



The Use of Electronic Payment Systems and Crowdfunding Platforms by Kyrgyzstani NPOs to Raise Funds from the Public

An Analytical Review

Bishkek, Kyrgyzstan

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Contents

- Introduction** 4
- 1. Electronic Wallets and Payment Terminals** 5
 - 1.1. What Is an E-Wallet and How to Create One 5
 - 1.2. What Is a Payment Terminal and How an NPO Can Use It..... 6
 - 1.3. How NPOs Use e-Wallets and Payment Terminals to Raise Funds from the Public7
- 2. The “Donate” Button on an NPO Website** 8
- 3. Fundraising through Mobile Operators**..... 9
- 4. Crowdfunding Platforms** 11
 - 4.1. Definition of Crowdfunding and Types of Crowdfunding 11
 - 4.2. Crowdfunding Platforms in Kyrgyzstan 13
 - 4.2.1. Overview* 13
 - 4.2.2. Registering Funds Raised Using Kyrgyzstani Crowdfunding Platforms. Tax Implications* 15
 - 4.3. Foreign Crowdfunding Platforms..... 17
 - 4.3.1. Overview* 17
 - 4.3.2. Registering Funds Collected on Foreign Crowdfunding Platforms. Tax Implications* 22

Introduction

Today, most non-profit organizations (NPOs) in the Kyrgyz Republic obtain funds for their activities from grants provided by international donor organizations. However, access to foreign funding is becoming increasingly difficult for a number of reasons, including the decrease in the number of international programs with components issuing grants to local NPOs. Another available source of funding for NPOs is government funding through the state social contracts (SSCs). These are grants from ministries, agencies, and local government bodies for NPOs' socially useful projects or the public procurement of social services from NPOs. Unfortunately, this source is also not enough to finance the entire NPO community. The funds allocated from the state budget (the republican and local budgets) to finance the SSCs are limited, and many NPOs prefer not to depend on the government. Other typical sources of NPO income, such as business activity and donations from individuals and local legal entities, are not yet widespread in the Kyrgyz Republic.

As a result, Kyrgyzstani NPOs are facing a funding gap. Understandably, they are interested in finding new sources of income. The use of electronic payment systems and crowdfunding Internet platforms (hereinafter, crowdfunding platforms) provides an additional opportunity for NPOs to reach out to more people and organizations that could support their activities.

This review focuses on the use by Kyrgyzstani NPOs of electronic payment systems and crowdfunding platforms to raise funds from the public for charity and other public benefit purposes. The concept of **electronic payment systems** in the review covers several methods of fundraising through the use of electronic payment systems, such as (1) e-wallets, (2) payment terminals, (3) the "Donate" button on an NPO website, (4) crowdfunding platforms, and (5) by SMS via mobile operators.

The legislation of the Kyrgyz Republic does not define the concept of **crowdfunding**, so, for the purposes of this review, we propose to use the following definition of this concept used in international practice: "Crowdfunding is the collection of funds from a wide range of legal entities and individuals using electronic payment systems and special Internet platforms created in the country and abroad for collecting donations and other money transfers in order to finance the activities of NPOs."¹

The review is based on an analysis of the legislation and practice of the Kyrgyz Republic on the use of electronic payment systems, as well as domestic and foreign crowdfunding platforms that can be used by NPOs of the Kyrgyz Republic to collect funds from the public. The review contains the positive experience of NPOs successfully using electronic payment systems and crowdfunding platforms to raise funds, as well as other useful information and recommendations for NPOs on how

¹The authors will not focus on crowdfunding platforms created in the Kyrgyz Republic, since there are few of them at the moment: they are just being established and are at the initial stage of formation. The review includes the activities of some popular foreign crowdfunding platforms that can be used by Kyrgyz NPOs to raise funds from the public.

they could successfully use electronic payment systems and crowdfunding platforms to collect funds from the public.

1. Electronic Wallets and Payment Terminals

1.1. What Is an E-Wallet and How to Create One

The most popular electronic payment system in the Kyrgyz Republic, and one which is most often used by individuals and NPOs to raise funds from the public, is the Elsom electronic wallet. This service is offered by the Kyrgyz Investment and Credit Bank (KICB).²

Elsom is a mobile wallet that allows its owner to deposit funds, make payments, transfer and cash in funds electronically. This is essentially the same as a bank card, only in a mobile phone.

With the help of Elsom, individuals and organizations, using their computer or mobile phone, can at any time easily, quickly and independently

- 1) pay for goods and services in stores;
- 2) pay utility bills;
- 3) pay for Internet services, cable TV, mobile communications;
- 4) pay fines, taxes, and other payments;
- 5) repay loans; and
- 6) make money transfers within the country, including money transfers to individuals and NPOs for charitable and socially beneficial purposes.

The Elsom electronic wallet is now available to all subscribers of mobile operators of the Kyrgyz Republic (Megacom, Beeline, O!). Any owner of a mobile phone number can create an Elsom mobile wallet:

- 1) by downloading the application Elsom 2.0;³
- 2) by dialing *900# and registering (full name and 14-digit TIN indicated in the domestic passport are required); and
- 3) by agreeing to the terms of the public offer posted on the Elsom website www.elsom.kg.

This is how it works:

- 1) phone + wallet = Elsom
- 2) Elsom number = mobile phone number

²www.elsom.kg

³<https://www.elsom.kg/?show=/ru/about.html>

3) Elsom balance \neq mobile phone number balance, Elsom has its own separate balance.

The advantages of Elsom are as follows:

- simple registration;
- instant crediting of payments and transfers;
- speed and mobility of payments and transfers;
- convenience of payments and transfers;
- a wide range of services offered;
- reliability and safety of the system; and
- security of transactions against external influence.

There are a number of other e-wallets in the Kyrgyz Republic, the operating principles of which are generally similar to Elsom.

1.2. What Is a Payment Terminal and How an NPO Can Use It

At present, private companies and individual entrepreneurs in all cities and villages of the Kyrgyz Republic have purchased and installed electronic payment terminals (hereinafter, the payment terminal) in shops, supermarkets, airports, universities, and other places where there is intensive movement of people. Kyrgyzstanis can make a variety of payments through these payment terminals, such as to top up their mobile phone balances and pay utility bills, taxes, fines, amongst others. Payment terminals have a “Charity” section, which contains a list of NPOs that can be given funds, bank account numbers, and mobile wallets.

The payment terminals operating in the Kyrgyz Republic include Mobilnik, Onoy, Umai, QuickPay, QIWI, and Bereke. Their commercial interest is clear, as they charge a small fee for each payment (from 5 to 30 soms)⁴. The owners of payment terminals are interested in a large flow of payments through their terminals: the more payments, the higher their income. To use payment terminals in order to collect funds from the public, NPOs enter into an agreement with the operator (owner) of one or another payment terminal (of their choice). After that, the operator posts the NPO’s name, bank account, and mobile wallet number in the “Charity” section of its payment terminals.



Once completed, persons wishing to transfer funds to the NPO’s bank account can also do this through a payment terminal. When making a cash or credit card payment through a payment terminal, the sender receives a receipt, which is a financial document confirming payment. As soon

⁴ The exchange rate of the Kyrgyz som to the US dollar as of 10 September 2020 was approximately 78 to 1.

as it receives funds and issues the receipt, the terminal immediately transfers the money to the specified bank account or mobile wallet of the recipient.

To date, Kyrgyz NPOs have rarely used payment terminals for fundraising purposes.

1.3. How NPOs Use e-Wallets and Payment Terminals to Raise Funds from the Public

First of all, NPOs need a tool to tell the general public about themselves and raise funds for their charitable and/or socially useful purposes. They provide such information through the media, popular information/news sites, crowdfunding platforms, their own websites, and other channels. The wider the outreach, the greater their chance of success. In the disseminated information, the NPO introduces itself, describes its socially useful activities, and states the goals for which it is collecting funds. The NPO's success largely depends on obtaining public confidence and effectively highlighting importance of its fundraising goals to the public, as well as on how its overall message is written and communicated. . At the end of the information piece, the NPO usually indicates the numbers of its bank account and/or e-wallet where money can be transferred and/or the name of the payment terminal through which it can be done. Practice shows that the public more readily puts its stock in those NPOs which report on how much money they have raised and how the donated funds will be spent.

Below are some examples of how Kyrgyzstani NPOs successfully use bank accounts, e-wallets, and payment terminals for fundraising purposes:

1. The Public Charitable Fund Elim Barsynby?! (hereinafter referred to Elim Barsynby) entered into an agreement with the country's main television channel, the Public Television and Radio Company (hereinafter, OTRK – the Russian acronym). Elim Barsynby carries out charitable activities in various fields, including providing material assistance to underprivileged individuals in need of expensive medical surgery abroad (for example, kidney or liver transplantation).⁵ OTRK and Elim Barsynby often show videos of persons in need of expensive treatment and call on the public and organizations to help them by transferring money to Elim Barsynby's mobile wallet. At the end of the fundraising campaign, OTRK broadcasts a presentation by Elim Barsynby's employees, while Elim Barsynby publishes a detailed report and proves regular updates on its website.

2. AKIpress⁶, 24.KG⁷ and other Kyrgyzstani news sites call on the public to donate to needy persons and NPOs on nearly a daily basis. In April 2020, during the nationwide quarantine due to the COVID-19 pandemic, the Karakol Zoo, which relied entirely on entry fees as its source of income,

⁵<https://www.elimbar.kg/>

⁶<https://kg.akipress.org/>

⁷<https://24.kg/>

, was left without a livelihood. The situation was so bad that the zoo had nothing to feed more than 150 animals and birds. The owner of the zoo, the Public Foundation Bugu-Ene, made an appeal to the public, which was posted on the information news website 24.KG containing the NPO's bank account number and mobile wallet to which anyone who wanted to help could transfer money.⁸ Many people and organizations, including the Joint-Stock Commercial Bank Keremet-Bank, responded promptly,⁹ and the zoo managed to receive timely assistance from the public to address their needs.

3. Popular Kyrgyz crowdfunding platforms include Diesel Forum,¹⁰ an all-purpose Internet forum that publishes a variety of announcements, such as the sale and lease of property, service provision, and fundraising for charity. The “Charitable Foundations” section contains dozens of pages created by various NPOs and individuals in order to raise money for charitable and socially useful purposes.¹¹ On these pages, NPOs publish information about their work and activities, their websites, appeals to the public about fundraising and the purpose of collecting funds, the bank account and e-wallet information where anyone can transfer funds to support a charity event or a socially useful project, and, if available, the payment terminals through which a potential donor can also transfer money.

4. To disseminate information about fundraising, NPOs also use their own websites and pages on Facebook, YouTube, Instagram and other social networks. They publish detailed information about their activities, program and financial reports of their organization, as well as other reports on funds spent on certain charity events and socially useful projects. They also indicate the numbers of their bank accounts and mobile wallets, as well as the names of payment terminals. This can be found on the websites of many Kyrgyzstani organizations, among them Babushka Adoption,¹² the Elim Barsynby?! Fund,¹³ and the Resource Center for the Elderly Association,¹⁴ to name a few.

2. The “Donate” Button on an NPO Website

Some NPOs add the “Donate” button on their websites, which allows an individual or organization to make a fast transfer of a monetary donation. These NPOs include Babushka Adoption¹⁵ and Good Neighbors International in the Kyrgyz Republic.¹⁶

⁸https://24.kg/obschestvo/149456_nujna_pomosch_karakolskomu_zooparku_bugu-ene_gde_jivet_bolee_150_zverey/

⁹https://24.kg/biznes_info/152437_sotrudniki_keremet_banka_ves_period_karantina_pomogali_nujdayuschimsya/

¹⁰<http://diesel.elcat.kg/>

¹¹<http://diesel.elcat.kg/index.php?showforum=326>

¹²<https://www.babushkaadoption.org/>

¹³<https://www.elimbar.kg/>

¹⁴<http://rce.kg/>

¹⁵<https://www.babushkaadoption.org/>

¹⁶<http://www.hope.kg/ru/>

As a rule, when creating a “donate” button for making a donation, an organizations is proposing to transfer money in any way convenient for the donor, such as:

- 1) to the NPO’s bank account (with a link for an instant transfer through bank cards Visa, MasterCard, Maestro, or other bank cards the donor may have);
- 2) to the NPO’s mobile wallet (with a link to open the donor’s page in the mobile wallet for the subsequent transfer of money to the NPO’s mobile wallet); or
- 3) through a payment terminal (indicating the name of the payment terminal).

To create a “donate” button on its website, an NPO should:

- 1) have a bank account and/or a mobile wallet, to which individuals and organizations could transfer donations, and/or be included in the clients list of one or another payment terminal; and
- 2) hire an IT specialist who will take care of the technical side of the process.

3. Fundraising through Mobile Operators

Raising funds through mobile operators using SMS is one of the most convenient and easy ways to raise funds from a technical point of view. Today, almost every adult in the Kyrgyz Republic has a mobile phone; the number of mobile operators’ subscribers is increasing every year. There are many more mobile phone top-up points than payment terminals. Bank cards and online banking are used by a much smaller number of Kyrgyzstanis than the services of mobile operators.

The three main mobile operators in Kyrgyzstan are Beeline, Megacom and O!. While these mobile operators previously fundraised by sending SMS messages to a short number allocated for NPOs, none of them currently uses this method. This is due to the fact that the National Bank of the Kyrgyz Republic (NBKR) regards such operations as making payments in favor of third parties – something only banks and payment system operators can do. According to the Provision on Regulating Payment System Operators and Payment Organizations,¹⁷ it is prohibited to combine the operations of a payment system with those of a mobile communications operator. In addition, the Law of the Kyrgyz Republic On Countering the Financing of Terrorist Activity and the Legalization (Laundering) of Crime Proceeds prohibits the provision of money and value transfer services without an appropriate license and/or registration in accordance with the legislation on the payment system.¹⁸ In absence of such restrictions, mobile operators might be able to send funds from the personal accounts of subscribers (including non-profit organizations) on their instructions (including through sending SMS) for any purpose.

¹⁷ Approved by the Directive of the National Bank of the KR of 25 March 2015. See Clauses 11 and 30 of the Directive.

¹⁸ Clause 7 Article 10 of Law #87 of the KR On Countering the Financing of Terrorist Activity and the Legalization (Laundering) of Crime Proceeds of 6 August 2018.

Fundraising by sending SMS to a short number allocated to a charitable organization was previously practiced by mobile operators. The NBKR considers such operations to be a banking operation, since it is about collecting, accumulating, and transferring funds via SMS. From the point of view of mobile operators, the subscriber in this case uses the operator's service at an increased cost (sends SMS at an increased cost) and the operator transfers income from this service to the charitable organization. Since we are referring to the provision of a service at an increased cost to the subscriber in this case, the provision of such services is regarded as a taxable supply, with the accrual of value added tax and sales tax. An increased sales tax rate of 5% is applied to communication operators for this type of service.

The NBKR explains its position regarding the prohibition of the practice of collecting funds by withdrawing them from a subscriber's personal account by the following reasons:¹⁹

1. Subscribers' rights are not protected in terms of guaranteed payments. The funds collected on the balance sheet can be debited to pay for the services of the operator itself and there is no security to these funds in the event of the operator's insolvency and bankruptcy.

2. Quasi-monetary funds in the form of "units" on subscribers' balances are not backed by anything. This gives rise to a parallel quasi-banking system of monetary circulation which is not regulated by the state. There is no government monitoring and supervision over these cash flows accumulated by mobile operators.

3. There is no government monitoring of the processes occurring within the mobile operators' automated systems (billing).

4. The requirements of the legislation on countering the financing of terrorist activity and the legalization (laundering) of crime proceeds regarding the payment system and electronic money are violated.

5. Other participants in the banking services market are placed in unequal conditions.

Today, however, subscribers of mobile operators raise funds by allowing third parties to replenish their personal accounts (balances) and then withdraw funds from the account. Such a fundraising scheme contradicts the terms of subscription agreements, since under the agreement, the subscriber's number must not be used for other than communication services and the subscriber has no right to use it for any operations that have signs of banking operations. In considering a subscriber's application for the return of funds available on the personal account of their mobile phone number, the operator has the right to refuse to return the funds if it is

¹⁹ The National Bank's position is explained here:
<https://www.nbkr.kg/newsout.jsp?item=31&lang=RUS&material=85148>.

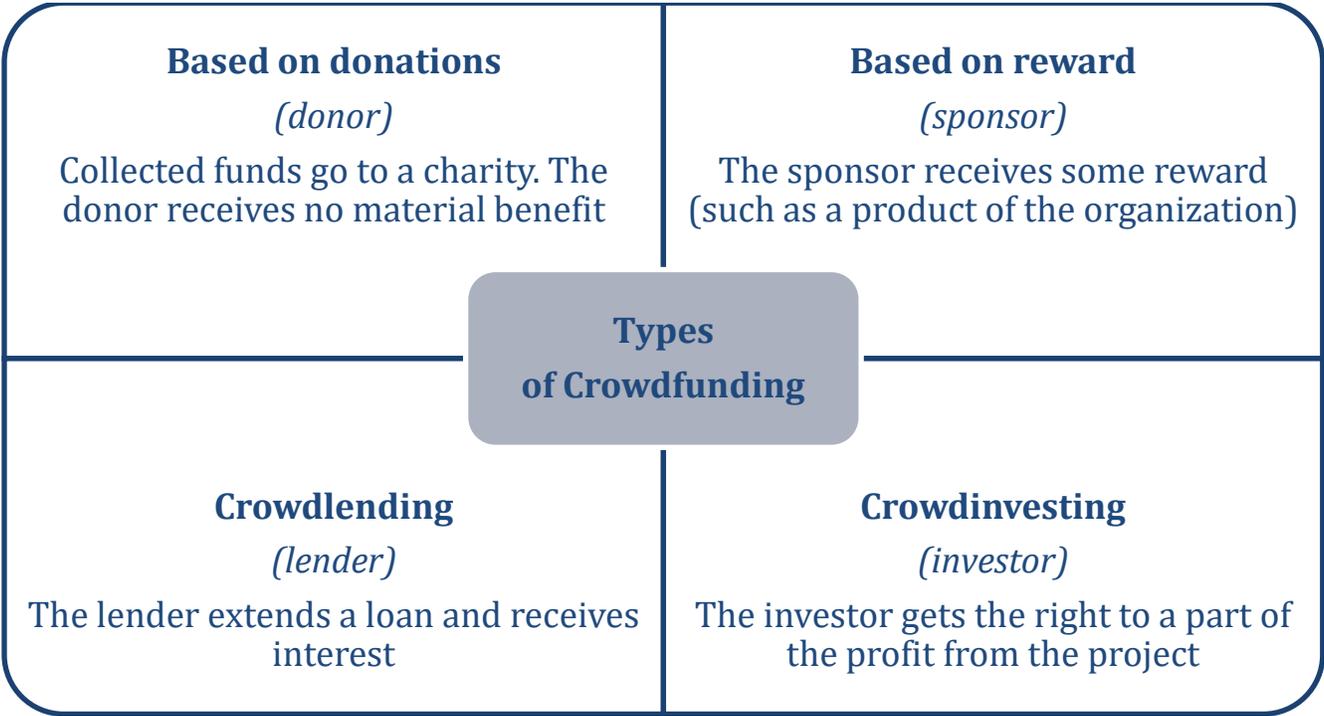
established that the subscriber has raised funds using the number. However, the operator often chooses to meet its subscribers halfway, taking into account their individual situation.

4. Crowdfunding Platforms

4.1. Definition of Crowdfunding and Types of Crowdfunding

Crowdfunding²⁰ is a mechanism by which individuals or organizations can attract funding for the implementation of their concepts or projects from a wide range of people, often in small amounts via the Internet. To facilitate and streamline the process of fundraising around the world, specialized **crowdfunding platforms** are created. These are Internet sites on which relevant concepts and projects are posted for the implementation of which funding is required.

Types of Crowdfunding²¹



²⁰ This footnote in the Russian original explains the etymology of the term.

²¹ Top Ten Crowdfunding Platforms of 2020, 20 March 2020. See: <https://medium.com/@mahzeb/top-10-crowdfunding-platforms-of-2020-b837efcf25c2>. Generosity of the Crowd. What Is Crowdlending and How Much Money You Can Make from It. TASS News Agency, 24 December 2019. See: <https://tass.ru/ekonomika/7410857>.

Crowdfunding falls into four types:

1. *Crowdfunding based on donations (charitable crowdfunding)*. During such a crowdfunding campaign, donations are collected for public benefit purposes, including support of the activities of charitable organizations or people in need. The donor does not receive any benefits from the organization or person to whom he/she makes the donation.

2. *Reward-based crowdfunding*. This type of crowdfunding can be charitable (with a public benefit goal) or non-charitable (for example, with the goal of supporting your favorite rock group or a business startup).

Here is one example of a reward-based charity crowdfunding campaign: a day care center for children with disabilities that announces a crowdfunding campaign to equip their cafeteria. A condition of the campaign may be that sponsors (donors) can access the center's services on a priority basis or at a reduced cost. Parents of children with disabilities may be interested in such sponsorship. Since children with disabilities belong to a vulnerable group, such a campaign can be considered charitable.

As an example of a non-charitable crowdfunding campaign, in 2012, the Russian group BI-2 managed to raise enough money through the Russian platform Planeta to release an album.²² The project was not charitable, since the funds were collected as advance payment for the discs that were later supplied to those who donated the funds. There are many examples where funds are raised to launch a business or a new product. The reward for sponsors in such cases will usually be the products of the business they are supporting.

3-4. *Crowdlending* and *crowdinvesting* are types of crowdfunding more related to supporting small and medium-sized businesses, but NPOs can use them as well. However, NPOs should keep in mind that these are high-risk types of crowdfunding for investors, since their investments are not insured and there is a risk of losing them if the project fails.

*Crowdinvesting*²³ is a financing mechanism in which everyone who has invested money in a project is considered a full-fledged investor and is entitled to dividends from the project's profit; in other words, they buy a share in the project. In relation to NPOs, this financing mechanism is unacceptable, since NPOs cannot have profit-making as their main goal and cannot pay dividends.²⁴ However, an NPO can use crowdinvesting as a financing mechanism if it establishes a commercial entity. In turn, a commercial legal entity established by an NPO is entitled to implement crowdinvesting projects and pay dividends to its investors.

²² "Istorii uspekha" (Success Stories), Planeta.ru: "Spirit, A New Album from BI2." <https://planeta.ru/stories/spirit>.

²³ This footnote in the Russian original explains the etymology of the term.

²⁴ Art. 85 of the Civil Code of the KR, Art. 2 and 12 of the Law of the KR On Non-Profit Organizations.

*Crowdlending*²⁵ is a financing mechanism which consists of some private entities (individuals or organizations) providing loans at interest to other private entities for business projects. In many countries, such a financing mechanism is a promising alternative to banks, as it allows a business to obtain loans in a simplified procedure at a lower interest rate. As for the loan givers (lenders), this mechanism allows them invest their funds and receive income on more lucrative terms than those offered by banks for deposits.

4.2. Crowdfunding Platforms in Kyrgyzstan

4.2.1. Overview

There are two crowdfunding platforms for fundraising from the public in Kyrgyzstan: Apake.kg and Hope.kg (hereinafter referred to as Kyrgyzstani crowdfunding platforms).

	<i>Apake.kg</i>	<i>Hope.kg</i>
<i>What are the goals of crowdfunding projects for placement on the platform?</i>	Solving socially significant tasks in various spheres of life of the population	Projects aimed at improving the state of the environment, strengthening the health of socially vulnerable people, protecting the rights of children and women, developing culture and art, and expanding access to education for vulnerable groups
<i>Who can apply to post a crowdfunding project on the platform?</i>	Any person, community/organization representative	Any legal entity

Crowdfunding platforms in Kyrgyzstan are owned by NPOs,²⁶ which implement their own public benefit projects and finance those of other NPOs on a competitive basis. Due to the limited human and financial resources of the platforms, crowdfunding projects are placed on the platforms based on a competitive selection as follows:

²⁵ This footnote in the Russian original explains the etymology of the term.

²⁶Apake.kg was established by the Apake Community Foundation; Hope.kg, by the Branch of the NPO Good Neighbors International in the Kyrgyz Republic; and Elimbar.kg, by the Community Fund Elim, Barsynby?!

1. An NPO planning to raise funds through the platform develops a project application and submits it to the platform organizer for consideration.²⁷

2. The platform selects the most interesting applications, places them on the platform, and raises funds for the implementation of the project. Part of the fundraising can take place offline (through platform partners, charity boxes, and other means). All funds are collected into the platform's bank account.

3. When funds for the implementation of the project have been collected, the platform, at its sole discretion, can: (a) transfer the collected funds to the NPO or (b) make the purchase of everything necessary on its own and transfer the finished completed project to the NPO's balance sheet to further support the finished result and ensure its sustainability. The transfer of collected funds or the completed project is formalized by an agreement.

4. In the future, the platform can monitor the implementation of the NPO project. If the monitoring results are not satisfactory, the platform may ask the NPO to eliminate the deficiencies or bring the NPO to account in accordance with the terms of the concluded agreement and the legislation of the Kyrgyz Republic.

5. If it is not possible to collect the entire amount or if it is not feasible to implement the project,, then the funds collected are redirected to finance another more promising project. Such a redirection of funds is possible due to the fact that the public offer between the platform and the donor (which the donor must accept before transferring funds) states that the funds collected go to the statutory activities of the NPO owner of the platform, so the platform can be flexible enough to dispose of the funds and direct them to any public benefit purpose in accordance with the charter.

Therefore, crowdfunding platforms in Kyrgyzstan, in contrast to foreign crowdfunding platforms, which will be discussed below, are not simply services supporting the technical ability of NPOs to collect donations from a wide range of people, but act as a source of funding for NPOs.

Example:²⁸

The NPO Child Protection Center (CPC) has submitted a project application to the Branch of the Korean-based NPO Good Neighbors International in the Kyrgyz Republic (platform), which is the owner of the Hope.kg crowdfunding platform. The purpose of the project application is to purchase 100 thousand Kyrgyz soms of special equipment for the psychologist's office of the CPC for the rehabilitation of children in difficult life situations. The platform decided to support the CPA application. As a result of the campaign, 97,050 soms were collected online. The platform contributed the missing 2,950 soms from funds raised offline. The platform independently

²⁷ See form of application used by Hope.kg here: <http://hope.kg/ru/about/>, and Apake.kg here: <https://apake.kg/ru/submit/>.

²⁸ See: <http://hope.kg/ru/projects/21>.

purchased all the necessary equipment and handed it over to the CPC under a donation agreement.

4.2.2. Registering Funds Raised Using Kyrgyzstani Crowdfunding Platforms. Tax Implications

NPOs may obtain donations, grants, and humanitarian aid via Kyrgyz crowdfunding platforms.

In accordance with the Tax Code of the Kyrgyz Republic, the above types of income of NPOs are not subject to income tax (Article 189). At the same time, it is very important to register them correctly. If the collection of funds and their registration are carried out with violations, the funds received may be included in the taxable base and the NPO will have to pay extra taxes.

Donation²⁹	Grant³⁰	Humanitarian aid³¹
<p><i>Donation of a thing or property right for generally useful purposes.</i></p> <p><i>Recipients (donees) may be individuals, social protection institutions, medical, educational, scientific, educational, charitable and other similar institutions, museums and other cultural institutions, foundations, community and religious organizations, as well as the state and its administrative-territorial units.</i></p>	<p><i>Assets donated by states, international, foreign and domestic organizations to the Government of the Kyrgyz Republic, local self-government bodies, state, as well as non-profit organizations that do not participate in supporting political parties or candidates in election campaigns.</i></p>	<p><i>Assets provided free of charge by states, organizations to the Government of the Kyrgyz Republic, local government, state, non-profit organizations, as well as to an individual in need in the form of food, machinery, equipment, equipment, medical supplies and medicines, other property to improve the living conditions of the population, and also prevention and elimination of emergency situations of military, ecological and man-made character, subject to their further consumption and / or free distribution.</i></p>

²⁹Art. 518 Part II of the Civil Code of the KR.

³⁰ Art. 153 of the Tax Code of the KR.

³¹Art. 153 of the Tax Code of the KR.

<i>Parties to the Contract</i>		
<p>Donor: any natural or legal person</p> <p>The recipient (donee) of the donation: individuals, social protection institutions, medical, educational, scientific, educational, charitable and other similar institutions, museums and other cultural institutions, foundations, public and religious organizations, as well as the state and its administrative-territorial units.</p>	<p>Grantor: states, international, foreign and domestic organizations</p> <p>Grantee: Government of the Kyrgyz Republic, local self-government bodies, state and non-profit organizations</p>	<p>Humanitarian aid provider, donor: states, organizations</p> <p>Recipient of humanitarian aid: Government of the Kyrgyz Republic, local self-government body, state, non-profit organization, individual in need.</p>

Depending on the specific situation, the purpose of the fundraising, and other circumstances, the platform and the NPO may enter into (a) a grant agreement, (b) a targeted donation agreement, or (c) an agreement for the supply of humanitarian aid. When developing an NPO agreement, it is important to pay attention to the following provisions in order to reduce tax risks and exempt the funds/property received under the agreement from income tax:

1. The contract should indicate that the funds received are either a donation, grant, or humanitarian aid and that they will be used for the statutory purposes of the NPO.³²

2. The contract should be free of charge, that is, there must be no counterclaims in exchange for the funds/property received with respect to the recipient NPO. However, the terms and conditions for the provision of the grant/donation/humanitarian aid are not considered a counterclaim, so the agreement may contain goals, terms, the procedure for using the funds or property received, the obligation of the NPO to provide a report on their use and implementation of the declared project, and other conditions.

3. The names of the parties in the contract must be correct (see examples in the table above) and not “Customer” and “Contractor.”

4. The subject of the donation contract should indicate a generally useful purpose³³ in compliance with the NPO’s statutory activity.

³² Art. 189 of the Tax Code of the KR.

³³ Art. 518 Part II of the Civil Code of the KR.

5. Regarding “charitable donation,” “charitable activity,” and “charitable organization,”³⁴ it should be noted that these formulations may suit only those NPOs which meet the requirements of the Law of the Kyrgyz Republic On Patronage and Charitable Activity (Law on Charity). These formulations do not carry any special risks for the NPO itself, since any assets received by the NPO free of charge are not subject to income tax. However, they can mislead an organization that has made a donation to an NPO and expects deductions for charity expenses.³⁵

6. Regarding donations, it is important to note that, based on the Civil Code, targeted assistance to one specific person will not be considered a donation, since there is no “generally useful purpose.” Therefore, the NPO needs to develop “generally useful/socially useful programs” and the director/head of the NPO should approve them. For example, it may have a number of separate programs to help seriously ill people, orphans, persons with disabilities, and others. In this case, donations will be raised for a public benefit program and it will be possible to provide targeted assistance within its framework.

4.3. Foreign Crowdfunding Platforms

4.3.1. Overview

Another opportunity to raise funds online for Kyrgyzstani NPOs is to use the services of foreign crowdfunding platforms. Unlike their Kyrgyzstani counterparts, foreign platforms are online services (tools) that give the author of a project (including NPOs) the technical capacity to publish a project and raise funds for its financing. In this case, the organizer of the service is a usually commercial legal entity that charges a commission for using the service.

Under the terms of foreign crowdfunding platforms, it is the NPO which is party to legal relations with donors, communicates with donors about its project, and bears responsibility for any losses arising in connection with its implementation. After transferring the collected funds, the platform does not control the implementation of the NPO project or monitor its sustainability, results, or other aspects. The platform only recommends that the NPO inform donors through the same page of the crowdfunding project about the progress of the project and its results, as this will help the NPO win the trust of donors and motivate them to support its future projects on the platform.

³⁴ Art. 153 of the Tax Code of the KR defines a “charity organization” and “charitable activity” for taxation purposes by reference to the Law On Charity. In practice, an NPO may include the word “charitable” in its name (for example, a charitable community foundation), but it will be only a part of the name and the NPO may not meet the requirements of the Law On Charity. As a result, neither the NPO nor its donors will not be entitled to any tax privileges.

³⁵ Art. 208 of the Tax Code of the KR.

<i>Advantages of foreign crowdfunding platforms over those of Kyrgyzstan</i>	<i>Disadvantages of foreign crowdfunding platforms compared to their Kyrgyzstani counterparts</i>
<ol style="list-style-type: none"> 1. Large selection of crowdfunding platforms – technically superior, well-known, and sustainable 2. Good feedback and support service 3. Easy procedure of launching a project: no restrictions on the number of projects that can be launched on the platform, and no competitive selection of projects 4. The platform is not involved in the implementation of the project, which gives more flexibility and independence to the NPO 	<ol style="list-style-type: none"> 1. Platform’s commission 2. Commission of banks and payment systems, including for international transfers 3. The project can only be posted in a foreign language 4. There are few platforms on which Kyrgyzstani individuals and NPOs can post projects. Partners are required from among residents of the countries supported by the platform.

In particular, Kyrgyzstani NPOs may be interested in using crowdfunding platforms of the Russian Federation (RF), given the fact that 640 thousand Kyrgyzstanis (or more than a million by unofficial data) are working in the Russian Federation, which is 20% of the economically active population of Kyrgyzstan.³⁶ They often support activities related to the solution of socio-economic problems in Kyrgyzstan. Therefore, fundraising for public benefit projects in Kyrgyzstan through Russian crowdfunding platforms may be advisable and will help Kyrgyz expat communities to support their homeland from abroad.

A popular crowdfunding platform in the Russian Federation, where Kyrgyzstani organizations and individuals can launch crowdfunding projects³⁷ from Kyrgyzstan, is Planeta.ru.³⁸ It can be used to launch projects in various fields, including social, charitable, and creative projects.

To launch an NPO’s crowdfunding project, it is necessary to register on the platform. By registering on the website, the NPO thereby accepts the platform’s public offer, which is essentially

³⁶ Cactus Media, 13 April 2020: https://kaktus.media/doc/386099_что_быдет_с_кыргызстаном_если_все_trydovye_migranty_vernytsia_na_rodiny.html.

³⁷ Since this review was written for Kyrgyzstani NPOs, we will discuss only NPOs’ crowdfunding projects.

³⁸ See the basic rules of using the platform here: <https://planeta.ru/faq/article/11!paragraph88>.

an agreement with the platform that will regulate their further relations. Therefore, before agreeing with the terms³⁹ of the platform, the NPO should read them attentively.

After registering on the platform’s start page, it is necessary to click the “Create a Project” button, and then read and accept another agreement with the platform.⁴⁰ Then the NPO fills in all the project editor fields (name, description, financial goal, remuneration, project duration, etc.) and sends the project for moderation to the platform managers.

After the project is approved by the moderators, the NPO signs the third and final agreement with the platform and the project is launched. The terms of the third agreement depend on whether the project is placed in the charity category or referred to other classes. The requirements for charity projects are more stringent, as they are provided with additional privileges through the platform. For example, organizations wishing to launch a charity project are required to submit a larger list of documents, and their compliance with the platform requirements involves a more thorough verification process. See the table below for the difference in terms of placement of charitable projects from those of projects in other categories.

Launching a <i>Charity</i> Project	Launching a Project in <i>Other</i> Categories
<u>Who may launch them</u>	
Only NPOs that have been <i>operating in the given field</i> for more than two years and <i>publish reports</i> on their activities online (in any way, including on the NPO’s page in Facebook, for example).	Organizations/individuals from any country
<p><i>Project goals:</i></p> <p>assistance to adults and children with serious illnesses, orphans, children and adults in difficult life situations, elderly, homeless pets; nature protection (acute environmental problems, assistance to wild animals); elimination of the consequences of natural disasters.</p>	<p><i>Categories:</i></p> <p>business, design and photography, food, games, film and video, literature and journalism, music, science and education, learning, community initiatives⁴¹, travel, events, social entrepreneurship, sports, theater, technology and innovation.</p>

³⁹ The terms and conditions of use: <https://planeta.ru/docs/agreement>.

⁴⁰ User agreement for the creation of a project: <https://planeta.ru/docs/projects-agreement>.

⁴¹ “Community Initiatives” are socio-cultural projects and initiatives intended to improve the quality of life and/or work. Examples include: the construction of children’s playgrounds and accessibility ramps, road repair, installment of traffic light posts and monuments.

<u>Documents required to launch a project</u>	
<p><i>Scanned copies:</i></p> <ul style="list-style-type: none"> — <i>NPO certificates of state registration of;</i> — <i>taxpayer registration card;</i> — <i>orders and decisions on the appointment of the head of the NPO;</i> — <i>the NPO charter (all pages); and</i> — <i>cards with NPO bank details in Word format.</i> <p><i>Electronic links to the website of the organization (if any), groups in social networks, publications in the media about the activities of NPOs.</i></p>	<p><i>Scanned copies:</i></p> <ul style="list-style-type: none"> — <i>certificates of state registration of NPOs;</i> — <i>taxpayer registration card; and</i> — <i>cards with NPO bank details in Word format.</i> <p><i>All copies must be certified by the NPO's CEO.</i></p>
<u>Deadline for application review</u>	
<p>For the first time, 5-14 days (the term can be extended): checking the organization's compliance with the declared information, confirming the reliability and positive reputation of the NPO.</p>	<p>For the first time, 5-14 days (the term can be extended): checking the organization's compliance with the declared information, confirming the reliability and positive reputation of the NPO.</p>
<u>Prices of services</u>	
<p>(creation and placement of the project is free of charge)</p>	
<p><i>Preferential:</i></p> <ul style="list-style-type: none"> — Any collected amount is transferred to the account of the NPO. — The project can be extended several times. — A commission is withheld only to cover operating expenses (payment for the services of payment aggregators, bank and postage costs, etc.): 5.9% of collected funds. 	<ul style="list-style-type: none"> — If 100% of the target amount is collected: the commission is equal to 10% of the collected funds. — If 50 to 99.9% of the target amount is collected: the commission is equal to 15% of the collected funds. — If less than 50% of the target amount is collected: the commission is not charged, and the collected funds are returned⁴² to participants in the fundraising.

⁴² The platform does not withdraw funds from the accounts of participants in the fundraising but only blocks them, so if the campaign fails, the funds will be unblocked.

Kyrgyzstani NPOs can also use the US-based crowdfunding platforms. The most successful and well-known of those are: Kickstarter.com, GoFundMe.com and Indiegogo.com. Unfortunately, none of them supports the launch of projects from Kyrgyzstan or allows funds to be transferred to bank accounts in Kyrgyzstan. However, NPOs in Kyrgyzstan can launch a crowdfunding campaign through partners (volunteers, employees) who are permanent residents of the United States or other countries supported by the platform.

Many crowdfunding campaigns for Kyrgyzstan are already running on the GoFundMe.com platform. Since the beginning of the COVID-19 pandemic, dozens of crowdfunding campaigns were launched on the platform from around the world to help the country fight the healthcare crisis, such as through purchasing oxygen concentrators, personal protective equipment, and other life-saving supplies and equipment.⁴³Elim Barsynby (referenced on page 7) maintains contact with the communities of Kyrgyzstanis in the United States, which support its activities through various ways, including by conducting crowdfunding campaigns on GoFundMe.com to implement the foundation’s projects. As another example, Kloop Media foundation has raised funds on the Indiegogo.com platform to purchase equipment for its radio studio.⁴⁴ The campaign was carried out by an employee of the organization – a German national. Kickstarter.com also has successful creative projects related to Kyrgyzstan.⁴⁵

The table below indicates the main difference between the three platforms:

	<i>Kickstarter</i>	<i>GoFundMe</i>	<i>Indiegogo</i>
Main activities	Creative projects, forbidden to collect funds for charity	Collecting donations to solve any problems, often personal	Flexible platform with no restriction on topics
Conditions of funding	“All or nothing”: If the campaign fails to raise 100% of the planned amount, it is recognized as unsuccessful and the author of the project does not receive anything. The	The author of the project receives any collected amount	At the choice of the author of the project (before launching it): either “all or nothing” or any collected amount

⁴³ See: https://www.gofundme.com/mvc.php?route=homepage_norma/search&term=Kyrgyzstan.

⁴⁴ See: [https://www.indiegogo.com/projects/kloop-radio-give-young-radio-djs-a-future/x/24091753#/.](https://www.indiegogo.com/projects/kloop-radio-give-young-radio-djs-a-future/x/24091753#/)

⁴⁵ Cm.: https://www.kickstarter.com/discover/advanced?ref=nav_search&term=kyrgyzstan.

	collected funds are returned to donors.		
Commission	5% - platform's commission, 3% + \$ 0.20 from each payment is the payment operator's commission	0% - platform's commission, 2.9% + \$0.30 from each payment is the payment operator's commission	5% - platform's commission, 2.9% + \$ 0.30 from each payment is the payment operator's commission

4.3.2. Registering Funds Collected on Foreign Crowdfunding Platforms. Tax Implications

If it places a crowdfunding project on the platform through an employee, volunteer or partner, the NPO must issue an order describing the project being launched and make an assignment agreement with the person (agent).⁴⁶ In this case, the agent will be able to launch and conduct the campaign on the NPO's behalf, receive funds from the crowdfunding campaign to his/her bank account, transfer collected funds to the NPO's account, and provide it with a detailed financial report.

Donations and business income can be obtained on foreign crowdfunding platforms. Income received from foreign sources is registered and taxed in the same way as those from local sources. See Paragraph 4.2.2. of this overview for the registration and taxation of donations.

Many crowdfunding platforms encourage colleagues to provide rewards to supporters of the project. This can be an additional motivation to get people interested in supporting the project. However, the income received will not be considered a donation in this case, since an essential condition of the donation agreement is that the donation be given gratis.

Accordingly, the income received by NPOs will not be considered donations, but instead as the sale of goods. NPOs will need to refer the collected funds to the taxable base and pay income tax, sales tax, and, if the threshold is exceeded, value added tax. If an NPO has the status of a charitable organization, it is exempted from all these taxes even in relation to its business income.⁴⁷

It is also risky to register the rewards provided to donors as gifts. According to the Civil Code, if there is a counter transfer of a thing or right, the contract is not recognized as a gift,⁴⁸ and the

⁴⁶ See Chapter 39 of the Civil Code of the KR.

⁴⁷ Art. 212, 251, 315 Of the Tax Code of the KR.

⁴⁸ Paragraph 2 Art. 509 of the Civil Code of the KR.

completed transaction may be recognized as sham,⁴⁹ i.e. one intended to cover up another trade. Accordingly, such a transaction will be considered null and void and the rules of the sale and purchase agreement will apply to it.⁵⁰ If this is proved by the tax authorities, the funds received by the NPO will be referred to business income and additional taxes, fines and penalties will have to be paid.

Example:

The NPO launched a crowdfunding campaign to create a sewing workshop for women victims of domestic violence. Persons wishing to support the campaign are offered the following opportunities: (a) transfer \$10 and receive a written thank-you letter from the author of the project; (b) transfer \$20 and receive a bag sewn by the workshop; amongst other options. As a result of the campaign, when the required amount is collected and the sewing workshop starts working, the supporters of the campaign will receive rewards depending on their contributions.

In this case, both those who have supported the project and the income received will be of two types: (1) donors and donations if the supporters did not receive any reward in cash or in kind; and (2) buyers and advance payment for the goods if the supporters received a reward in cash or kind.

When launching a crowdfunding project on a foreign platform, it is necessary to pay special attention to the public description of the project. This description will be considered a public offer, that is, a written agreement between the NPO and the donor. In particular, it is desirable to indicate in the description that:

1. Funds are collected in the form of “donations” for a specific generally useful project implemented by the NPO. This will avoid disputes with tax authorities over whether the funds raised are donations.

2. If the collected funds cannot be spent for the intended purpose or there is a surplus after the implementation of the project due to changed circumstances, the donor agrees that the unspent funds will be spent on statutory activities or some other similar NPO project. In accordance with the Civil Code, if the use of a donation for the purpose indicated by the donor is not possible, it can be used for other purposes only with the consent of the donor.⁵¹ If the donated property is not used for the purpose indicated by the donor, the latter may demand that the donation be returned. In the

⁴⁹ Clause 2 Art. 188 of the Civil Code of the KR.

⁵⁰ Clause 2 Art. 188 of the Civil Code of the KR.

⁵¹ Paragraph 4 Art. 518 of the Civil Code of the KR.

case of crowdfunding with its large numbers of donors, contacting each donor to obtain permission would be a challenge.

The above risks can be minimized by developing a competent accounting policy or issuing guidelines, which will describe the accounting procedure for funds collected as a result of the NPO's crowdfunding effort.