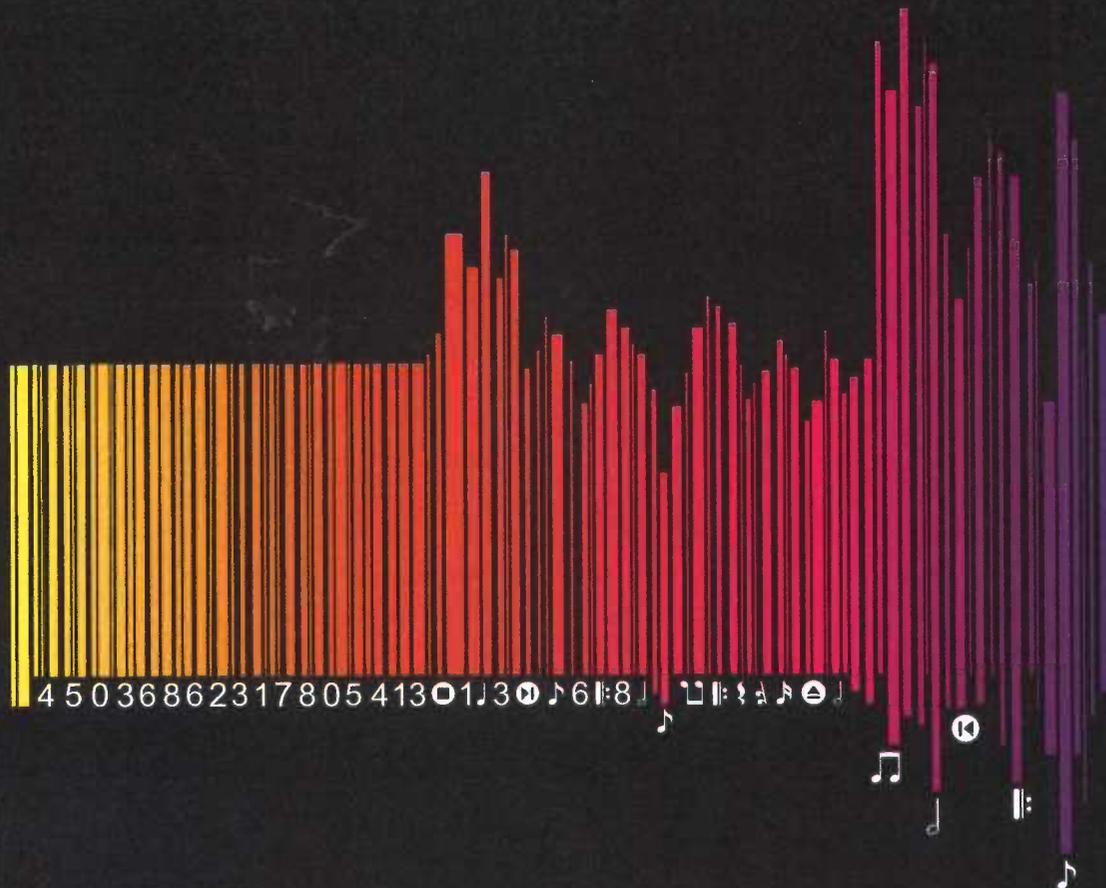




INTERNATIONAL  
ASSOCIATION OF  
ENTERTAINMENT  
LAWYERS

# The Monetization of the Global Music Business – from Creators to Major Industry

Edited by William Bee Ravenel Lewis & Marcelo Goyanes



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# Online-Crowdfunding in Switzerland



**Author: Dirk Spacek**<sup>[1]</sup>

## >> Legal framework in Switzerland and pitfalls to avoid

Online-Crowdfunding is a relatively new form of financing processed over the Internet. Crowdfunding facilitates the centralized gathering of money from the general public through Internet-based crowdfunding-Platforms. Creative project developers may upload project descriptions and strive to obtain financial contributions from multiple financiers. Accordingly, every person can register on the CF-Platform and support projects with freely chosen contributions. While crowdfunding originally started as a model merely known in the artistic field, it gradually began to be used for purely commercial business endeavours. Crowdfunding raises numerous legal questions, mostly involving contract-law, intellectual-property-law and to a great extent financial regulatory law. This essay attempts to illustrate how Switzerland, a country renowned for being a banking and finance-hub, deals with the phenomenon of crowdfunding and what sets it apart from other regimes in the world.

## >> Introduction

Since the emergence of crowdfunding in the United States (most popularly represented by [www.kickstarter.com](http://www.kickstarter.com) in New York) a great deal of debate about it has arisen: While optimists praise it as the future business model of the 21st century and as a democratic safeguard against corporatism, other more sceptical viewers opine that it will serve as a platform for “wanna-be-entrepreneurs” and degenerate into an incubator for fraud. In any case, such a debate is useless: crowdfunding

is here. It has become a salient reality. The democratization of financing processes that previously lived sealed off in a private sphere is not only a crowdfunding-phenomenon. It is a more general trend of today’s emerging “sharing economy.” Therefore, the appropriate analysis should not be to judge new business model’s potential of success. Rather, we should reflect how legal frameworks can govern to reduce the risks and foster the benefits associated with new online-business models. As such, we will review the same in the context of how Switzerland deals with crowdfunding.

## >> Swiss Crowdfunding providers and their mechanics

Online-Crowdfunding usually involves three parties:

- 1) innovative project developers who usually need to register online as capital seekers (“**Developers**”),
- 2) a crowdfunding-platform (“**CF-Platform**”) which may impose certain admission requirements for the Developers and
- 3) financial supporters – in colloquial language “**Backers**” which may participate and support projects with freely chosen amounts (starting from micro-amounts of any currency).

Frequently, and depending on the rules established by the CF-Platform, Developers must achieve a certain threshold of financial support before all collected amounts are wired to the Developers.<sup>[2]</sup> Consequently, Developers must strive to advertise their projects and update on any progress in their works to satisfy Backers’ expectations to avoid having Backers “withdraw” their payments before a certain cut-off-date.<sup>[3]</sup>

Overall, the Swiss crowdfunding market remains rather small compared with the United States, Germany or France. Nevertheless, it is growing remarkably. Based on recent statistics, the growth generated with crowdfunding in the last few years has achieved rates of up to 192 percent. In 2013, 11.6 million Swiss Francs were collected through CF-Platforms in Switzerland.<sup>[4]</sup> In September 2014, Swisscom, the Swiss national telecom provider, launched a new crowdfunding platform in collaboration with the Swiss crowdfunding provider [www.wemakeit.ch](http://www.wemakeit.ch). The

“What also proves important is a separate layer of contract lying between the Backers/Developers on the one hand and the CF-Platform on the other hand”

new platform is cloud-based and provides customers with the opportunity to use underlying software (Software-as-a-Service, “SaaS”) to establish CF-Platforms with low investment costs. This is meant to incentivize the crowdfunding market in Switzerland.<sup>[5]</sup> In December 2014, the cantonal bank of Baseland has started to host its own crowdfunding-platform to support creative endeavours which could not find support under the bank’s traditional sponsoring programs.<sup>[6]</sup>

If we look at the three-party-model (CF-Platform, Developers and Backers) as a kind of “archetype,” then many variations of it can be perceived in today’s Swiss landscape. The most frequent variations are:

- 1) the donation model,
- 2) the reward model, the
- 3) pre-payment-model,
- 4) the loan model and
- 5) the equity participation model.

Interestingly, so far, the greatest growth in the Swiss crowdfunding market has occurred under the equity model. The volume of funds invested in equity-crowdfunding in 2013 amounted up to 5.8 million Swiss Francs. The loan, donation, and rewards models have achieved lower investment rates (volume of funds of 1.78 million Swiss Francs for loan based crowdfunding and 4.23 million Swiss Francs for donation and rewards model based crowdfunding in Switzerland in 2013).<sup>[7]</sup> Today’s most well-known Swiss CF-Platforms are probably [www.cashare.ch](http://www.cashare.ch), [www.c-crowd.com](http://www.c-crowd.com), [www.wemakeit.ch](http://www.wemakeit.ch), [www.investiere.ch](http://www.investiere.ch) and [www.crowdfundingnow.ch](http://www.crowdfundingnow.ch), all of which provide either one of the abovementioned crowdfunding models or combinations thereof.

Depending on which crowdfunding model one chooses, different levels of legal implications can arise. For instance, neither the donation model nor the reward model will raise particular legal concerns. The Swiss legal framework does not, per se, forbid the gratuitous support of creative projects with no expectations in return. Nonetheless, things get more intricate if one chooses the pre-payment, loan,

or equity model. In these scenarios, money is wired from Backers to Developers in return for the receipt of future products (let’s say for example a newly developed music video clip in downloadable format). Or, Backers can wire money in return for the repayment with an additional interest charge. In all of these constellations, Backers and Developers assume legal roles of buyers and purchasers or lenders and creditors, respectively. Not only does this implicate contract law, but it also raises questions under the Swiss regulatory framework applicable to banks, security dealers and financial intermediaries in general. We shall now turn to a review of each of these topics in greater detail under the following sections.

### >> Crowdfunding and Swiss Contract Law Implications

As discussed above, Backers and Developers may enter into contractual relationships with each other *directly* through a CF-Platform. To the extent that Swiss law is applicable, most of these contracts will fall under the rules of the Swiss Code of Obligations (“CO”). Under the CO, relationships between Backers and Developers will most probably either be qualified as a

- 1) gift (Art. 239 et seq. CO) as a
- 2) purchase agreement (Art. 184 et seq. CO) or as a
- 3) contract for work or service which is still to be accomplished by the Developer (Art. 363 et seq. CO).

While beyond the scope of this essay, under Swiss contract law, each of these contract types has its own legal consequences and Developers and Backers must be aware of them before entering into any such direct agreements with each other through a CF-Platform.<sup>[8]</sup>

In addition, what also proves important is a separate layer of contract lying between the Backers/Developers on the one hand and the CF-Platform on the other hand. Seemingly, most CF-Platforms’ terms of use deny the existence of any contractual relationship with Backers and Developers. CF-Platforms often describe themselves as pure “intermediaries.” The intermediary model implies that Developers and Backers

enter into contractual relationships *directly* with each other and not with the CF-Platform. Nevertheless, an attempt “to deny any contractual relationship” is probably fruitless. Intermediary functions of a CF-Platform are also services provided on a contractual basis, namely based on the website terms of use. Under Swiss contract law, the intermediary service of a CF-Platform will most probably be qualified as a brokerage contract (Art. 412 et seq. CO) or agency contract (Art. 418a et seq. CO) with Backers and/or Developers, respectively.<sup>[9]</sup> In this context, CF-Platforms usually also assume additional responsibilities to process cashless payments from Backers to Developers and mostly retain a commission fee of 3-9 percent of the amount wired.<sup>[10]</sup>

As a broker or agent under Swiss law, it is important to bear in mind that engaging in either double-brokerage or double-agency (i.e., acting for two principals at the same time) is considered illegal if it involves any disadvantages to the parties (Art. 415, 418c para. 1 and 398 OR). Disadvantages usually occur when conflicts of interest arise. Therefore, to be on the safe side as an operator of a CF-Platform in Switzerland, it is recommended to avoid interfering with the offerings that Developers and Backers make. The latter should be able to determine their own stipulations and commercial terms.<sup>[11]</sup> Admittedly, most CF-Platform terms of use provide *fall back provisions* in the event that Developers and Backers have not provided enough specificity in their agreements. Nevertheless, it is the author’s opinion that doing so should not necessarily run afoul of the ban on double brokerage or double agency.

If the fall back provisions only set forth generic duties which could reasonably apply to all contracts entered over the CF-Platform in a neutral fashion, this should still comply with the law.<sup>[12]</sup> By reason of the foregoing, in order to avoid any conflicts of interest, most CF-Platforms’ terms of use require Developers to specify their own project descriptions and, if they consist of a team, the team-members’ respective tasks (e.g. members of a music-band), so that Backers gain a transparent view of where the Developers stand in terms of commitment. Further, Developers are frequently obliged to specify their promised rewards (e.g. a free CD of their album or the mentioning of all Backers in the credits of a movie-

clip). As for the Backers’, CF-Platforms also frequently stipulate that they should conduct their own investment considerations and that the CF-Platform assumes no responsibility in this regard. Also, CF Platforms sometimes reserve the rights to pre-select certain projects in order to carve-out obviously fraudulent schemes.<sup>[13]</sup>

### >> Crowdfunding and risks arising under Swiss Intellectual Property Law

Swiss intellectual property law does not differ significantly from other continental-European intellectual property jurisdictions. The Swiss legal system provides protection for, among other things, patents, trademarks, designs, copyrights and electronic semiconductors.<sup>[14]</sup> Switzerland is also a member of various multilateral and bilateral treaties on intellectual property law, among them, most importantly, the agreement on trade-related aspects of intellectual property rights (TRIPS) as well as the Berne Convention on copyright and the Rome Convention on the protection of copyright-related rights.<sup>[15]</sup> These treaties have contributed to a significant degree of harmonisation among the participating countries. It therefore comes as no surprise that the Swiss intellectual property system is much like those of its continental-European neighbours.

Considering the bandwidth of projects presented on Swiss CF-Platforms, various intellectual property rights can be established with the creation of such projects, in particular, copyrights, visual designs and, if applicable, patents. Most Developers will usually wish to retain full ownership of such intellectual property rights and most CF-Platforms’ terms of use should ideally provide for the same as a fall-back-option in case the Developer has not specified it. However, the more important intellectual property issue to consider is the *risk* Developers assume when they *present starting-point-ideas* publicly on the website of a CF-Platform. Unfortunately, as perceived by a review of several Swiss CF-Platforms, it appears that many Developers are not aware of these risks.

Generally speaking, under Swiss intellectual property law, pre-productive “ideas” or “concepts” generally do not enjoy protection under intellectual property law, unless they have reached a concrete form of expression (as for copyrights), a concrete

visual design or form (as for designs) or a concrete technical solution (as required for patents).[16] Thus, by presenting pre-developed and unprotected project ideas openly on a CF-Website, there is a considerable risk that parasites will jump on board and use these ideas for their own purposes. Where there is potential of success, imitators usually aren't far away from it.[17] Also, if one decides to present project ideas for *products* or *inventions* which may enjoy protection as designs or patents, the intellectual property risks involved are even more accurate: Whoever publicly presents visual layouts or technical inventions is most likely to destroy the novelty-requirement for a later design- or patent-application.[18] "Novelty" requires that an invention or a visual design has not been disclosed to the public *before* the application date (see Art. 1 of the Swiss Federal Act on the Protection of Patents and Art. 2 para. 1 of the Swiss Federal Act on the Protection of Designs).

By virtue of the above, it is generally recommended not to disclose many aspects of pre-market-project ideas and concepts on a CF-Platform. Rather, one should try to focus on generic or output-based descriptions of project goals. Making reconstructing of ideas and concepts difficult for observers usually entails strategic advantages in the market. Further, visual designs or patentable technologies should never be disclosed at an early stage. Instead, one should try to only vaguely describe the envisaged design or technology. Also, one should apply for patent or design applications with relevant intellectual property authorities *early* (i.e. *before* presenting any prototypes to the public over a CF-Website). By this means, the novelty requirement can at least be safeguarded.[19]

Considering the production of music, intellectual property risks are probably less of a concern, since music can be recorded fast and easily with today's advanced recording technologies. Consequently, in most cases, recordings will mostly have found a concrete form of expression quickly and are likely to enjoy full copyright protection as accomplished works of art. Swiss copyrighted music works come into existence without any registration efforts and are protected against infringement as from their date of existence (see Art. 6 of the Swiss Federal Act on Copyrights and

related rights). But even with music, there is a non-excludable risk that imitators could usurp frictions of a musical work or underlying creative elements for their own purposes. Thus, shorter "snippets" of music will probably do better. Put simply: One should keep one's initial output to the public low enough to protect one's intellectual property, but interesting enough to attract the public's attention – that's the key.

### >> Crowdfunding under the Swiss Financial Regulatory Landscape

To date, there is no particular Swiss statute in force which captures the regulation of CF-Platforms and their related financing activities. As far as can be seen, only the Swiss Financial Market Supervisory Authority ("**FINMA**") and the Swiss State Secretariat for Economic Affairs ("**SECO**") have addressed this issue in informative reports and discussion-papers,[20] but thus far have failed to provide any specific guidance or regulations. Pursuant to newspaper articles, FINMA has issued rulings on at least three different platforms and decided that none of them was subject to the supervision of FINMA.[21] Nonetheless, FINMA still seems to take a cautious and rather suspicious approach to crowdfunding.

So viewed, the current Swiss financial regulatory framework applicable to crowdfunding is fragmented, i.e., scattered over many different statutes. In this sense, the most important regulatory provisions an operator of a CF-Platform might face in Switzerland shall be summarized in the following section.

#### a) Swiss Federal Act on Banks and Savings Banks

The Swiss Federal Act on Banks and Savings Banks ("**ABSB**") provides that any natural person;

- 1) mainly active in the financial sector intending to
- 2) either accept deposits from the public on a professional basis, or
- 3) recommend themselves for financing any number of persons or companies with public deposits or by refinancing themselves from five or more banks must obtain a license from FINMA (Art. 1 para. 2 and Art. 3 ABSB).

A person is considered to act on a professional basis if that person constantly accepts more than 20 deposits from the public (Art. 6, ordinance to the ABSB). A more detailed ordinance relating to the ABSB provides a list of exemptions for funds not qualifying as deposits, inter alia, (i) funds provided in consideration of a contract due to the transfer of property or the rendering of a service and (ii) funds transferred as a security (for more detail, see Art. 5, ordinance to the ABSB). Therefore, in order to avoid being required to obtain a banking license from FINMA, a CF-Platform should *refrain from collecting funds from investors on its own account and from keeping any accounts in the name of investors*. Whether what activity one is engaging in actually falls into these categories is a thorny issue which must be considered delicately.<sup>[22]</sup>

#### b) Swiss Federal Act on Collective Investment Schemes

The Swiss Federal Act on Collective Investment Schemes (“ACIS”) provides that all Persons responsible for the management of collective investment schemes must obtain an authorization from FINMA (Art. 13 ACIS). Collective investment schemes are defined as assets raised from several investors for the purpose of collective investment and which are pooled and collectively managed for the account of such investors (Art. 7 ACIS). An exemption from the authorization requirement under the ACIS applies if;

- 1) the funds are only invested in one operating company which is active in a manufacturing, trade or service business and generates its revenues and profits with such business or
- 2) if the investment decisions are primarily made by the investors and not by the management of the investment scheme (Art. 8, ordinance to the ACIS). In recognition of this reality, to avoid the requirement to obtain an authorization from FINMA, CF-Platforms should;

- 1) *introduce investors to operating project developing companies only and*
- 2) *refrain from any activities which could result in the platform pooling or managing funds* (in particular pooling in such a way that investments cannot be personalized anymore or subsequently granting these investments as loans to companies advertising on the platform).<sup>[23]</sup>

#### c) Swiss Federal Act on Stock Exchange and Securities Trading

The Swiss Federal Act on Stock Exchange and Securities Trading (“ASES”) applies to all persons who;

- 1) in their professional capacity buy and sell securities on the secondary market,
- 2) publicly offer securities on the primary market or
- 3) create derivatives and offers them to the public.

Any such persons qualify as security dealers and require an authorization from FINMA (Art. 10 ASES). Thus, to avoid regulation under the ASES, CF-Platforms should refrain from the following business activities:

- 1) *Trading of shares in companies presented on the platform in the name and on the account of investors,*
- 2) *maintaining accounts for the settlement of transactions for investors or holding any shares on behalf of investors in safe custody,*
- 3) *underwriting any kind of securities newly issued by companies presented on the platform on a firm basis or against commission and subsequently publicly offering such securities to investors.* So far, from what can be seen in Switzerland, CF Platforms will most probably not qualify as stock exchanges or exchange-like institutions since they only provide opportunities of direct investments into new (i.e., not existing) shares, thus, mostly only facilitate primary market transactions.<sup>[24]</sup>

#### d) Prospectus Requirements

If equity securities or bonds are publicly offered for subscription in the primary market, an issuing company always needs to issue a prospectus containing information with regard to the company and its business activities (Art. 652a and/or 1156 CO). CF-Platforms in Switzerland are usually not making any public offers for their own equity or debt securities and are therefore, usually, not subject to the Swiss prospectus requirements. Instead, the companies presented on the CF-Platform-Website (Developers) will have to comply with the prospectus requirements if they decide to issue equity securities or bonds as a reward for Backers. Still, one must bear in mind that

## “Operators of CF-Platforms should take adequate measures to limit their exposure to prospectus liability”

a CF-Platform will assume liabilities as a “facilitator” to a prospectus, if the prospectus of a Developer provided on the CF-Platform-Website contains incorrect, misleading or incomplete information (Art. 752 CO).[25] Accordingly, operators of CF-Platforms should take adequate measures to limit their exposure to prospectus liability, to the extent possible under Swiss law. Swiss law provides some limited options for private placings of equity securities or bonds (i.e. placements to a limited target audience where investors are addressed on a private and individual “handpicked” basis). However, there is a degree of uncertainty as to when and how a placing is to be considered private.[26] From what can be seen in the Swiss crowdfunding-landscape, companies presented on CF-Platforms (Developers) seldom address solely a private subscriber base. Therefore, private placings of securities or bonds seem rather unlikely to occur.

### e) Swiss Anti-Money Laundering Act

Under Swiss Anti-Money Laundering Act (“**AMLA**”), persons providing services as financial intermediaries must be affiliated to a recognized self-regulatory organization or obtain a license from FINMA for their professional business activities. Furthermore, financial intermediaries must comply with statutory provisions and procedures of the AMLA, in particular, verification duties regarding the identity of the customer and beneficial owner wiring funds, and duties to clarify and keep records and further organizational measures to be taken (see in particular Art. 3 et seq. AMLA). Financial intermediaries are in particular persons who accept or keep third party funds or assist in the investment or transfer of such funds (Art. 2 AMLA). [27] Whether a CF-Platform operator falls under the AMLA or not very much depends on the individual set-up of the platform. However, since CF-Platforms regularly receive monetary funds from Backers and forward them to Developers, they will often most likely qualify as financial intermediaries in the sense of the AMLA.[28] It is noteworthy that recently, FINMA has issued a fully revised anti-money-laundering ordinance which came into effect on January 1st, 2016. Although the qualification of a financial intermediary has not changed, the new ordinance sets forth *less strict due diligence requirements* for payment service providers if the payments transacted do not exceed certain thresholds (roughly summarized, payment transactions not

amounting to more than 1'000 Swiss Francs per transaction and 5'000 per paying contractual party during a year or CHF 25'000 per contractual party during a year if the payments are wired to merchants or providers/suppliers of goods with a user account of approved banks in Switzerland or equivalently approved banks abroad).[29]

### f) Concluding remark

As the previous elaborations have shown, Online-Crowdfunding faces multiple regulatory challenges in Switzerland which must be observed and considered delicately. Not only does this hold true for CF-Platforms as service providers, but also for Developers (e.g. musicians, artists, filmmakers) if they solicit financing over CF-Platforms from the public, e.g., by raising equity capital for the financing of a new music album or motion picture.[30] Section 5 of this essay provides a basic guideline of topics to consider under Swiss law.

### >> A view outside of Switzerland

Switzerland to date has not enacted any statute specifically addressing crowdfunding. By contrast, in the *United States*, the Jumpstart Our Business Startups Act (“**JOBS Act**”) was passed on April 5, 2012, to encourage funding of small businesses in the United States by easing several securities regulations.[31] Even though this act is a remarkable step, it does not appear to be a unitary or comprehensive act with regard to crowdfunding. One of the most significant provisions of the JOBS-Act provides an exemption from the requirement to register public offerings with the SEC for certain types of small offerings (up to one [1] million per year) and thereby relieve “emerging growth companies” from regulatory burdens.[32] Thus, the act primarily targets the raising of equity capital. Other regulatory aspects of crowdfunding (such as anti-money laundering aspects, debt financing regulation or internet-based financial service provider liability in general) are, however, not dealt with in a comprehensive manner. In addition, many side aspects of crowdfunding have been governed under a fragmented approach within the United States earlier. In particular, various individual states had enacted different intra-state crowdfunding exemptions to their existing “blue sky” laws in the past to permit intrastate crowdfunding. Meanwhile, the JOBS Act has been amended accordingly and securities raised by

crowdfunding are now exempted from “blue sky”-state registration requirements.[33] In the *European Union*, the European Commission is currently exploring the potential and the risks of this relatively new and growing form of finance, as well as the national legal frameworks applicable to it. In November 2015, the European Commission launched a study to gather and analyse data across the EU. So far, the EU has not launched directives or similar acts of legislation addressing crowdfunding on a unitary, supranational level. Thus, the European Union also maintains a fragmented approach in that every member country still applies its own national rules to crowdfunding.[34]

It is noteworthy that *France* has enacted two specific regulatory statutes applicable to crowdfunding, namely the “conseil en investissement participative” (“CIP”) and the “intermédiaire en financement participative” (“IFP”), with;

- 1) options to being registered as a CF-Platform and receiving a “national approval label” as well as
- 2) a raised threshold of 1 (one) million Euro for public equity offerings which leads to exemption from prospectus obligations if pre-defined minimal information is provided to investors.

Additional existing French statutes addressing alternative investment funds, payment services and anti-money laundering are also in force and operate similarly as in other European countries.[35] On the other hand, *Germany* seems to follow a similar regulatory approach as Switzerland (with fragmented statutes not specifically addressing crowdfunding and similar underlying considerations). Though, the German prospectus regulation provides for an exemption for security offerings which do not exceed 100'000 Euro within a time period of 12 months and legislative changes are expected to even increase this threshold in Germany.[36]

## >> Outlook

As can be seen, it proves almost impossible to provide a reliable and concise overview of all relevant European jurisdictions and their way of addressing crowdfunding. Their regulatory approaches vary and legislative adaptations are underway in

almost every country. Thus, whoever is interested in using crowdfunding as an international and/or Europe-wide financing tool addressing multiple Backers all over Europe should make sure to comply with multiple jurisdictional requirements and ideally consult local attorneys well versed in this area of law. This proves particularly important for cross-border financing undertakings for large movie productions. In contrast, the music sector still seems more driven by a local subscriber base until the artist manages a serious breakthrough in the international music market.

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- [1] Dirk Spacek is a Swiss attorney at law in Zurich. He is a specialist for Media, Information Technology and Intellectual Property Law. His practice also covers general corporate & commercial matters.
- [2] See JENNA WORTHAM, *A Few Dollars at a Time, Patrons Support Artists on the Web* (available under: [www.nytimes.com/2009/08/18/technology/success-of-crowdfunding-puts-pressure-on-entrepreneurs.html](http://www.nytimes.com/2009/08/18/technology/success-of-crowdfunding-puts-pressure-on-entrepreneurs.html)): "But for the creators of these projects, getting the money is sometimes the easy part. They then have to turn their dreams into reality, with a crowd keeping an eye on their progress.").
- [3] See DIRK SPACEK, *Online-Crowdfunding, upheaval for the entertainment industry and start-up companies?*, in: *sic!* (Swiss Journal for Intellectual Property Law), 5th issue, 2013, p. 278.
- [4] RASHID BAHAR/MICHAEL TRIPPEL, *Section Switzerland*, in: Oliver Gajda/Tanja Aschenbeck-Florange/Thomas Nagel (editors); *Review of Crowdfunding Regulation, Interpretations of existing regulation concerning crowdfunding in Europe, North America and Israel, 2014*, licensed under a Creative Commons under [www.europecrowdfunding.org](http://www.europecrowdfunding.org), p. 213.
- [5] See press release under <https://www.swisscom.ch/de/about/medien/press-releases/2014/09/20140901-MM-Crowdfunding.html?909894%40>.
- [6] See press release under <https://www.blkb.ch/die-blkb/medien/medienmitteilungen/2014/blkb-lanciert-crowdfunding-marktplatz>.
- [7] See BAHAR/TRIPPEL, *infra*, fn. 4, p. 213 et seq.
- [8] For further legal details on these implications, see SPACEK, *infra*, fn. 3, p. 280 et seq.
- [9] In this regard, see, ROLF H. WEBER, *Legal questions arising around search-engines*, Zurich 2003, p. 127.
- [10] In this regard, see e.g. the respective explanations on Kickstarter's website [www.kickstarter.com/help/faq#pdAmzCharAnyFees](http://www.kickstarter.com/help/faq#pdAmzCharAnyFees) or on Indiegogo's website [www.indiegogo.com/how-pricing-works-on-indiegogo](http://www.indiegogo.com/how-pricing-works-on-indiegogo) as well as on the Swiss Website [www.c-crowd.com/de/home/fragen-antworten](http://www.c-crowd.com/de/home/fragen-antworten).
- [11] See SPACEK, *infra*, fn. 3, p. 281.
- [12] This view is similarly upheld by PETER V. KUNZ, *Crowdfunding*, in: *Jusletter* of August 25, 2014, p. 8, Fn. 60.
- [13] In this regard, see e.g. the Website terms of use of Kickstarter, available under <https://www.kickstarter.com/terms-of-use?ref=footer>.
- [14] See the Swiss Federal Act on Patents for Inventions (available under <https://www.admin.ch/opc/en/classified-compilation/19540108/index.html>), the Swiss Federal Act on the protection of Trade Marks and Indications of Source (available under <https://www.admin.ch/opc/en/classified-compilation/19920213/index.html>), the Swiss Federal Act on Copyrights and Related rights (available under <https://www.admin.ch/opc/en/classified-compilation/19920251/index.html>), the Swiss Federal Act on the protection of topographies of semiconductors (available under <https://www.admin.ch/opc/de/classified-compilation/19920260/index.html>).
- [15] See ROLF H. WEBER, *Law and idea*, in: P. Tercier/M. Amstutz/A. Koller/J. Schmid/H. Stöckli (editors), *The work of Gauch, law, contract law and construction law, Festschrift for Peter Gauch*, Zurich 2004, p. 313 et seq.
- [16] See DIRK SPACEK, *Protection of TV-Formats*, Zurich 2005, p. 138 et seq.
- [17] See SPACEK, *infra*, fn. 3, p. 288.
- [18] See SPACEK, *infra*, fn. 3, p. 291.
- [19] In this regard, see Fact sheet: *Crowdfunding – FINMA*, available under <https://www.finma.ch/en/finma-public/faktenblätter/#Order=4> and study paper "risk capital in Switzerland", available under <http://www.seco.admin.ch/themen/05116/05118/05319/index.html?lang=de>.
- [20] See <http://www.tagesanzeiger.ch/schweiz/standard/Die-Fallstricke-des-CrowdfundingBooms/story/27666437>.
- [21] See BAHAR/TRIPPEL, *infra*, Fn. 4, p. 215.
- [22] See SPACEK, *infra*, fn. 3, 290; SECO-study paper "risk capital in Switzerland", available under <http://www.seco.admin.ch/themen/05116/05118/05319/index.html?lang=de>, p. 7.
- [23] See SECO-study paper, *infra*, fn. 21, p. 12; see also BAHAR/TRIPPEL, *infra*, fn. 4, p. 217 et seq.
- [24] See BAHAR/TRIPPEL, *infra*, fn. 4, p. 220.
- [25] See PATRICK SCHLEIFFER/DAMIAN FISCHER, *Prospectus-free placements*, in: Thomas U. Reutter/Thomas Werlen (editors), *Zurich/Basle/Geneva, capital markets transactions V*, p. 124 et seq.
- [26] See PETER V. KUNZ, *infra*, fn. 12, p. 12.
- [27] See SPACEK, *infra*, fn. 4, p. 288.
- [28] See press release and related documents of FINMA under <https://www.finma.ch/en/news/2015/02/mm-revision-gvv-20150211/>.
- [29] In this regard, see e.g. CHRIS ISIDORE, "An IPO like a Hawke", July 24, 2003, in *CNN Money Online*, available under <http://money.cnn.com/2003/07/09/news/companies/hawke/>. This essay reports on investors being offered a chance to invest in a new independent film starring Ethan Hawke for only 8.75 Dollars a share.
- [30] For more information in this regard, please review the legal statute available under <http://www.sec.gov/spotlight/jobs-act.shtml>.
- [31] See Section 302 ("Crowdfunding Exemption") of the JOBS Act and further provisions. See also frequently asked questions to the JOBS Act, available under <http://www.sec.gov/divisions/corpfin/guidance/cfjobsactfaq-title-i-general.htm>.
- [32] See press release of the U.S. Securities and Exchange Commission, available under <https://www.sec.gov/news/pressrelease/2015-249.html>.

- [33] The study is publicly available under [http://ec.europa.eu/finance/general-policy/crowdfunding/index\\_en.htm](http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm).
- [34] See CATHERINE OLIVE/EVE HUCHON, Section France, in: Oliver Gajda/Tanja Aschenbeck-Florange/Thomas Nagel (editors), *Review of Crowdfunding Regulation, Interpretations of existing regulation concerning crowdfunding in Europe, North America and Israel, 2014*, licensed under a Creative Commons under [www.europecrowdfunding.org](http://www.europecrowdfunding.org), p. 91 et seq.
- [35] See TANJA ASCHENBECK-FLORANGE/THOMAS NAGEL, Section Germany, in: Oliver Gajda/Tanja Aschenbeck-Florange/Thomas Nagel (editors), *Review of Crowdfunding Regulation, Interpretations of existing regulation concerning crowdfunding in Europe, North America and Israel, 2014*, licensed under a Creative Commons under [www.europecrowdfunding.org](http://www.europecrowdfunding.org), p. 103 et seq.