

Welcome to Austria's Crowdfunding Paradise



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The Austrian Alternative Financing Act (*Alternativfinanzierungsgesetz*), due to enter into force in autumn 2015, will establish the legal basis for the financing of SMEs (small and medium-sized enterprises, as defined in EU law) through crowdfunding and citizen participation models. Furthermore, it will create a legal framework for the operators of crowdfunding platforms. Some of the most important elements of the Act are:

Broad Scope of Application

The Alternative Financing Act applies to typical SME's – i.e., to businesses in need of financing which: (a) have fewer than 250 employees and (b) either generate annual turnover of no more than EUR 50 million or with an annual balance sheet totalling not more than EUR 43 million.

This broad scope of application thus opens crowdfunding up to a whole range of SMEs across Europe, not necessarily restricted to Austrian companies or start-ups.

Issue Volume Up to EUR 1.5 Million

The new law will significantly increase the maximum issue volume currently admissible without

issuing a capital markets prospectus, raising it from its present level of EUR 250,000 to EUR 1.5 million, thereby enabling the financing of slightly larger investment projects. Investments over EUR 5 million (minus the funds already repaid) raised over a seven-year observation period will trigger the need to publish a prospectus.

Alternative Financing Instruments

The scope of the new law covers shares, bonds, and business shares in capital companies and cooperatives, as well as profit participation rights, silent partnerships, and subordinated loans that are very common in practice. Donations or similar voluntary payments do not fall within the scope of the law. Special rules apply to shares and bonds offered to the public with a total consideration of no less than EUR 250,000 and no more than EUR 1.5 million (prospectus obligation "light").

Individual Investments up to EUR 5,000

In line with the principle of investor protection, individual investments are generally limited to a maximum of EUR 5,000 (per project, within a period of 12 months, in instalment payments). In principle, only "professional investors" are exempt from the above limitations.

Broad Information Requirements Vis-à-Vis Investors

In addition to information on the business and the alternative financing instrument, the current annual accounts, the business plan including de-

tails specifying the intended issue volume that is expected to raise the capital through the issue of alternative financing instruments, and other contractual terms applicable to the financing instruments need to be disclosed.

This minimum information must be "verified" by an expert (i.e. attorney, accountant, notary public, chamber of commerce, management consultant, or financial adviser), as the Austrian Financial Market Authority (FMA) does not have any powers of verification.

Relief for Crowdfunding Platforms

In the future, operators of a crowdfunding platform must either hold trade licences entitling them to act as financial advisers (for investment transactions) or investment service providers (for transactions in alternative financing instruments under the Securities Supervision Act (*Wertpapieraufsichtsgesetz*)) or be in possession of a licence issued by the FMA. This has the decisive advantage that in the future a trade licence, which is fairly easy to obtain, will suffice. However, in addition to this, operators will be obliged to take out third party liability insurance and to adopt measures to prevent money laundering and the financing of terrorism, which could see the administrative costs increase somewhat.

Summary

Crowdfunding remains a high risk investment, and its success or failure may be a very close call. However, for Austria as a business location and major start-up hub, crowdfunding will foster financing possibilities for SMEs.