

AMF instruction

Description of the AMF review process of registration applications by crowdfunding investment advisers and the transmission of annual disclosures by said advisers – DOC- 2014-11

References: Articles 325-45 and 325-67 of the AMF General Regulation

This instruction applies to crowdfunding investment advisers ("CIAs") as defined by Article L.547-1 of the Monetary and Financial Code. It specifies the content requirements of the application form that must be submitted by any applicant seeking to be registered as a CIA, as well as the AMF reviewing process.

In accordance with Article L. 547-4 of the Monetary and Financial Code, and in the absence of an authorised association in charge of for monitoring CIAs, the Autorité des Marchés Financiers (AMF) assesses the professional skills of natural persons empowered to manage or administer a legal entity applying to be registered as a CIA, as well as the ability of CIAs to comply with the business conduct and organisational rules mentioned in the AMF General Regulation.

The AMF's assessment of the criteria that CIAs must satisfy is conducted on the basis of an application form whose content requirements are specified in this instruction.

This instruction also sets out the procedures for communicating the annual disclosure sheet referred to in Article 325-45 of the AMF General Regulation.

Article 1 - Contents of the application file

The applicant must provide the AMF with a hardcopy version of the application file, which shall contain the items detailed below. To facilitate its assessment, the AMF may ask the applicant to send it an electronic version of the form as well.

1. Information about the applicant

The following information must be provided:

- The business name of the applying legal entity;
- Address;
- Legal form;
- The names and contact details of the natural person(s) empowered to manage or administer the legal entity;
- Description of the applicant's direct or indirect ownership structure;
- The name of the expected insurance company;
- Whether the company has (or plans to obtain) the status of crowdfunding intermediary (CI)/agent of a payment services provider.

2. Professional skills

The applicant shall provide, for each natural person empowered to manage or administer the legal entity making the application, an up-to-date CV, which should be dated, signed and in French, to enable the AMF to make sure that their professional skills are adequate for the requested activities, in accordance with Article 325-33 of the AMF General Regulation.

3. Ability to comply with business conduct and organisational rules

The applicant must specify the procedures used to conduct its business, in accordance with Articles 325-35 to 325-50 of the AMF General Regulation.

a) Description of activity:

- Description of the investment model (direct or via holding companies) or financing model. In particular, in situations where companies intervene between the company carrying out the project and the one offering the securities and/or *minibon*, provide a detailed organisational chart describing these relationships, and information about the contractual agreements between these companies;
- Description of the specifications of offerings (including the minimum ticket per investor¹, if applicable) and the expected fundraising range (via securities and/or *minibons*) for the selected projects;
- Description of the procedure for selecting projects (issuers) and conducted due diligence (shareholder agreement and articles of association, in particular);
- Description of the procedure for valuing the issuers of securities and/or *minibons* offered, including a description of the procedure intended to ensure that the interest paid to *minibon* investors does not exceed the legal maximum;
- Description of services provided to companies in which the customer invests directly or via a holding company or that the customer finances;
- Description of how securities and/or *minibons* are marketed, particularly via partnerships;
- Where applicable, presentation of procedures for handling and monitoring subscription applications and transactions relating to the subscription and purchase of *minibons*, with details of the subscription period, settlement procedures (in the event of success or failure) and related disclosures to investors;
- Where applicable, description of the applicant's activity in terms of entering securities in securities accounts and/or registering securities and/or *minibons*, including disposal procedures;
- Description, where applicable, of the applicant's activity in terms of providing the related service mentioned in point 3 of Article L.321-2 of the Monetary and Financial Code²;
- Description of the policy for monitoring the activity of financed companies or companies in which the customer has invested directly or via a holding company;
- Description of procedures covering the compensation paid to the CIA by investors and issuers, notably the fees (or scale of fees) pertaining to each of the services offered;
- Description of procedures governing the compensation paid to the CIA by a third party or paid by the CIA to a third party in connection with the provision of advisory services.

b) Compliance with the rules set out in the AMF General Regulation

The applicant shall provide the AMF with evidence of its compliance with business conduct rules, including:

- its obligation to inform the customer, in accordance with Articles 325-35 and 325-36 of the AMF General Regulation (notably through pre-contractual marketing documentation, contractual documentation and the website):
 - o about the risks incurred (in particular the risks of capital loss, illiquidity, absence of valuation, the failure rate and calculation of the issuer's failure rate);
 - o about the fees charged by the platform in relation to each of the services offered, both to investors and issuers.
- about its obligation to ensure that the investment chosen by the customer is suitable to that customer's experience, investment knowledge, financial capacity and investment goals before providing an advice.

It should also describe how its tools function, notably by providing screenshots for its future website.

¹ The investor is a customer of the CIA with the ability to invest in securities and *minibons*.

² "Consultancy services provided to firms in relation to capital structure, industrial strategy and related subjects, as well as consultancy services relating to mergers and acquisitions."

Furthermore, it shall also describe its policies for handling complaints (which must include mention of the ability to contact the AMF ombudsman), preventing money laundering and terrorist financing, and detecting and managing conflicts of interest.

The applicant must describe the standing resources put in place to manage and monitor its activity through to termination, and the procedures that will apply in the event that the applicant discontinues its activity.

The application should also include an overview of the following points:

- *Human resources:*

- Number of employees and, where applicable, the number of non-salaried people (particularly people on secondment);
- Detail of functions within the CIA of each natural person (append organisation chart);
- For each person, indicate other positions (including any corporate office) held and the time devoted to such positions;
- Due diligence done by the CIA regarding the professional skills and fitness and propriety of employees providing crowdfunding investment advisory services.

- *Technical resources:*

The applicant should describe the technical resources used as well as back-up arrangements (business continuity plan). Specify whether these resources belong to the applicant or whether they are leased or made available by a third party.

- *Contractual relations:*

Where applicable, the applicant shall describe contractual relations with third parties and make available copies of contracts entered into (particularly contracts with payment service providers).

c) Annexes to be included with the application

- Dated and signed CVs of any natural persons empowered to manage or administer the CIA, and where applicable, of any persons involved in the activity of entering financial instruments in securities accounts;
- A copy of the applicant's *Kbis* certificate of incorporation;
- The platform's articles of association;
- Group organisation chart, if applicable;
- Templates for agreements with issuers or project creators;
- Procedure for monitoring the activities of project creators;
- Templates for agreements with investors;
- Shareholder agreement(s) and template articles of association for the company carrying out the offering, if applicable;
- Screenshots showing how various tools function, in accordance with Articles 325-32 and 325-35 of the AMF General Regulation, as well as screen dumps showing disclosures about the fees borne by customers;
- Business plan and forward-looking balance sheet for the first three years, along with assumptions used;
- A table of financial and operating cash flows, including a description of the pathway for the payment of funds relating to securities and/or *minibons* subscribed by the investor;
- A table of financial and operating cash flows linked to interest payments and *minibon* redemptions, including in a situation where the issuer is experiencing difficulties;
- A key regulatory information document template, as referred to in AMF Instruction 2014-12, for each product marketed;
- Estimate for professional liability insurance pursuant to the Decree of 16 June 2016;

- Description of the pathway used to support a project on the website, from the public-access pages to subscription;
- Procedure for providing advice, including the approach used to ensure that the proposed product is suited to the investor's profile;
- Procedure for monitoring records of provided services;
- A statement on their honour by each of the natural persons empowered to manage or administer the CIA regarding the completeness and truthfulness of the information provided in the application file and its annexes.

Article 2 - Review process

The applicant sends the AMF an application form covering the points mentioned in Article 1 of this instruction.

Upon reception, the AMF checks that the application is complete. If it is not, the AMF may ask the applicant for any additional information as may be necessary.

Following the review, the AMF informs ORIAS within two months (from reception of a complete application form) whether it believes that the applicant meets the criteria relating to professional skills and the ability to comply with business conduct and organisation rules.

If the AMF believes that the criteria are not met, it informs the applicant of this.

Article 3 – Annual disclosure sheet

Before 30 April of each year, the CIA shall fill in the annual report and send it to the professional association (or the AMF if no such association exists) in accordance with the template supplied by the AMF.