

Crowdfunding Regulations: New Questions and Answers

The Central Bank of Ireland recently posted to its website common queries and their answers in regards to the new Crowdfunding Regulation (Regulation (EU) 2020/1503 (“The Regulation”). This Regulation amends the previous Regulation (EU) 2017/1129 and Directive (EU) 2019/1937. The Central Bank of Ireland (the “Central Bank”) has been appointed the competent authority in Ireland for the authorisation and supervision of crowdfunding services pursuant to this legislation and the use of such Q&A documents like this one pertaining to crowdfunding (the “Q&A”) is now an established means of it assisting market participants by setting out its related interpretations. Key issues addressed in the Q&A are set out below:

Transitional Arrangements

The transitional arrangement provided for under Article 48 of the Regulation only apply to those existing crowdfunding service providers who were providing a crowdfunding service within the State prior to the Regulation entering into force on 10 November 2021. A Delegated Regulation to extend the transitional period by 12 months is permitted under Article 48(1) of the Regulation, on 21 October 2022. A crowdfunding service provider can continue to avail of the transitional period until 20 November 2023 or if sooner whenever the crowdfunding authority is authorised. The Central Bank has advised that Crowdfunding service providers make an application as soon as possible and before 10 May 2023 so that the process can be complete before the transition period expires. An authorisation must be obtained the end of the transitional period in order to continue to provide crowdfunding services thereafter.

Addendum to the Consumer Protection Code

Published on 13 January 2022, the code does not apply to any crowdfunding service operating under the transitional period outlined above. The Code will however, apply when the crowdfunding service is authorised under the Regulation. The Central Bank has advised that providers should utilise this time to make the necessary internal changes to ensure that their processes and procedures are in compliance with the Code and Regulation, which the Central Bank will be responsible for enforcing. The Central Bank also has an expectation that there is clear progression

by firms availing of the transitional period to meet the new statutory requirements. In regards to the scope of the Code it applies to all regulated activities of regulated entities, as defined within the Code, operating within the State.

Crowdfunding Shares

The question of whether a share in a legal person established under Irish company law could qualify as an instrument for crowdfunding is a key issue. However, the Q&A provides that this would be determined by the Central Bank on a case-by-case basis and is a matter for independent legal advice.

Key Investment Information Sheet (KIIS)

The Regulation states that where a Member State authorises a crowdfunding service it may be required to provide an ex-ante notification of a KIIS at least seven working days before making it available to prospective investors. The Central Bank will not require ex-ante notification but reserves the right to require a copy.

How can Clerkin Lynch assist?

The Central Bank of Ireland recommends that all crowdfunding service providers obtain independent legal advice. The Q&A does not constitute legal advice but rather is a helpful guide. Clerkin Lynch has a strong history of assisting clients with regulatory compliance as well as assisting with actual applications for authorisation or approval. Please contact us for a no-obligation discussion to find out more about our team and services.



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