

ALTERNATIVE FINANCIAL SERVICES ASSOCIATION OF LATVIA

# **Guidelines for the Crowdfunding Industry in Latvia**

2020

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## 1. INTRODUCTION

- 1.1. The guidelines for the crowdfunding industry in Latvia (the *Guidelines*) approved by the Supervisory Board of society “Latvijas Alternatīvo finanšu pakalpojumu asociācija” (in Latvian: Alternative Financial Services Association of Latvia) (the *Association*) is a compilation of basic principles that have been developed by the Association as recommendations to the members – crowdfunding services providers. The Guidelines comprise minimum operational standards in a form of recommendations; however, every member of the Association is free to opt for introducing and following even higher operational standards in their activities. Application of the Guidelines shall not release a member of the Association from the obligation to follow the requirements set out by law.
- 1.2. **The Guidelines are recommendations to the members of the Association that do not impose any kind of duties or commitments on the members of the Association, save for if a member of the Association has decided to introduce them in its operations.** The Guidelines shall not be deemed to be a good practice code; therefore, a member of the Association may freely introduce the Guidelines in its operations or cease application of the Guidelines at any time. If a member of the Association has not introduced the Guidelines in its operations, such member of the Association is prohibited from referring to the Guidelines. A member of the Association shall promptly notify the Association about its decision to introduce the Guidelines in its operations or to cease the application of the Guidelines.
- 1.3. The objective of the Guidelines is to create a reliable, responsible and sustainable industry of crowdfunding in Latvia and provide users of crowdfunding platforms (the *Platforms*) with additional protection and foreseeable conditions of collaboration.
- 1.4. Upon introducing the Guidelines, a member of the Association undertakes to follow the Guidelines in its operations according to the comply-or-explain principle. Pursuant to the said principle, if any of the recommendations contained in the Guidelines is not introduced, the member of the Association may provide a substantiation as to why and how it does not apply to operations of the particular member of the Association.
- 1.5. The Guidelines in their latest wording are available on the website of the Association. The Guidelines shall come into effect as of the time of approval thereof.
- 1.6. Members of the Association shall ensure that the Guidelines are known to their employees, as well as to have them freely available to users of the Platforms. In order to confirm conformity of their operations to the Guidelines the members of the Association shall insert the logo of the Association and links to the website of the Association and the Guidelines in clearly visible areas of their Platforms. Members of the Association shall procure that every user of the Platform has these Guidelines available free of charge in all foreign languages in which the member of the Association usually disseminates information so that foreign users of the Platform would not be discriminated in any way, however, subject to the Guidelines being available at least in Latvian and in English.

## 2. PROTECTION OF FUNDS OF THE USERS OF THE PLATFORM

- 2.1. If a member of the Association accepts and holds funds of users of the Platform (inter alia, by holding such funds on an account opened in the name of the member of the Association in a credit institution or a payment institution), the member of the Association shall develop and maintain an effective mechanism for protection of the funds of the users of the Platform that shall ensure that the funds of the users of the Platform are not considered a property of the member of the Association and claims of creditors of the member of the Association and other kinds of limitations may not be directed at them. The member of the Association shall record the funds or other property (such as claims) of the users of the Platform off its own balance sheet.
- 2.2. In order to ensure acceptance and holding of the funds of users of the Platform, members of the Association shall cooperate only with such licensed payment service providers (credit institutions or payment institutions), which have immaculate reputation (namely, there is no information at disposal of the member of the Association about such activities of the credit institution or payment institution

that, in the opinion of the member of the Association, might bear evidence of dishonest or punishable activities of the credit institution or the payment institution and that might jeopardize safety of the funds of the users of the Platform).

- 2.3. A member of the Association shall provide a user of the Platform with sufficient information about the mechanism for protection of the funds and other property of users of the Platform implemented by the member of the Association properly and in line with professional care. The member of the Association does not provide users of the Platform with representations or guaranties regarding protection of the funds or other property of the users of the Platform which do not conform to the protection mechanism implemented by the member of the Association or applicable laws, or which may mislead the user of the Platform regarding protection of its funds or other property.
- 2.4. A member of the Association other than a financial institution shall notify, duly and in line with professional care, users of the Platform that the users of the Platform are not protected by any of the protection schemes available in the country, which are available to customers of financial institutions (such as a deposit guarantee scheme in the event of deposits in credit institution or an investment protection scheme in the event of receiving investment services).

### **3. GOOD CORPORATE GOVERNANCE**

- 3.1. For the purpose of duly managing risks and enhancing business ethics in the crowdfunding industry, a member of the Association shall develop and maintain an effective corporate governance system and introduce management measures that would provide for an effective and cautious management.
- 3.2. A member of the Association shall ensure that its management board and supervisory board are comprised of only such persons who possess high professionalism and high principles of morality. The body of the management board and the supervisory board approved by the member of the Association shall be such as to be able to procure a critical and independent approach to evaluation and making of decisions. The structure of the supervisory board has to be transparent, clearly establishing duties of the supervisory board and liability of members of the supervisory board.
- 3.3. A member of the Association shall post the following information about each member of the management board and the supervisory board on the Platform: first name, last name, year of birth, education acquired, a description of the professional experience of the last three (3) years.
- 3.4. Upon developing and maintaining the corporate governance system, the member of the Association may follow the recommendations of the European Union and OECD (Organization for Economic Co-Operation and Development) for corporate governance of a company.

### **4. AVAILABILITY OF INFORMATION AND COMMUNICATION TO CUSTOMERS**

- 4.1. Information disclosed by a member of the Association shall be verified, accurate, unambiguous and prepared according to high standards of quality.
- 4.2. A member of the Association shall provide all users of the Platform with equal and convenient access to key information related to the member of the Association, including information about the financial status, structure and corporate governance of the member of the Association, as well as the role of the Platform in relations with other persons.
- 4.3. Information disclosed by a member of the Association shall provide an insight in economic activity and financial performance of the member of the Association. The information posted on the Platform of the member of the Association shall be up-to-date and such that would allow users of the Platform to assess operation of the Platform, provide understanding of the object of investment, as well as would allow making reasoned decisions with regard to the investments made by them.
- 4.4. A member of the Association shall establish minimum requirements for that information which is to be disclosed to the users of the Platform regarding the object of investment and shall procure compliance with such requirements. The member of the Association shall procure equal and convenient access to the key information related to the object of investment to all users of the Platform, including the

information about investments and the procedure for making thereof, fees of the Platform payable by users of the Platform, methods for calculation thereof and other payments, transactions concluded by the users of the Platform, accounting of the investments made by the users of the Platform and their funds.

- 4.5. A member of the Association shall provide information in a clear and easily comprehensive manner disclosing both positive and negative information associated with the member of the Association, thus providing users of the Platform with complete and holistic information about the Platform and the member of the Association, which would allow users of the Platform to evaluate all information before making a decision. The member of the Association shall procure that historic information about an object of investment is also available on the Platform.
- 4.6. Taking into account that third-party information about an object of investment is also posted on the Platform, based on which the users of the Platform take a decision on making investments, the member of the Association shall clearly and unambiguously communicate to the users of the Platform in an easily accessible manner whether the member of the Association has verified and guarantees correctness and completeness of such information.
- 4.7. A member of the Association shall take care that the information about modifications in operation of the Platform would be understandable to its users and available in a timely manner.
- 4.8. A member of the Association shall procure timely preparation and disclosure of financial statements and audited annual reports of the member of the Association in line with the set requirements.
- 4.9. On the Platform a member of the Association shall clearly and unequivocally provide, in a manner easily accessible to users of the Platform, a description of general risks associated with investments made on the Platform. The member of the Association shall warn users of the Platform that investments on the Platform are associated with risks and they are not covered by guarantees of either deposit compensation scheme or investment compensation scheme, as well as shall invite users of the Platform to assess the above risks taking into consideration the financial status and knowledge of each user of the Platform in the investment industry, and consult relevant experts before making investments.
- 4.10. Information on the Platform shall be reflected in all foreign languages in which the member of the Association usually spreads information so that foreign users of the Platform would not be discriminated in any way subject, however, to the requirement that the information shall be disclosed in the Latvian and the English languages at least.
- 4.11. The information posted on the Platform shall be updated on regular basis and updates regarding the member of the Association and its activities shall be posted in a timely manner. The Association recommends avoiding situations where outdated information can be found on the Platform, which may mislead its users (save for the historic information about the object of investment and investments made there).

## **5. ADVERTISING**

- 5.1. Upon launching advertising campaigns, a member of the Association shall procure that such campaigns meet the requirements of the laws governing advertising of crowdfunding, commercial practices and information society and good practices thereof ensuring, among other, that its commercial practices are congruent with the professional care, are not misleading or aggressive.
- 5.2. A member of the Association shall develop an advertising campaign in a responsible manner to avoid encouraging current and potential users of the Platform to use services that are not suitable for them and expose them to excessively high financial risks.
- 5.3. Upon advertising the services and the object of investment offered on the Platform, a member of the Association shall invite users of the Platform to read terms of use of the Platform and information about the object of investment, as well as seek advice of an expert before making investments.

- 5.4. The Association recommends avoiding inclusion of unreasonable promises about the return on investments in the advertising. However, a member of the Association may refer to the historic return on investments warning that the historic return does not guarantee the same level of return in future.
- 5.5. Comparative advertising of members of the Association shall at all times be developed in a manner not injurious to other stakeholders of the industry.
- 5.6. Advertising campaigns where the current or potential users of the Platform are approached individually (for example, by sending a commercial communication to users of the Platform in a form of an email message or SMS, etc.), shall be used by the member of the Association in considerate and non-intrusive manner providing that users of the Platform are not overly disturbed and always referring to a free option to unsubscribe from further receipt of such commercial communications in a manner convenient and simple for the users of the Platform.

## **6. ETHICS AND REPUTATION**

- 6.1. A member of the Association shall act honestly, fairly and professionally in line with the effective laws and regulations, ethical standards and in the best interests of users of the Platform. The member of the Association shall also comply with decisions, instructions and guidelines of the authorities supervising the crowdfunding industry, such as the Consumer Rights Protection Centre and the Data State Inspectorate.
- 6.2. A member of the Association is aware that, upon taking any actions in the course of its business, its actions affect the reputation of the Association and the entire industry as well; therefore, the Association invites to refrain from any activities that might jeopardize the overall reputation of the crowdfunding industry or its stakeholders.
- 6.3. Before commencing operations, a member of the Association shall carefully assess reputation of business partners.
- 6.4. Members of the Association shall provide for relevant training of employees so that their employees would be able to procure, upon performing their official duties, compliance with the present Guidelines.

## **7. CONFLICTS OF INTEREST**

- 7.1. A member of the Association shall act as an impartial mediator between users of the Platform. The member of the Association shall maintain an effective policy for the prevention of a conflict of interest where specific requirements and restrictions are established for use of the Platform by members of the management board and the supervisory board, employees of the member of the Association and any person who has a close association with the member of the Association within the meaning of Regulation 575/2013. The member of the Association shall procure that its internal documents contain definition of the concept "conflict of interest" and provisions for prevention thereof.
- 7.2. A member of the Association shall implement all relevant measures in order to prevent, detect and manage conflicts of interest between the member of the Association, shareholders, management board, supervisory board, and employees, or other persons with whom the member of the Association has a close association within the meaning of Regulation 575/2013.
- 7.3. Each member of the management board and the supervisory board of the member of the Association shall avoid any conflicts of interest in their activities and shall be as independent of external influence as possible, striving to bear responsibility for decisions made and following generally accepted ethical principles upon making any decisions relating to the operations of the member of the Association. Upon making decisions, a member of the management board and the supervisory board shall be guided by the best interests of the member of the Association and shall not use offers of cooperation made to the member of the Association for the personal gain.
- 7.4. A member of the Association shall procure that users of the Platform are treated equally in similar circumstances on the Platform disallowing any kind of discrimination.

- 7.5. A member of the Association shall publish information on the Platform in a manner conveniently available to its users about the persons who are associated with the member of the Association (its shareholders, members of the management board and the supervisory board, and other persons who may affect operational or financial performance of the member of the Association, including employees) and their association with the object of investment offered on the Platform.
- 7.6. In order to procure that potential users of the Platform are offered possibilities of investments in various objects of investment in a neutral manner, the Association invites not to accept pecuniary or nonpecuniary remuneration or other kinds of benefits for directing a user of the Platform towards a specific object of investment which is offered on the Platform.
- 7.7. The Association advises a member of the Association who is an operator of the Platform and its shareholder whose shareholding in the capital of the member of the Association is equal to or exceeds 20% (twenty per cent), or a person who has a direct or indirect control over it, not to make investments on the Platform. Other persons associated with the member of the Association shall have a right to make investments on the Platform on arm's length basis just like any non-associated user of the Platform.
- 7.8. A member of the Association shall develop such principles of the Platform and remuneration of the persons associated with it that would prevent a conflict of interest.

## **8. SUSTAINABILITY OF THE PLATFORM / PROCURING CONTINUATION OF OPERATION THEREOF**

- 8.1. A member of the Association shall develop and implement an action plan for effective management of technical, legal, operational, compliance or financial risks.
- 8.2. A member of the Association shall develop and implement an action plan for provision of sustainability of the Platform in case of suspension or termination of operation of the Platform. The member of the Association is under an obligation to implement measures in order to procure that in case of termination of operation of the Platform access to data regarding users of the Platform and investments made and transactions closed by them and access to the virtual accounts is possible.

## **9. DATA PROTECTION**

- 9.1. A member of the Association shall procure honest personal data processing in line with the applicable law and best practices of the crowdfunding industry. A member of the Association shall post its privacy policy, cookies policy and other documents and forms related to personal data processing on the Platform in order to duly inform users of the Platform about their rights in relation to personal data processing.
- 9.2. A member of the Association shall procure the aggregate of technical, organizational and legal measures for adequate protection of the personal data of the users of the Platform.
- 9.3. A member of the Association shall procure nondisclosure of the personal data of users of the Platform, save for the cases prescribed by laws and consents of the users of the Platform.

## **10. AML/CFT/CFP / SANCTIONS**

- 10.1. Crowdfunding services may be exposed to the risks of money laundering and terrorism and proliferation financing; therefore, a member of the Association shall assess compliance of its operations with the laws governing the combating of money laundering and terrorism and proliferation financing and, if necessary, develop and implement relevant internal control systems, inter alia, by appointing a responsible person who has required knowledge in the area of combating money laundering and terrorism and proliferation financing and sanction management, as well as a responsible member of the management board.
- 10.2. In its operations, a member of the Association shall implement the principle "known your customer" (KYC), whereunder it shall perform identification, customer due diligence (CDD) of the users of the

Platform, monitoring of business relationship, and retaining of the documents and information obtained in the course of this process.

- 10.3. Members of the Association shall proactively support the combating of money laundering and terrorism and proliferation financing and circumvention of sanctions, or attempt thereof, inter alia, by refraining from suspicious transactions and reporting to the competent authorities thereof.
- 10.4. In its operations a member of the Association shall comply with the requirements of the Act on the International and National Sanctions of the Republic of Latvia.
- 10.5. The Platform shall cooperate only with such payment service providers who are licensed in the European Union or who are subject to the requirements of laws and regulations governing the combating of the money laundering and terrorism and proliferation financing that are equivalent to the requirements of the European Union law.

## **11. REVIEW OF COMPLAINTS**

- 11.1. A member of the Association shall develop and maintain an effective and transparent procedure for fair and prompt review of complaints from users of the Platform ensuring that it contains the following minimum requirements for reviewing of complaints:
  - 11.1.1. users of the Platform shall have a possibility to submit complaints to the member of the Association on the Platform free of charge;
  - 11.1.2. complaints shall be reviewed, and the first answer shall be given within at least thirty (30) days as of the time of receipt of the complaint, unless a shorter deadline is established by law;
  - 11.1.3. if reviewing of a complaint reasonably requires a longer period than specified in Clause 11.1.2 the member of the Association shall notify the user of the Platform thereof indicating the reason and deadline for provision of the answer.
- 11.2. A member of the Association shall procure that all employees who are directly engaged in servicing users of the Platform are informed about the procedure of the member of the Association for reviewing of complaints and shall assist users of the Platform by providing information regarding the procedure for submission and reviewing of complaints.
- 11.3. Information about the procedure for reviewing of complaints is freely available on the Platform.
- 11.4. A member of the Association shall keep records of all complaints received and steps taken. The member of the Association shall post on the Platform an annual account about complaints submitted to the member of the Association, steps taken and results of the reviewing of such complaints.

## **12. DISCLOSING OF THE PERFORMANCE**

- 12.1. On annual basis, within three (3) months, a member of the Association shall submit at least the following information to the Association regarding performance of the Platform in the previous year:
  - 12.1.1. number of users of the Platform;
  - 12.1.2. amount of funds invested through the Platform;
  - 12.1.3. number of investment projects realized on the Platform;
  - 12.1.4. number of failed investment projects realized on the Platform<sup>1</sup> and the amount of funds not returned to users of the Platform;
  - 12.1.5. number of complaints about operation of the Platform submitted.

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<sup>1</sup> Such investment projects which have resulted in a default and investment funds are not returned to users of the Platform for more than two (2) months.



12.2. The Association shall have a right to disclose the received information to the general public, inter alia, on its website or transfer such information to third parties.

### **13. CONTRIBUTION TO DEVELOPMENT OF THE GENERAL PUBLIC / FACILITATING FINANCIAL LITERACY**

13.1. A member of the Association shall evaluate impact of its operations on the general public and the economy in general on regular basis, as well as develop services with an aim to improve the financial services available to the general public and the overall financial system making the options of safe investments more readily available to the wider audience.

13.2. A member of the Association shall implement measures aimed at educating users of the Platform and the general public in order to facilitate understanding of the public about making investments and other financial issues. The member of the Association shall take care that users of the Platform understand the essence of the services available on the Platform and make responsible and weighed investments thus avoiding disproportionately high risks.

### **14. ENVIRONMENTAL PROTECTION**

14.1. In their operations members of the Association shall implement environmentally friendly measures and invite both users of the Platform and business partners to approach environmental issues in a responsible manner.

14.2. Members of the Association support environmentally friendly technologies and processes, as well as revise, on regular basis, and implement measures that might reduce the footprint of the member of the Association on the environment.

### **15. RIGHTS OF THE ASSOCIATION**

15.1. The Association is entitled to prohibit a member of the Association from referring to the Guidelines and compliance therewith, if the Association establishes that the member of the Association has referred to the Guidelines unjustifiably, as well as to publish relevant notices on the website of the Association.

15.2. The Association is entitled to make amendments to the Guidelines by giving a timely prior notification to the members of the Association thereof.