

FinanceEstonia **BEST PRACTICE FOR CROWDFUNDING**

FinanceEstonia and **the Law Firm Deloitte Legal Estonia** have created the Best Practice for the Crowdfunding industry (hereinafter **the Best Practice**) in order to provide the code of conduct to all the internet-based crowdfunding platforms in Estonia that have joined the Best Practice at hand. The compliance with the Best Practice does not exempt a crowdfunding platform provider from following the requirements provided by law.

The Best Practice operates based on the principle of „comply or explain“, which means that a crowdfunding platform provider shall notify the public on its website of whether the Best Practice principles are being complied with or not. In case a crowdfunding platform provider that has joined the Best Practice does not follow a principle provided for in the Best Practice, the platform provider shall explain on its website, which principles are not being followed and why.

1. Investor funds

In case a crowdfunding platform provider has received money from the investor with the purpose of making investments or issuing loans, or the crowdfunding platform has received funds from an investee for the purposes of making a distribution or repayment, the crowdfunding platform provider must keep these funds apart from the crowdfunding platform provider's own assets (for example, keep these funds on a special bank account, opened with a licensed credit institution, a licensed payment service provider or in another way that ensures the separation of the funds from the platform provider's own assets).

A crowdfunding platform provider is not allowed to make promises to the platform's users (hereinafter also referred to as **the user**) that the funds they handed over to the platform provider for the above stated purposes are separated from the platform provider's own assets in case of the platform provider's insolvency, if that does not correspond to legal reality or if there are practical doubts with regard to such separation.

If a user so wishes, the user has to be provided with an opportunity to get information on his investment objects, the size of the investments and the status of the investments process. In addition, when using prepayment based crowdfunding models, the investor must have an opportunity to get, upon his request, information regarding the total size of his prepayments, the net balance of the user's funds and the transactions made.

2. Data protection

The personal data collected through the crowdfunding platforms must be processed in accordance with all applicable legal acts. The platform provider is obligated to establish and make available the principles of data processing on his website. The platform provider is obligated to implement sufficient organizational and technological measures, in order to ensure the security of data.

3. Measures of money laundering prevention and the implementation of international sanctions

The platform provider shall independently evaluate, whether the Estonian Money Laundering and Terrorist Financing Prevention Act (hereinafter **MLTFPA**) is applicable to its activity. When applying the **MLTFPA** to its activities, the platform provider must comply with the obligations provided by law. In case the **MLTFPA** is not applicable to the platform provider's activity, the platform provider shall at least follow the requirements provided by the Best Practice.

The platform provider is obligated to ensure that the requirements provided by the International Sanctions Act applicable to it are being followed.

The platform provider:

- a) when establishing a business relationship with a new platform user (an investor and an investee) collects, to the extent reasonably relevant for the particular crowdfunding business model, at least the following data: the new user's personal data; information on the legal and natural persons related to the user; the bank account number, through which the funds are being raised and invested; the number of the personal identification document;
- b) insists that the users (investor and investee) provide the platform provider with accurate data. Should the platform provider discover that the data provided is incorrect or suspect that this might be the case, the platform provider shall demand that the user explained the situation and, if necessary, corrected the data. If the user refuses to correct the data upon the platform provider's demand, or if the explanations or corrections provided by the user do not convince the platform provider; or if the user refuses to provide his personal identification document or power of attorney upon the platform provider's demand, the platform provider shall refuse to conclude an agreement with such user or terminate the agreement with the user;
- c) conducts his activities with due diligence, paying attention to unusual situations or situations, which give rise to money laundering suspicions, and notifies the Financial Intelligence Unit of such suspicions.

4. The quality of information and communication

The crowdfunding platform provider:

- a) makes available to the public and users (investor and investee) only correct, clear and non-misleading information;
- b) makes sure that, on equal grounds, the users have equal access to the information published on the crowdfunding platform;
- c) to the extent reasonable, makes available on his website the description of the role of the crowdfunding platform and its provider in relations with other parties, of the investments, which are enabled through a crowdfunding platform and the process of making them, in a sufficiently clear, detailed and easily detected manner. Also, if relevant, the description on how the investors' funds and the records of the investments are being kept must be provided;
- d) establishes sufficient and uniform minimum requirements for the description of the investment objects, which are made available on his platform; and makes sure that the investees follow them. If the investee fails to meet the minimum requirements, the platform provider shall demand that the investee followed the requirements. In case the investee refuses to follow the minimum requirements, the platform provider shall not conclude the user agreement or terminate the already existing user agreement;
- e) ensures the comparability of the existing past and present investment objects by the investors or in their interests. The crowdfunding platform provider shall not delete or hide earlier investment objects or related campaigns from the website.

The crowdfunding platform provider shall clearly inform the investors, if he does not verify or ensure the correctness and completeness of the data provided by the investees or does not evaluate the creditworthiness of the investees or the likely return on the investments.

In case the platform provider verifies or guarantees the correctness and completeness of the data provided by the investees or provides services of economic, legal or other types of due diligence to these investees, the results of which are being made available through the platform to the persons that wish to invest in the investees' investment objects, the platform provider shall expressly notify the public of this through its website and make available the information on the respective analysis methods.

5. Risk warnings

The platform provider shall make available on its website the descriptions of general risks related to the investments made through the crowdfunding platform, as well as warnings about the investment-related risks, in a manner that such descriptions and warnings are easily found and clearly expressed.

The platform provider shall expressly call on the investors to evaluate the risks related to the particular investment and the particular investor, depending on his economic status, and to consult with a corresponding specialist before making an investment decision.

6. Consumer protection and advertising

In case services are offered to consumers via the crowdfunding platform, the platform provider shall comply with the obligations provided by relevant legal acts.

The crowdfunding platform provider:

- a) when advertising its services and the investment objects being offered through the crowdfunding platform, shall call on the users to thoroughly familiarize themselves with the terms and conditions of the crowdfunding platform's services and the information on the investment objects, as well as to consult with a specialist;
- b) the adverts published must reflect the crowdfunding platform provider's service in a correct and honest way and the platform provider must avoid misleading and dishonest ways of trading;
- c) does not publish unfounded promises regarding the returns of the investments; if the platform provider does not verify the accuracy of the promises made by the investee regarding the returns of investments in the investment objects offered, then the platform provider shall publish a clear notice on this on its website;
- d) if possible with regard to the business model of the crowdfunding platform, provides the investors a reasonable *cooling-off* period, which gives them the possibility to reconsider the decision within a reasonable period of time after having made the investment decision, and annul the decision made through the crowdfunding platform. In such case, the platform provider shall establish the procedure for such right to be exercised, including the time limits, in the crowdfunding platform's terms of use.

7. Avoiding conflicts of interests and the remuneration system

The platform provider:

- a) is obligated, in equal circumstances, to treat the users (investors and investees) or their clearly defined subgroups equally;
- b) is obligated to identify potential cases of conflict of interest, to make available on its website sufficient information on the identified cases of conflicts of interests without unreasonable delay, to take the necessary measures to prevent and solve conflicts of interests, and to establish and make available sufficient relevant internal procedures. Amongst others, the platform provider is obligated to make available on his website information regarding the persons related to the crowdfunding platform (shareholders of the crowdfunding platform provider, the management board members of the platform provider and other persons capable of influencing the activities or economic results of the crowdfunding platform provider, including the employees of the platform provider) and their relation to the investees on the crowdfunding platform and their investment objects; also, the platform provider is obligated to establish the principles of remuneration of the platform provider and its related persons, which avoid and prevent conflicts of interests.
- c) shall make available clear and non-misleading explanations of the remuneration system used by the platform provider, including the fees charged from the users (investors and investees), the amounts or calculation methods of these fees and other costs or their absence for the users.

In equal circumstances, the persons related to the crowdfunding platform provider may invest in the investees' investment objects on the platform on equal conditions with other investors.

8. Sustainability of the activities

The platform provider is obligated to develop recovery plans, where the minimum behavioral models in case of emergency (for example, communication plan, recovery priorities and other items that might help to eliminate the technical, legal or financial risks, which might substantially affect or suspend the activities of the platform) are being set.

The platform provider shall develop and make available an action plan in case of termination of the crowdfunding platform activities, irrespective of the reasons of terminating the activities. If relevant, the

action plan shall contain information about the valid agreements, the investees' assets transferred to the platform provider and the conditions of the continuance, transfer, administration and termination of the agreements.

If relevant due to the nature of the platform provider's activities, the platform provider shall conclude an agreement with a legal person, which, in case of termination of the platform provider's activities, shall have the right to access the crowdfunding platform's user-related data and accounts, with the objective of taking over the platform provider's rights of administration.

9. Reporting

Within two (2) calendar months following the end of each calendar year the crowdfunding platform provider is obligated to make available on its website an overview of the results of the platform provider's economic activities over the previous calendar year as well as information about the campaigns conducted during the same calendar year, the forecasts published regarding the investment objects and the comparison of such promises with actual results, including the promised and actual returns of investments.

In addition, within two (2) calendar months following the end of each calendar year the crowdfunding platform provider is obligated to provide FinanceEstonia or a third party nominated by FinanceEstonia with an overview of the results of the platform provider's economic activities over the previous calendar year, as well as the information about the campaigns conducted during the same calendar year, the forecasts published regarding the investment objects and the comparison of promises with actual results, including the promised and actual returns of investments, and also the compliance with the Best Practice, in a form provided by FinanceEstonia.

The data provided must contain at least the following information: the number of successfully ended campaigns¹, the sums of money raised during the campaigns, the percentage of the successfully ended campaigns from the whole number of the investment objects, the size of the average investment object, the size of the smallest and biggest successfully ended campaigns; the number of investors per investment project. The data must be provided according to the type of crowdfunding (investment based and loan based models must be distinguished).

FinanceEstonia has the right to transfer the information received to third parties, as well as to publish the information on a website.

FinanceEstonia does not guarantee nor is responsible for the correctness of the data submitted to FinanceEstonia by the crowdfunding platform providers nor the correctness of data, which the crowdfunding platform providers have made available to the public.

10. Dispute resolution

The crowdfunding platform provider shall make on its website available an annual overview regarding the complaints submitted against the platform provider, the measures taken to handle such complaints and the results of dispute resolution.

11. Joining the Best Practice and compliance with it

If the crowdfunding platform provider joins the Best Practice, FinanceEstonia issues the platform provider a respective label, which the platform provider may use on its website and in its marketing materials. FinanceEstonia checks whether the platform provider complies with the Best Practice and issues, each calendar year, a new label to the platform providers that have joined the Best Practice and have been compliant with the latter.

In case of non-compliance with the Best Practice, FinanceEstonia may ban the platform provider from using the label issued or refuse to issue a new label in the new calendar year, and may also publish a notice on

¹ The successfully ended campaign for the purposes of the Best Practice is the campaign during which the minimum sum of the money to be raised, as set by the investees, was achieved.

the platform provider's non-compliance with the Best Practice and its consequences. In case the platform provider is banned from using the label, the platform provider shall not have the right to any kind of compensation.

The management board of FinanceEstonia has the right to change the conditions of the Best Practice, giving a respective notice no later than a month before making the amendments. The management board of FinanceEstonia has the right to establish a reasonable fee, in order to compensate for the administrative costs borne to check compliance with the requirements of the Best Practice. In such case, FinanceEstonia shall give a respective notice no later than a month in advance. No fee for the labels already issued and the administrative costs already borne to check compliance with the Best Practice will be established retroactively and establishing a fee may only take place prospectively, in order to perform the control procedures of compliance with the Best Practice for the new labels to be issued.

Questions:

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FinanceEstonia and Law Firm Deloitte Legal do not guarantee nor are responsible for the correctness of the data submitted to FinanceEstonia by the crowdfunding platform providers nor the correctness of data, which the crowdfunding platform providers have made available to the public.