The operating licence for crowdfunding

Documents

OTSUS Finantsinspektsiooni järelevalvepoliitika ühisrahastusteenuse osutamisele muutmiseks (pdf, 0.37 MB)

JUHEND Finantsinspektsiooni järelevalvepoliitika ühisrahastusteenuse osutamisele (pdf, 0.53 MB)

Supervision policy of the Financial Supervision Authority on the provision of crowdfunding services (pdf, 0.48 MB)

Ühisrahastuse infopäeva slaidid (pdf, 2.63 MB)

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 have to apply to Finantsinspektsioon for an operating licence 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 listed as an annex in the Commission Delegated Regulation (EU) 2022/2112.

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 the Commission Delegated Regulation (EU) 2022/2112. 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.

Provisions applicable to marketing communications of crowdfunding service providers

According to Article 28(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council (hereinafter the Regulation), Finantsinspektsioon as the competent authority within the meaning of the Regulation, shall publish and keep up-to-date on their websites those national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers. Finantsinspektsioon outlines the legislation that crowdfunding service providers should follow when marketing their services and products. We note that the following references to the content of the applicable legislation is not exhaustive and the service provider must always make sure itself that it follows the requirements that arise from the applicable legislation.

Advertising Act

When crowdfunding service provider markets crowdfunding services, the crowdfunding service provider must comply with the requirements set out in the Advertising Act. According to Section 29(2)

of the Advertising Act, advertising of financial services must include an invitation to examine the terms and conditions of the financial services and to consult an expert, as necessary. Besides, the crowdfunding service provider must comply with the basic requirements for advertising arising from the Section 3 of the Advertising Act: (1) Advertising shall, given ordinary attention, be clearly distinguishable from other information and its content, design and presentation shall ensure that it is recognised as advertising.; (2) Advertising shall contain, in a clearly distinguishable manner, the name of the person placing advertising, the Estonian or European Community trade mark thereof which is under registration or has been registered or the domain name thereof.

Consumer Protection Act

Section 13(1) of the Consumer Protection Act establishes that for the purposes of the Consumer Protection Act, commercial practices mean any act, omission, course of conduct or manner of presentation, commercial communication, including advertising, and marketing, by a trader, directly related to the advertising, offering, sale or supply of goods or services to consumers or the purchase of things from consumers.

Section 16(2) of the Consumer Protection Act establishes that a commercial practice is deemed to be misleading if it contains false information or if presentation of factually correct information deceives or is likely to deceive the average consumer and in both cases as a result of it the average consumer makes or is likely to make a transactional decision that the consumer would not have made otherwise.

Language Act

Section 16(1) of the Language Act establishes that signs, signposts, business type names and outdoor advertisements, including outdoor advertising, installed to a public place with the purpose of political campaigning, and the notices of a legal person shall be in Estonian. Section 16(2) establishes that the translation of the text into a foreign language may be added to public signs, signposts, business type name and outdoor advertisements; thereby the text in Estonian shall be in the forefront and shall not be less observable than the text in a foreign language.

Section 18(1) of the Language Act establishes that upon public performance and transmission of audio visual works, including programmes and advertisements the provider of the audio visual media service or a company shall ensure that a foreign language text shall be accompanied by an adequate translation into Estonian in form and content.

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