

Briefing
January 2018

Crowdfunding Update: *European Commission proposal awaited; Department of Finance publishes Feedback Statement*

Ireland Law Firm of the Year 2017
Chambers Europe Awards

Best Firm in Ireland 2016 & 2017
Europe Women in Business Law Awards

**Best National Firm for Women in
Business Law 2016 & 2017**
Europe Women in Business Law Awards

**Best National Firm Mentoring Programme
2016 & 2017**
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2016
International Financial Law Review (IFLR)
Europe Awards

Ireland Law Firm of the Year 2016
Who's Who Legal

**Americas International Tax Firm of the
Year 2016**
International Tax Review

**Advised on the 'Deal of the Decade' –
Merger of Lafarge and Holcim**
Mergermarket European M&A Awards

The Department of Finance has published a [Feedback Paper](#) on its April 2017 public consultation on the regulation of crowdfunding. In that consultation, it sought industry views on numerous issues to inform its decision on whether to regulate crowdfunding.

For details of the consultation paper, read our April 2017 briefing: [Crowdfunding: Should it be regulated? Department of Finance begins industry consultation.](#)

FEEDBACK PAPER

The Department noted that there are only three crowdfunding platforms operating in Ireland at the moment, each involved in peer-to-peer lending, with crowdfunding comprising between 0.33% and 0.4% of the SME finance market.

The feedback received by the Department was broadly supportive of the introduction of regulation, with the caveat that any regulatory regime should be proportionate, low-cost, and should not stifle the industry's growth potential. Additional risks beyond those specifically identified by the Department in its consultation were not identified.

Among the feedback received were suggestions that any future regulatory regime should:

- » distinguish between peer-to-peer consumer lending, peer-to-peer business lending, and the equity investment model (further details on those three models are set out in our earlier [Briefing](#));
- » include requirements for risk warnings, minimum information standards, client money requirements, contingency planning for platform failure, and identity verification;

- » encourage potential funders to carry out due diligence themselves, and to diversify their funding, so as to improve investor awareness and mitigate against the scale of investor loss on the failure of a particular business (with crowdfunding platforms also being required to diligence those looking to use their platforms to source funding); and
- » include client asset rules and requirements for both back-up servicing arrangements and indemnity insurance with a view to mitigating the likely impact of a platform failure.

WHAT HAPPENS NEXT?

In October 2017, the European Commission confirmed that it would publish its proposal for an EU-wide framework on crowdfunding and peer-to-peer lending by the end of Q1 2018.

In light of the Commission's impending proposal, the Department has not suggested the introduction of domestic legislation at this time to deal with crowdfunding. Instead, it will monitor the progress of the Commission's proposal, and implement any resulting EU regulations into Irish law. The Department commented that any EU-level regulatory framework has the potential to make the crowdfunding market more competitive, and may allow Irish crowdfunding platforms to passport their services into other EU Member States.

WHAT WILL THE COMMISSION PROPOSE?

The Commission has indicated that its imminent proposal will address the following key issues:

- » **risks:** the key risks inherent in crowdfunding, which are similar to those signposted by the

Department in its consultation paper i.e. fraud, platform failure, business failure, loss of investment, insufficient risk management, insufficient information/inadequate disclosures, potential conflicts of interest, and data protection issues; and

- » **scale:** the lack of cross-border crowdfunding activity, in part due to divergences in regulatory approaches between EU Member States.

Any action that the Commission ultimately takes will be underpinned by its desire to facilitate cross-border crowdfunding activity, while ensuring that crowdfunding platforms are appropriately managed so as to protect those who use them to lend/invest.

It is considering four options:

- » **no EU regulatory framework:** leaving it up to each EU Member State to decide whether to put in place a national regulatory regime;
- » **a non-binding regime:** developing and recommending non-binding standards and mapping best practices to promote convergence;
- » **an EU regulatory framework:** this would involve specific licencing requirements and passporting provisions;
- » **an opt-in framework for cross-border platforms:** crowdfunding platforms who want to operate on a cross-border basis could opt-in to an EU-wide regulatory regime, while those platforms that only wish to operate at a national level would instead have to comply with any applicable national regulatory framework.

NO FURTHER PUBLIC EU CONSULTATION

Notably, the Commission signalled that due to the number of direct or related public consultations carried out at EU level over the last 4 years, together with the frequent discussions that have taken place between the Commission, the European Supervisory Authorities, EU Member States and the crowdfunding sector, it is not planning any further open public consultation once it publishes its imminent proposal. Instead, it will continue to consult with key stakeholders in the crowdfunding space, including investors.

COMMENT

Our Alternative Lending Group has extensive experience advising on all aspects of crowdfunding. It is hoped that the Commission's proposal will, if it does recommend regulation, ensure that any regulatory framework is proportionate and low-cost, in line with the feedback received by the Department on its consultation.

Ireland is an attractive location for crowdfunding platforms and for peer-to-peer lending more generally. The industry should not fear a regulatory regime which is proportionate and low-cost, as the enhanced investor confidence that would come with this should result in continued growth. Ireland is also well positioned to act as a crowdfunding hub and to benefit from a passporting regime, particularly in a post-Brexit environment.

We will publish further updates and analysis when the Commission's proposal is published later in Q1.



**KEVIN LYNCH, PARTNER
FINANCE**

+353 1 920 1199
kevin.lynch@arthurcox.com



**ROBERT CAIN, PARTNER
FINANCIAL REGULATION**

+353 1 920 1050
robert.cain@arthurcox.com



**AIDEN SMALL, PARTNER
FINANCE**

+353 1 920 1072
aiden.small@arthurcox.com



**DARA HARRINGTON, PARTNER
ASSET MANAGEMENT AND
INVESTMENT FUNDS**

+353 1 920 1206
dara.harrington@arthurcox.com



**DAVID MOLLOY, PARTNER
FINANCE, HEAD OF LONDON**

+353 1 920 1220
david.molloy@arthurcox.com



**IAN DILLON, ASSET MANAGEMENT
AND INVESTMENT FUNDS**

+353 1 920 1788
ian.dillon@arthurcox.com



**MAEDHBH CLANCY, PSL
FINANCE**

+353 1 920 1225
maedhbh.clancy@arthurcox.com

arthurcox.com

Dublin
+353 1 920 1000
dublin@arthurcox.com

Belfast
+44 28 9023 0007
reception@arthurcoxni.com

London
+44 207 832 0200
london@arthurcox.com

New York
+1 212 782 3294
newyork@arthurcox.com

Silicon Valley
+1 650 943 2330
siliconvalley@arthurcox.com