

Translation from Finnish**Legally binding only in Finnish and Swedish****Ministry of Finance, Finland****Crowdfunding Act***(734/2016; amendments up to 648/2018 included)***Chapter 1****General provisions****Section 1 (1072/2017)****Scope of application**

This Act lays down provisions on acquiring, offering and professionally mediating loan-based and investment-based crowdfunding, which both seek a financial return, for the purpose of financing business activity.

This Act's provisions on crowdfunding intermediaries, with the exception of sections 3–8, section 10, subsection 7, section 14, subsection 1, paragraph 1 and sections 15 and 17, also apply to licensed crowdfunding intermediaries.

Notwithstanding the provisions of subsection 2 above, section 9, subsection 3, section 10, subsections 1, 5 and 6 and section 15 of this Act apply to licensed crowdfunding intermediaries in mediating loan-based and investment-based crowdfunding using means other than financial instruments.

The provisions of this Act do not apply to loan-based crowdfunding in cases where the borrower is a consumer.

Provisions on money collection are laid down in the Money Collection Act (255/2006).

Where securities referred to in the Securities Markets Act are offered and mediated in loan-based or investment-based crowdfunding, provisions on the disclosure duty of the crowdfunding recipient are also laid down in the Securities Markets Act (746/2012).

Provisions on money collection are laid down in the Money Collection Act (255/2006).

Provisions on providing investment services using financial instruments are laid down in the Act on Investment Services (747/2012).

Provisions on trading in financial instruments are laid down in the Act on Trading in Financial Instruments (1070/2017).

Provisions on payment services are laid down in the Payment Services Act (290/2010) and in the Act on Payment Institutions (297/2010).

Section 2

Definitions

In this Act:

- 1) *loan-based crowdfunding* means the acquisition, offering or brokering of a loan for a financial return using means other than a financial instrument, where a debt relationship is created between the crowdfunding recipient and the customer of the crowdfunding intermediary;
- 2) *investment-based crowdfunding* means an equity or debt investment for the purpose of acquiring, offering or mediating, in respect of the crowdfunding recipient, a share of ownership or of debt, or other stake based on a financial return, specified in a subscription agreement or investment agreement concerning a financial instrument or concerning securities other than those referred to in the Securities Markets Act, or in a comparable agreement;
- 3) *registered crowdfunding intermediary* means an economic operator that is not a credit institution, payment institution, investment firm or central securities depository, or a person referred to in chapter 1, section 3, subsection 1, paragraph 1 of the Act on Investment Services, or an alternative investment fund manager, and that professionally mediates loan-based or investment-based crowdfunding using means other than financial instruments;
- 4) *licensed crowdfunding intermediary* means an investment firm, credit institution, payment institution, central securities depository or alternative investment fund manager, or a person referred to in chapter 1, section 3, subsection 1, paragraph 1 of the Act on Investment Services;
- 5) *crowdfunding recipient* means an unlisted company or other corporate entity or foundation that acquires funds through crowdfunding;
- 6) *securities* means securities referred to in chapter 2, section 1 of the Securities Markets Act;

- 7) *financial instrument* means a financial instrument referred to in chapter 1, section 14 of the Act on Investment Services ;
- 8) *credit institution* means a credit institution and an EEA-credit institution referred to in chapter 1, section 7 of the Act on Credit Institutions (610/2014);
- 9) *payment institution* means a payment institution referred to in section 5, paragraph 2 of the Act on Payment Institutions or a foreign payment institution referred to in section 2, paragraph 1 of the Act on the Activities of Foreign Payment Institutions in Finland (298/2010);
- 10) *fund management company* means a fund management company referred to in section 2, subsection 1, paragraph 3 of the Act on Common Funds (48/1999) or a foreign EEA fund management company referred to in section 2, subsection 1, paragraph 10b of the same act;
- 11) *investment firm* means an investment firm referred to in chapter 1, section 13, subsection 1, paragraph 1 of the Act on Investment Services or a foreign investment firm referred to in chapter 1, section 9, subsection 1, paragraph 7 of the same act;
- 12) *alternative investment fund manager* means an alternative investment fund manager referred to in chapter 2, section 2, subsection 1 of the Act on Alternative Investment Fund Managers (162/2014) or an EEA alternative investment fund manager referred to in chapter 2, section 2, subsection 2 of the same act.

Chapter 2

Right to mediate crowdfunding

Section 3

Obligation to register

A party other than a licensed crowdfunding intermediary may mediate crowdfunding using means other than financial instruments if the party is registered in accordance with this chapter in the register of crowdfunding intermediaries maintained by the Financial Supervisory Authority. (1072/2017).

The obligation to register does not apply, however, to economic operators located in another state of the European Economic Area (*EEA state*) that temporarily mediate crowdfunding in Finland.

Section 4

Registration notice

A party intending to mediate crowdfunding must include the following in the registration notice:

- 1) the information referred to in section 5, subsection 1, paragraphs 1 and 2;
- 2) details of the persons referred to in section 7, subsection 2 whose reliability and familiarity with the operation of financial markets will be assessed;
- 3) details of the education and work experience of the persons referred to in section 7.

If so requested by the Financial Supervisory Authority, the notice provider must also submit other information that is needed for assessing whether the requirements for registration have been met.

Section 5

Information entered in the register and notification of changes

The following shall be entered in the register of crowdfunding intermediaries:

- 1) the economic operator's full name, personal identity number (or in the absence of this the date of birth), business name, auxiliary business name, business identity code (or other corresponding identifier), and the visiting address of the places of business at which the crowdfunding is to be mediated;
- 2) the full name and personal identity number (or in the absence of this the date of birth) of each person whose reliability and familiarity with the operation of financial markets has been ascertained during processing of the registration notice;
- 3) the registration identifier provided by the Financial Supervisory Authority and the date of registration;
- 4) the reason for and date of deregistration;
- 5) public warnings, administrative fines and penalty payments imposed on the notice provider, and such prohibitions as are reinforced by a notice of a conditional fine.

The crowdfunding intermediary must notify the Financial Supervisory Authority without delay about any changes to the information entered in the register or about ceasing its activities.

Section 6

Requirements for registration

The Financial Supervisory Authority must register the notice provider as a crowdfunding intermediary if:

- 1) the notice provider has the right to engage in business in Finland;
- 2) the notice provider is not bankrupt and, if a natural person, is an adult and his or her competency is not restricted;
- 3) the notice provider is not undergoing corporate restructuring procedures or undergoing debt adjustment for private individuals;
- 4) the notice provider is reliable;
- 5) the notice provider is familiar with the operation of financial markets to the extent that is necessary in view of the nature and scope of the crowdfunding mediation;
- 6) the other registration requirements laid down in this section are met.

A further registration requirement is that the notice provider must have at least EUR 50,000 in equity or, taking due account of the nature and scope of the notice provider's activities, a professional liability insurance policy, bank guarantee or other corresponding collateral which the Financial Supervisory Authority deems to be sufficient. The insurer or other collateral provider must be domiciled in an EEA state, unless an exception to this is granted by the Financial Supervisory Authority upon application. The insurance policy must also meet the following terms:

- 1) the insurance shall be valid for compensation of losses for which the crowdfunding intermediary is responsible under this Act;
- 2) the sum insured shall be a minimum of EUR 1,000,000 per loss and a total of EUR 1,500,000 for all losses in a year;
- 3) if the insurance policy incorporates a deductible, the insurer shall pay the insurance compensation to the party suffering the loss without subtracting the deductible;
- 4) the insurance shall compensate a loss that arises as a result of an act or omission that occurred during the period of insurance and for which a written claim for compensation is presented to the

notice provider or the insurer during the validity of the insurance policy or within three years of the expiry of the policy.

If the crowdfunding intermediary intends to receive customer assets, a further registration requirement is that the intermediary is able to store and process customer assets in the manner required by section 10.

The crowdfunding intermediary must submit to the Financial Supervisory Authority, for its information, the rules, terms of agreement or other corresponding documents that indicate how the crowdfunding mediation is to take place and the requirements, rights and obligations that will apply to crowdfunding recipients and other customers.

The Financial Supervisory Authority may refuse registration if it is evident, in view of the circumstances, that the notice provider intends to act as the agent of another party.

Section 7

Reliability and familiarity with the operation of financial markets

The notice provider shall not be considered reliable in the manner required under section 6, subsection 1, paragraph 4 if he or she, by a judgment that has gained legal force, has been sentenced to a term of imprisonment during the five years preceding the assessment, or sentenced, during the three years preceding the assessment, to pay a fine for an offence that can be considered to demonstrate that he or she is evidently unsuitable to mediate crowdfunding, act as the owner of a crowdfunding intermediary or act as a member or deputy member of its board of directors, as its managing director or as its deputy managing director or in another role in its senior management, or if he or she has otherwise, in previous activities, proved to be evidently unsuitable to act in duties of the type mentioned.

If the notice provider is a legal person, the requirement for reliability applies to the managing director and his or her deputy, members and deputy members of the board of directors, members and deputy members of a supervisory board and any comparable body, active partners, other members of senior management and anyone directly or indirectly holding at least one tenth of the shares or of the votes conferred by shares in the case of a limited liability company, or with similar ownership or control if the entity is other than a limited liability company.

The requirement for familiarity with the operations of financial markets applies to the board of directors as a whole. The board of directors and also the managing director and other members of the operational management must be generally familiar with financial markets and the key risks associated with them to the extent that is necessary in view of the nature and scope of the activities. The operational management includes the notice provider's managing director and deputy managing director, members and deputy members of the board of directors, members and deputy members of a supervisory board and any comparable body, active partners and other members of senior management.

If the notice provider also engages in other business activities than crowdfunding mediation, the requirement shall only apply to those who are actually responsible for the crowdfunding mediation.

Section 8

Deregistration

The Financial Supervisory Authority must deregister a crowdfunding intermediary if:

- 1) the crowdfunding intermediary has ceased its activities;
- 2) the registration requirements laid down in section 6, subsection 1, paragraph 1, 2) and 4 are no longer met;
- 3) the crowdfunding intermediary acts as the agent of another party;
- 4) the registration requirement laid down in section 6, subsection 1, paragraph 5 or section 6, subsection 2 is no longer met and the crowdfunding intermediary does not fulfil the requirement within the time set in a request issued by the Financial Supervisory Authority; or
- 5) serious or repeated neglect is evident in the activities of the crowdfunding intermediary or its senior management.

If the economic operator has been deregistered, it shall no longer be permitted to engage in crowdfunding mediation.

The Financial Supervisory Authority will issue more detailed regulations concerning the cessation of activities on the basis of deregistration.

Section 9 (1072/2017)**Right of licensed crowdfunding intermediary to mediate loan-based or investment-based crowdfunding**

A licensed crowdfunding intermediary may, within the scope of its licence, provide loan-based and investment-based crowdfunding.

Crowdfunding mediation using financial instruments referred to in chapter 1, section 14, paragraphs 1 and 2 of the Act on Investment Services may also be provided by a person referred to in chapter 1, section 3, subsection 1, paragraph 1 of the same Act who has obtained a licence by virtue of chapter 2, section 1 of the Act and who, in the manner laid down in chapter 1, section 15, paragraph 1 of the Act, only receives and transmits the financial instruments mentioned above.

A licensed crowdfunding intermediary must notify the Financial Supervisory Authority of the start or cessation of its operation as a crowdfunding intermediary.

The services referred to in subsection 1 above may be offered to the EEA from Finland, unless this is prohibited or restricted in another EEA state. Provisions on third countries are laid down separately.

The provisions of chapter 7, section 6 of the Act on Investment Services apply to the right of investment services providers to use a tied agent.

Chapter 3**Customer protection****Section 10 (1072/2017)****Crowdfunding intermediary's procedures and its obligations towards the investor**

Crowdfunding intermediaries must act honestly, fairly, professionally and in the interests of the customer.

The mediation of investment-based crowdfunding using financial instruments shall be in compliance with the provisions of the Act on Investment Services where applicable.

A person referred to in chapter 1, section 3, subsection 1, paragraph 1 of the Act on Investment Services who has obtained a licence by virtue of chapter 2, section 1 of the same Act shall, in mediating crowdfunding, comply with the following provisions of that Act:

- 1) the provisions of chapter 2, section 1 on the licence requirement for providing investment services;
- 2) the provisions of chapter 3 on granting and revoking an investment firm's authorisation and on the trust of major shareholders;
- 3) the provisions of chapter 6b on corporate governance;
- 4) the provisions of chapter 7, section 7, subsection 4 on the obligations of financial instrument distributors and of section 9 on the management of conflicts of interest;
- 5) the provisions of chapter 10, section 2 on the general principles applicable in the provision and marketing of investment services and ancillary services; the provisions of section 3 on entering into agreements concerning investment firm services; the provisions of section 4, subsection 1 on the assessment of suitability and of subsection 2 on the assessment of appropriateness if the investment exceeds EUR 2,000; the provisions of section 5, subsections 1–3 on the duty of disclosure of an investment firm; the provisions of section 6, subsections 5–8 on incentives; the provisions of section 7 on providing information to the client; the provisions of section 11 on the information to be saved on transactions and services; the provisions of section 12 on the recording of telephone calls and electronic messages; the provisions of section 15 on handling customer complaints; the provisions of chapter 15 on administrative sanctions; the provisions of chapter 16 on compensation for damage and penalties; and the provisions of chapter 16a on supervisory powers.

The provisions of chapter 1, section 3, subsection 3 of the Act on Investment Services concerning the safekeeping of and professional liability insurance for customer assets apply to persons referred to in subsection 3 above.

Registered crowdfunding intermediaries must comply with:

- 1) the good crowdfunding practice referred to in section 18, subsection 1;

- 2) the provisions of chapter 7, section 9 of the Act on Investment Services concerning management of conflicts of interest;
- 3) the provisions of chapter 10, section 4 of the Act on Investment Services concerning the acquisition of information about the customer (appropriateness test), if the investment exceeds EUR 2,000; the provisions of section 5, subsections 1-3 on the duty of disclosure; the provisions of section 11 on information to be stored on transactions and services; the provisions of section 12 on recording telephone calls and electronic messages; and the provisions of section 15 on handling customer complaints.

If a crowdfunding intermediary administers customer assets, it must arrange the safekeeping of customer assets transferred to it and ensure they are handled in a reliable manner. A crowdfunding intermediary must take particular care to ensure that:

- 1) customer assets are kept separate from its own assets;
- 2) a record is kept of the customer assets in such a way that each customer's customer assets are itemised separately from the assets of other customers;
- 3) the customer assets are deposited in a bank account of a deposit bank that has a licence to operate in Finland or in another EEA state.

A crowdfunding intermediary that is registered in accordance with chapter 2 does not need to join the investors' compensation fund referred to in chapter 11 of the Act on Investment Services.

Section 11

Duty of disclosure

No false or misleading information may be given in the marketing of crowdfunding. Information that proves to be false or misleading after it has been presented and which may be of material importance to the customer of a crowdfunding intermediary must be adequately corrected or supplemented without delay.

For the purpose of a considered assessment of a crowdfunding recipient and the favourability of an offer, the crowdfunding recipient must disclose, in accordance with section 21, true and sufficient information about factors that are likely to materially influence a company's value or its

repayment ability, before starting to acquire funds. Crowdfunding intermediaries must take care to ensure that crowdfunding recipients meet the obligation laid down in this subsection.

Crowdfunding recipients and crowdfunding intermediaries have an obligation to release information without delay about material changes that occur in their economic circumstances and about other factors that affect the fulfilment of their obligations.

Notwithstanding the provisions of chapter 4, section 3 of the Securities Markets Act, crowdfunding recipients do not need to publish a prospectus if the securities are offered in Finland and their combined consideration over 12 months is less than EUR 5,000,000.

Section 12

Customer due diligence

Provisions on customer due diligence are laid down in the Act on Preventing Money Laundering and Terrorist Financing (444/2017). (468/2017)

A crowdfunding intermediary shall not mediate crowdfunding or otherwise participate in acquiring funds for a crowdfunding recipient that is bankrupt.

Chapter 4

Monitoring and sanctions

Section 13

Monitoring

The Financial Supervisory Authority shall monitor compliance with this Act.

The Consumer Ombudsman shall also monitor compliance with this Act where the customer of a crowdfunding intermediary is a consumer.

Provisions on the Financial Supervisory Authority's collaboration with the Consumer Ombudsman are laid down in section 46 of the Act on the Financial Supervisory Authority (878/2008).

The Financial Supervisory Authority has the right to obtain information necessary for determining the requirements laid down in sections 6 and 7 from a fines register referred to in section 46 of the Act on the Enforcement of Fines (672/2002). Provisions on the right to obtain information from the criminal records are laid down separately.

Section 14

Penal provisions

Anyone who wilfully or through gross negligence

- 1) mediates crowdfunding without registration, in violation of the provisions of chapter 2, or
 - 2) acquires assets through crowdfunding for a crowdfunding recipient that is bankrupt, in violation of section 12, subsection 2,
- must be sentenced to pay a fine or to imprisonment for no more than one year *for a crowdfunding offence*, unless the act is of a minor nature or a more severe punishment is provided for it elsewhere in the law.

The punishment for violation of the obligation of secrecy laid down in section 19 shall be determined according to chapter 38, section 1 or 2 of the Criminal Code of Finland (39/1889), unless a more severe punishment is provided for the act elsewhere in the law.

Section 15

Administrative fines and penalty payments

The provisions of section 18 of this Act on belonging to a body that issues recommendations and on the related duty of notification constitute provisions referred to in section 38, subsection 1, paragraph 2 of the Act on the Financial Supervisory Authority, for the neglect or violation of which an administrative fine is imposed.

The following are provisions and decisions referred to in section 40, subsection 1 of the Act on the Financial Supervisory Authority, for the neglect or violation of which a penalty payment is imposed:

- 1) as referred to in section 10, subsection 5, paragraphs 2 and 3 of this Act, the provisions of the Act on Investment Services laid down in chapter 7, section 9 on the management of conflicts of

interest, in chapter 10, section 4 on acquiring information about the customer if the investment exceeds EUR 2,000, in section 5 on the duty of disclosure, in section 11 on information to be stored on transactions and services, in section 12 on recording of telephone calls, and in section 15 on handling customer complaints;

2) the provisions of this Act referred to in section 10, subsection 6 on the management and safekeeping of customer assets; section 11 on the duty of disclosure; and section 12 on customer due diligence.

(1072/2017)

The provisions referred to in section 40, subsection 1 of the Act on the Financial Supervisory Authority comprise not only the provisions of subsection 2 of this section but also further provisions relating to the provisions of subsection 2. (1072/2017)

Section 16

Liability for damages

The crowdfunding intermediary and the crowdfunding recipient have an obligation to compensate any loss that they have caused wilfully or through negligence to a customer or anyone else by procedures that are in violation of the provisions given in or by virtue of this Act.

For any loss which they incur, investors have the right also to demand compensation from the crowdfunding intermediary's managing director, a member of its board of directors or a member of a comparable body, or from an active partner, if the loss has arisen as a result of the person having, wilfully or through negligence, failed to ensure that the activities comply with the prohibition against receiving customer assets referred to in section 10, subsection 3, and that customer assets are stored and handled in the manner referred to in the stated provision. A loss is deemed to have been caused by negligence if the party responsible for the procedure fails to demonstrate that due care was taken.

The provisions of chapters 2 and 6 of the Tort Liability Act (412/1974) shall apply to the adjustment of damages and to the allocation of liability among two or more persons liable for the damages.

Chapter 5

Miscellaneous provisions

Section 17

Maintaining access to information

Notwithstanding the provisions of section 16, subsection 3 of the Act on the Openness of Government Activities (621/1999), personal data from the register may be disclosed as a printout or may be made publicly accessible via an electronic information network or otherwise disclosed in electronic format. However, details of a personal identity number may only be disclosed by virtue of this Act if the data is given as a printout or a technical recording and if the receiving party has the right to handle a personal identity number by virtue of section 13 of the Personal Data Act (523/1999) or another act.

The Financial Supervisory Authority must, however, keep the following register information publicly accessible by means of an electronic information network:

- 1) the economic operator's name, business name, any auxiliary business name, business identity code (or other corresponding identifier), principal place of business and the visiting address of the places of business at which the crowdfunding is to be mediated;
- 2) the names of the managing director and his or her deputy, the names of the members and deputy members of the board of directors, the names of the members and deputy members of a body comparable to the board of directors, and the active partners;
- 3) the date of registration;
- 4) public warnings, administrative fines and penalty payments imposed on the notice provider, and such prohibitions as are reinforced by a notice of a conditional fine.

Section 18

Good crowdfunding practice and self-regulation

The acquisition, offer or mediation of crowdfunding shall not be performed in violation of good crowdfunding practice.

A crowdfunding intermediary must:

- 1) belong, directly or indirectly, to an independent body established in Finland or the EEA that represents a wide range of actors in the sector and has issued a recommendation on promoting openness and transparency in crowdfunding mediation; or
- 2) undertake to comply with the recommendations issued by such a body or must disclose the reasons why it does not undertake to comply with these.

The body referred to in subsection 2 above, or a comparable body, may, for the purpose of promoting compliance with good practice, also issue recommendations on the scope of this Act other than those referred to in subsection 2.

The crowdfunding intermediary must notify the Financial Supervisory Authority of the body referred to in subsections 2–3 to which it belongs, or of the body's or bodies' recommendations that it complies with. On the request of the Financial Supervisory Authority, the body or the crowdfunding intermediary belonging to the body, must supply the Financial Supervisory Authority with the rules of the body and any other information on the body that is necessary for monitoring as requested by the Financial Supervisory Authority.

Any contract term based on a recommendation, or any other contract term, under which there is a deviation from the provisions of this Act to the detriment of the customer or the crowdfunding recipient, shall be null and void.

Section 19

Secrecy obligation

Anyone serving as a member or deputy member of a body of a crowdfunding intermediary, in the service of the intermediary or when performing a task commissioned by it, who has gained knowledge of matters concerning the economic status or detailed personal circumstances, or a business secret, of the crowdfunding recipient or of another customer of a crowdfunding intermediary or of another person connected with its activities, shall be obliged to keep this secret unless the party for whom the non-disclosure obligation was enacted gives its consent to the disclosure. Neither may secret information be given to a general meeting of a crowdfunding intermediary or to the meeting of a corresponding body or to any shareholder, member, active agent or other person attending the meeting. (648/2018)

Section 20**Appeal**

Provisions on appealing against a decision of the Financial Supervisory Authority issued by virtue of this Act are laid down in section 73 of the Act on the Financial Supervisory Authority.

Irrespective of any appeal, a deregistration decision referred to in this Act must be complied with, unless otherwise ordered by the appellate authority.

Section 21**Authority to issue decrees**

Further provisions may be issued by decree of the Ministry of Finance on the obligation of a crowdfunding recipient to disclose:

- 1) true and sufficient information referred to in section 11, subsection 2, when an offer is not governed by Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;
- 2) the structure and content of the true and sufficient information referred to in section 11, concerning an offer with a total consideration of less than EUR 5,000,000 in Finland over 12 months.

Section 22**Entry into force**

This Act enters into force on 1 September 2016.

Section 23**Transitional provisions**

Crowdfunding intermediaries must submit a registration application no later than three months after the entry into force of this Act.

Anyone practising activities that require registration under this Act when this Act enters into force may continue the activities until a decision concerning entry in the register has been made, provided that the registration notice referred to in section 4 is submitted within three months of the entry into force of this Act.

The registration notice may be taken for processing before the entry into force of this Act, and the notice provider may be registered in the register of crowdfunding intermediaries when this Act enters into force.

Crowdfunding intermediaries must submit to the Financial Supervisory Authority, no later than six months after the entry into force of this Act, a notice indicating the body referred to in section 18, subsection 2 that it belongs to, or indicating which body has issued the recommendation referred to in section 18, subsections 2 and 3 that the crowdfunding intermediary has undertaken to comply with.

Sections 14 and 15 of this Act shall apply three months after the entry into force of this Act, and section 18, subsections 2–5 six months after the entry into force of this Act.