

# HOT TOPIC: crowdfunding

*E-Commerce Law & Policy* explores crowdfunding in four jurisdictions.

## India

With the slow adoption of e-commerce in India, many promoters of online businesses have started to embrace the concept of crowdfunding because of the ease of connecting with potential 'funders.'

Unlike the US and UK, crowdfunding in India is

primarily used for donations and contributions. Often, beneficiaries reward their contributors by giving them nominal perks or gifts, for example: distributing products at subsidised rates. Such crowdfunding, often referred to as 'patronage crowdfunding,' is simpler to implement compared to

'investment crowdfunding,' due to regulatory issues governing equity investment.

Crowdfunding is helpful for raising funds for e-commerce ventures, since many such projects are end-user oriented, allowing the pitching of ideas direct to users.

The lack of a complete understanding of the concept

of crowdfunding, the lack of encouraging infrastructure and the absence of monetary incentives for contributors are the principal roadblocks for e-commerce projects opting for crowdfunding in India.

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## Australia

The launch of Australia's first online equity based crowdfunding platforms has highlighted the regulatory challenges faced by Australian online businesses that seek to crowdfund. The two newly launched funds, though, invite individuals to buy small amounts of equity in early stage businesses. The difficulty

is that regulations limit participation to 'sophisticated investors,' cap investor numbers and restrict companies from advertising small scale offers without a prospectus.

Australia's regulations were designed for more traditional capital raising; the Australian Securities Exchange acknowledges that 'the

compliance costs associated with those requirements may be prohibitive for very small capital raisings through crowdfunding portals.'

The Corporations and Markets Advisory Committee is currently considering changes to the laws affecting equity based crowdfunding, and is expected to make recommendations in April

2014. Any relaxation of regulations has the potential to greatly increase crowdfunding's impact in Australia and potentially unlock a new source of funding for small online startups.

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## France

The announcement of French crowdfunding legislation should strengthen investments in France. Funds raised via platforms amounted to 78M euros for 2013 according to the French association Financement Participatif France. The government specified that the main

measures aim at giving a legal framework to platforms that fits their business model.

Concerning lending crowdfunding, French actors need to be authorised by the French Prudential Control Authority and projects are only open to professional investors. Interest bearing loans from consumer to

consumer or professionals would be officially allowed. The amount per lender and per project would be capped at 1,000 euros to limit risk.

For equity crowdfunding, fundraising inferior to 1M euros would not be subject to a prior filing with the French Financial Markets Authority.

Uncertainty exists

surrounding the trust that potential lenders and investors will give to these platforms. The draft legislation should contain specifications regarding information and transparency obligations.

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## US

The SEC recently proposed equity crowdfunding rules that for the first time would permit small businesses to use the internet to raise up to \$1M in any 12-month period through the sale of a limited amount of securities to each investor, without regard to investor sophistication.

The promise of crowdfunding is to create a simple way for garage startups and smaller businesses to raise capital without the need to rely on lawyers, bankers and other intermediaries. The SEC's proposed rules would require lengthy disclosure documents, intermediation through brokers or funding

portals, and an annual reporting obligation to the SEC - a heavy lift for a small business seeking seed capital. Other permissible techniques for privately raising capital exist, and they are neither as complicated as the SEC's crowdfunding model, nor are they limited to \$1M in total proceeds. Thus, the jury is still

out on the proposal. But without significant revision, it may not move the needle much, particularly for e-commerce and online businesses that could benefit from a more liberal crowdfunding regime.

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