

# Raising Capital Through a Public Offering

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## CAPITAL MARKETS

# Traditional Financing vs. Capital Markets

Startups and SMEs often face problems with bank financing – collateral demands, rigid repayment structures, and limited flexibility. Capital markets offer a compelling alternative.



## Mutual Benefits

Flexible instruments like profit sharing and bullet loans attract growing companies while creating attractive returns for investors.



## Need for Regulation

Unregulated markets pose serious fraud risks to retail investors – a legal framework is essential to protect all parties.

LEGAL FRAMEWORK

# Defining a "Public Offering"

The public offer may trigger extensive distribution and documentation obligations. Two key EU regulations govern this space.

## Prospectus Regulation

Governs traditional securities. A public offer consists of a communication to the public in any form and by any means that contains sufficient information regarding the terms of the offer and the securities to be offered to enable an investor to decide whether to purchase or subscribe to those securities.

## MiCAR

Governs crypto-assets. The definition of a public offer under MiCAR is **virtually identical** to the definition in the Prospectus Regulation.

## ISSUER OBLIGATIONS

# Documentation Requirements

Fulfilling documentation obligations is the standard prerequisite for accessing a public capital market – and for ensuring investors can assess risks and terms.

**1**

## Prospectus

For **securities**, issuers must publish a prospectus approved by the competent authority, accompanied by specific distribution channel rules.

**2**

## Crypto Whitepaper

Under **MiCAR**, crypto-asset offerings require a published and notified whitepaper to ensure investor transparency.

## EXEMPTIONS

# Exemptions from Prospectus Requirements

Not every offering triggers full documentation obligations. Key exemptions allow companies to raise capital with significantly reduced regulatory burden.

## Qualified Investors Only

Offerings directed **exclusively** at qualified investors are fully exempt from the prospectus requirement.

## Fewer than 150 not Qualified Investors

Offerings to **fewer than 150 non-qualified investors** per EU member state are also exempt – mirrored in MiCAR for crypto-assets.

## Specific Exceptions

Both regulations contain further tailored exceptions for different offering types, providing additional flexibility.

STRATEGY

# Private Placements & SME Strategies

A **private placement** is an offering that is not public because a personal connection already exists with the investor – the key to unlocking capital without full documentation.

## Legal Basis

While not explicitly defined in the Prospectus Regulation, private placement is a well-recognized concept in legal literature – and strong evidence supports its application to crypto-assets under MiCAR.

## Advantage for SMEs

Clever structuring allows startups and SMEs to raise capital through securities *or* crypto-assets without the burden of extensive documentation requirements.

📌 **Key Takeaway:** A prior relationship between issuer and investor is the cornerstone of non-public status and a Private Placement.

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