monetary limits are met. By virtue of a decision of the Minister of Finance, following proposal of the Hellenic Capital Market Commission, the monetary limits may change.

## Objectives

Under the aforementioned framework, the conjunction of investors' interest from the one hand and the companies' need for financing on the other, without the unconditional application of a strict legal framework, is envisaged. As it is characteristically stated in the Law's explanatory report: "Primarily, Crowdfunding was connected with the funding of various charitable projects or art forms. Recently, though, it has become a method of capital raising for startups and innovative companies or other commercial projects".

The ongoing financial crisis, the continuous need for liquidity which enterprises are facing and the difficulty of fundraising (reduction of the public financial support, reduction of the access to loans and trade credit) render Crowdfunding an alternative financing option for newly established SMEs and start-ups, mainly at their early stages, while simultaneously bank lending is avoided. It is left upon the market stakeholders to properly promote this new instrument, in order to substantially enhance the promoted investment plans, to build a relationship of trust with the investors and convince the supervisory authorities of further expanding the funding limits laid down by the Law.

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