

# Introducing the New Irish Regulatory Regime for Crowdfunding

On 13 December 2021, the European Union (Crowdfunding) Regulations 2021<sup>1</sup> ("Regulations") were transposed into Irish law and gave effect to the EU Regulation 2020/1503<sup>2</sup> ("Crowdfunding Regulation") which came into force on 10 November 2021.

This marks the introduction of a new regulatory regime in Ireland for entities providing crowdfunding services (that is, the operation of a digital platform, open to the public, which matches or facilitates the matching of prospective investors or lenders with businesses that seek funding) and recognises this as an increasingly important type of alternative financing for businesses and enterprises that are reliant on small investments.

## Scope and Purpose

The Crowdfunding Regulation provides uniform requirements for the following:

- Provision of crowdfunding services
- Organisation, authorisation and supervision of Crowdfunding Services Providers ("CSPs")
- Operation of crowdfunding platforms
- A requirement for transparency in marketing communications when providing crowdfunding services in the EU

A CSP that facilitates either investment-based crowdfunding or peer-to-peer business lending via its platform will need to be authorised by the national competent authority in the EU Member

State in which it is established. Under the Regulations, the Central Bank of Ireland ("Central Bank") is designated as the competent authority in Ireland.

The Crowdfunding Regulation's scope is limited as follows:

- Project owners have some obligations under the new regime but are not required to be authorised by the Central Bank
- Companies who seek financing or investment via the crowdfunding platform are limited to raising €5 million within a 12-month period per project owner; offers exceeding €5 million fall under the scope of MiFID II and / or the Prospectus Regulation

The Crowdfunding Regulation does not cover the scope of payment services offered by the CSP. In these instances, the CSP should apply for authorisation (under the Second Payment Services Directive 2015/2366/EU) to provide these services or assign a relevant third-party provider who is authorised to provide payment services.

## Consumer Protection Code Amendments

On 13 January 2022, the Central Bank announced<sup>3</sup> that it will be applying new rules on advertising to CSPs. Article 28 of the Crowdfunding Regulation provides for additional national marketing requirements.

<sup>1</sup>

<https://www.irishstatutebook.ie/eli/2021/si/702/made/en/print?q=SI+702>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1503>

<sup>3</sup> <https://www.centralbank.ie/news/article/central-bank-announces-new-crowdfunding-regulatory-regime-13-Jan-2022>

The following sections of the Consumer Protection Code 2012 have been amended by an addendum<sup>4</sup> to reflect these additional requirements:

## *Chapter 1 - Scope*

- In the Application section, CSPs have been added to the bullet point list; and
- A new paragraph has been inserted stating which sections of the Consumer Protection Code apply to regulated entities providing crowdfunding services.

## *Chapter 9 - Advertising Requirements*

- A new paragraph has been added to Clarification of Scope; and
- A new Provision 9.53 has been inserted which provides that CSPs must ensure the risk warning in 9.53 is included in advertisements.

## *Chapter 12 - Definitions*

- A definition of CSP has been added.

## **Authorisation - Transitional Provisions**

Existing CSPs which provided crowdfunding services in Ireland before the introduction of the Crowdfunding Regulation (10 November 2021) will require authorisation going forward but may continue to provide those services until 10 November 2022.

## **Authorisation Process Summary**

An application for authorisation by the Central Bank will involve the following steps:

- A preliminary meeting with Central Bank to discuss the proposed application
- Submission of an application form (and Individual Questionnaires)

- The Central Bank will acknowledge receipt of the application within 10 working days and assess the application for completeness within 25 working days
- Once the application has been deemed complete, the Central Bank will then assess it
- The Central Bank will make a decision within three months of the receipt of a complete application
- A letter of authorisation will be issued by the Central Bank to successful applicant(s) outlining the authorisation requirements and any applicable conditions

## **Further Information**

Further information on our Irish Financial Services Regulatory Group and the services we provide is available on our website<sup>5</sup> and in our brochure<sup>6</sup>.

If you would like further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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<sup>4</sup> <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/addendum-consumer-protection-code-2012-january-2022.pdf>

<sup>5</sup> <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

<sup>6</sup> <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

**January 2022**  
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