
The operating licence for crowdfunding

Documents

[OTSUS Finantsinspektsiooni järelevalvepoliitika ühisrahastusteenuse osutamisele \(pdf, 0.37 MB\)](#)

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The operating licence for crowdfunding

Crowdfunding is an alternative means of financing for businesses in the start-up phase and small and medium-sized enterprises that usually depend on small investment. Crowdfunding is an exchange where the provider of crowdfunding services acts as a digital platform that is open to the public, without taking any risk itself, in order to bring together or help bring together potential investors and lenders with businesses needing finance.

Crowdfunding generally involves three types of participant:

1)

the project owner, who is applying for money and who submits the project needing financing;

2)

investors, who fund the project submitted;

3)

an intermediary organisation as provider of the crowdfunding service, who operates as the service provider to bring together the project owners and investors through an internet-based platform.

A distinction is made between loan-based and investment-based crowdfunding services.

A loan-based crowdfunding service means the intermediation of lending, which includes presenting and evaluating the crowdfunding offers for clients or assessing the credit risks of crowdfunded projects and the project owners.

An investment-based crowdfunding service means receiving and distributing client projects looking for crowdfunding in a single place, and offering freely transferable securities or accepted instruments on a public platform without fixed liabilities, allowing investors unrestricted access.

Under Directive (EU) 2020/1503 of the European Parliament and of the Council, the majority of the current crowdfunding providers in Estonia will have to start to apply to Finantsinspeksioon for an operating licence from 10 November 2021. More detailed requirements for the licence are set out in the directive.

The provider of crowdfunding services has to assess whether their activities are of the sort that require a licence or registration for offering securities to the public.

Applying for an operating licence for crowdfunding

A legal entity that plans to provide crowdfunding services must submit an application for a licence as a provider of crowdfunding services using the form in Annex VI of the ESMA RTS (the form has not yet been approved by the Commission).

https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf

The application for the licence must be submitted with the data and documents required in Article 12 (2) of Delegated Regulation (EU) 2020/1503 of the European Commission, which are described in detail in Annex VI of the ESMA RTS. These requirements are:

1)

the name of the provider of the crowdfunding services, including its official name or other business name used, the internet address of the website it manages, and its physical address;

2)

the legal form of the crowdfunding service provider;

3)

the statutes of the crowdfunding service provider;

4)

a business plan listing the types of crowdfunding services that the crowdfunding service provider plans to provide, and the crowdfunding platform that it plans to use, covering also where and how the crowdfunding supply will be marketed;

5)

the management procedures and internal control mechanisms of the crowdfunding service provider, including a description of its risk management and bookkeeping to show that it is in compliance with the requirements of the directive;

6)

a description of the control and protection systems, equipment and procedures used in the data processing system of the crowdfunding service provider;

7)

a description of the operating risks of the crowdfunding service provider;

8)

a description of the prudential safeguards of the crowdfunding service provider;

9)

evidence that the crowdfunding service provider applies prudential safeguards;

10)

a description of the business continuity plan of the crowdfunding service provider, which takes account of the nature, scale and complexity of the crowdfunding services that it intends to provide, and sets out measures and procedures to ensure that critical services for existing investments can continue to be provided if the crowdfunding service provider becomes insolvent, and ensure the proper management of contracts between the crowdfunding service provider and its clients;

11)

data on the person responsible for managing the crowdfunding service provider;

12)

evidence that the person noted in point 11 has an unimpeachable reputation and sufficient knowledge, skills and experience to provide crowdfunding services;

13)

a description of the internal rules of the crowdfunding service providers that prevent associated persons from participating as the owner of a crowdfunded project that could be offered by the crowdfunding service;

14)

a description of the procedure for transferring the activities of the crowdfunding service provider;

15)

a description of the procedure of the crowdfunding service provider for handling client complaints;

16)

confirmation of whether the crowdfunding service provider plans to provide payment services itself or through a third party under Directive (EU) 2015/2366 or do so as set out in Article 10 (5) of the Directive;

17)

a description of the procedures of the crowdfunding service provider for verifying the completeness, accuracy and clarity of the information contained in the key investment information document;

18)

a description of the procedure of the crowdfunding service provider for setting investment limits for inexperienced investors.

On top of this, the preparation of the materials needed for the application for an operating licence and subsequent activities must also consider the guidelines and memorandums that apply to crowdfunding.

The application must be submitted in Estonian.

If it is not possible to tell for certain from the documents and information submitted whether or not the applicant for an operating licence is sufficiently capable of providing crowdfunding services or whether it meets the legal requirements, or if it is necessary to check other details concerning the applicant, Finantsinspektsioon may request further information and documents.

The requirements in the directive are complemented by the Finantsinspektsioon recommendatory guidelines “Finantsinspektsioon’s supervisory policy for crowdfunding services”.

Duration of the proceedings

Finantsinspektsioon will assess within 25 working days of receiving the application whether the application is complete. If the application is not complete, Finantsinspektsioon will set a deadline by which the applicant must provide the missing information. The procedures are paused while deficiencies are remedied.

The decision of whether or not to grant the authorisation will be taken by Finantsinspektsioon within three months of receipt of the complete application.

Application fee

The fee for applying for an operating licence as a crowdfunding service provider is 1000 euros.

Applying for an operating licence to operate abroad

It is necessary to apply for an operating licence before providing cross-border crowdfunding services.

If a crowdfunding service provider that has an Estonian operating licence plans to provide crowdfunding services in countries other than Estonia, it must inform Finantsinspektsioon of this. The notification must contain the following information:

1)

the list of member states where the crowdfunding service provider plans to provide crowdfunding services;

2)

data on the people and the legal entities responsible for providing crowdfunding services in those member states;

3)

the date on which the crowdfunding service provider plans to start providing crowdfunding services;

4)

a list of other services that the crowdfunding service provider provides and that are not covered by this regulation.

The crowdfunding service provider may start to provide services in the member states listed in the notification from the day when the relevant authority in the country concerned has received notification from Finantsinspektsioon or at the latest within 15 calendar days of submitting an application to Finantsinspektsioon.

There is no application fee for notification of the provision of cross-border services.

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