

### **New regulations on crowdfunding in France**

The French regulations on the banking monopoly and those on the public offer of securities were once considered as barriers to the development of crowdfunding in France. This has changed. Eager to ride the wave, new rules have just been introduced that opens the doors to crowdfunding in France, rules that also ensure that crowdfunding investors are adequately protected. The new regulation (Order n°2014-559 dated 30<sup>th</sup> May 2014 or “**Order**”) covers two categories of crowdfunding:

- the online raising of capital through the issuance of securities; and
- the online raising of capital through loans or gifts.

The above two distinctive categories reflect the ground reality for now of crowdfunding. The capital raising is typically of a small amount from a large number of persons, either through the issuance of securities or by way of loans or gifts.

#### **1. ISSUING AND INVESTING IN SECURITIES THROUGH CROWDFUNDING**

Since one of the objectives of the Order was to supervise the offer of securities through crowdfunding, a new category, namely a “crowdfunding investment advisor” (“*conseiller en investissement participatif*”) has been introduced. These professionals will provide online investment advice on crowdfunding platforms, including recommendations on securities (shares or bonds) issued through crowdfunding.

Crowdfunding investment advisors are required to register with the ORIAS (“*Organisme pour le registre unique des intermédiaires en assurance, banque et finance*”) and respect certain good conduct rules, including those on conflict of interests and others to be further specified by the AMF (“*Autorité des marchés financiers*”). In addition, crowdfunding investment advisors must act in good faith and in the best interests of their clients. They should also assess the financial condition, experience with regard to investment and the investment objectives of their clients.

The Order also requires supervision of the crowdfunding websites by the AMF, which shall issue general guidelines in this regard in the coming months.

Since crowdfunding would in principle trigger the rules on the public offer of securities in France, the new regime has, unsurprisingly, provided an exemption for prospectus publications. In order to be exempt from any prospectus publication, one must satisfy three conditions:

- (i) the securities should not be listed on a regulated market or MTF;
- (ii) the securities should be offered through an investment services provider or a crowdfunding investment advisor under the relevant crowdfunding website (which must satisfy the conditions set out in the general regulations of the AMF); and

- (iii) the investment amount should be below the threshold to be fixed by executive order.

In order to raise capital under this category, promoters are required to incorporate companies in the form of “*sociétés anonymes*” (**SA**) or “*sociétés par actions simplifiées*” (**SAS**).

## 2. CROWDFUNDING IN THE FORM OF LOANS AND GIFTS

The Order has also given birth to another new category, that of a “crowdfunding intermediary”. This new activity consists in connecting, by online services, the promoters of a project and the persons financing those projects by way of loans or gifts. Crowdfunding intermediaries will be regulated by the ACPR (“*Autorité de contrôle prudentiel et de résolution*”). They are required to register with the ORIAS and respect organizational rules and rules of good conduct. In particular, crowdfunding intermediaries have an obligation to warn lenders regarding crowdfunding risks.

The lenders are individuals who grant, for non-professional purposes, a small amount of credit – an amount less than €1,000 – for a financing round not more than €1,000,000. These thresholds will be further defined in another executive order. The lenders are allowed to lend in several transactions. The Order has therefore introduced a new exemption to the banking monopoly in favor of individuals granting loans under crowdfunding.

## 3. COMMON PROVISIONS

The Order also includes common provisions for both crowdfunding investment advisers and crowdfunding intermediaries, in particular, those on ORIAS registration and anti-money laundering procedures.

**For further information, please contact:**



Thierry Bonneau  
T +33 1 83 64 76 25  
E tbonneau@spitz-poulle.com



Jean-Baptiste Poulle  
T +33 1 83 64 76 21  
E jbpoulle@spitz-poulle.com

### **Legal information:**

SPITZ & POULLE is an *Association d'Avocats à Responsabilité Professionnelle Individuelle*. The law firm is located at 18 boulevard de la Tour-Maubourg, 75007 Paris.

The information and opinions present in this publication are not meant to be exhaustive. They constitute neither a substitute for specific advice on particular situations nor a legal advice.

[www.spitz-poulle.com](http://www.spitz-poulle.com)