

ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY BY INVESTBYBIT PTY LTD T/A BINANCE AUSTRALIA (ACN 621 652 579) UNDER SECTION 38 OF THE SPAM ACT 2003

1. Definitions

1.1. In this Undertaking:

- 1.1.1. **ACMA** means the Australian Communications and Media Authority.
- 1.1.2. **Regulatory Oversight Committee** means the senior oversight committee overseeing IBB's compliance with this Undertaking.
- 1.1.3. **IBB** means Investbybit Pty Ltd t/a Binance Australia ACN 621 652 579.
- 1.1.4. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
- 1.1.5. **CEM complaint** means a complaint to IBB that relates to a CEM sent, or alleged to have been sent, by IBB and includes complaints notified to IBB by the ACMA.
- 1.1.6. **Commencement date** has the meaning given in clause 2.1.
- 1.1.7. **Implementation Plan** has the meaning referred to in clause 6.2
- 1.1.8. **independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
- 1.1.9. **Initial Report** has the meaning referred to in clause 5.1.1
- 1.1.10. **relevant period** means 1 October 2021 to 3 May 2022.
- 1.1.11. **report** means the report produced by the independent consultant referred to in clause 5.1.
- 1.1.12. **Spam Act** means *Spam Act 2003* (Cth).
- 1.1.13. **Subsequent Review** has the meaning referred to in clause 5.5
- 1.1.14. **Subsequent Report** has the meaning referred to in clause 5.6

1.2. Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

1.3. References to IBB personnel throughout include personnel within the related bodies corporate of IBB who are authorised to send messages on IBB's behalf.

2. Term of the Undertaking

2.1. This Undertaking commences when:

- 2.1.1. it has been executed by IBB; and
- 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to IBB (**Commencement date**).

- 2.2. This Undertaking continues for a period of 36 months from the Commencement date or until it is withdrawn by IBB, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by IBB, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.
- 2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

3. Background

- 3.1. On 21 October 2022, the ACMA notified IBB that the ACMA has reasonable grounds to believe that, during the relevant period, IBB sent, or caused to be sent, commercial electronic messages without consent and/or without a functional unsubscribe facility, in contravention of subsections 16(1) and 18(1) of the Spam Act.
- 3.2. IBB acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding IBB's compliance with the Spam Act, offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

4. Undertaking

- 4.1. IBB undertakes to take the following specified actions to ensure IBB complies with the Spam Act and does not contravene the Spam Act in the future.

5. Independent Consultant

- 5.1. IBB undertakes to appoint an independent consultant to:
 - 5.1.1. conduct a review (the **Initial Review**) of IBB's current procedures, policies, training and systems relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
 - a. all CEMs are sent, or caused to be sent, by IBB with the consent of the relevant account holder
 - b. IBB receives, records and actions all unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect
 - c. all CEMs sent, or caused to be sent, by IBB contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act
 - d. all CEMs sent, or caused to be sent, by IBB contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act
 - e. IBB classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
 - 5.1.2. Produce a report (**the initial report**) making recommendations as to:
 - a. ensuring systems relied upon by IBB receive, record and action unsubscribe requests
 - b. improvements to policies and procedures that ensure compliance with the Spam Act, including but not limited to:

- i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
 - ii. procedures for ensuring IBB personnel comply with policies and procedures
 - iii. procedures for ensuring continued compliance when process or system changes are implemented
 - c. ongoing training for IBB personnel on Spam Act compliance
 - d. ongoing monitoring of Spam Act compliance measures
 - e. ensuring IBB takes reasonable steps to address any identified systemic problems.
- 5.2. IBB undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 30 business days after commencement of these undertakings. The approval request will include specific detail that sets out how the person or body meets the definition of an independent consultant. If the ACMA does not approve the choice of independent consultant, IBB will repeat this process until it has the ACMA's written approval.
- 5.3. IBB undertakes to appoint the independent consultant, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.
- 5.4. The approved independent consultant will provide the final initial report to IBB, and at the same time to the ACMA, within six months of their appointment.
- 5.5. The independent approved consultant will, 16 months after the final initial report has been provided to IBB and the ACMA, will review (subsequent review) IBB's compliance with the implementation plan and IBB's procedures, policies, training and systems relating to its Spam Act compliance.
- 5.6. The independent consultant will provide the results of their subsequent review in writing (Subsequent Reports) to IBB, including the Regulatory Oversight Committee, and at the same time, the ACMA within 2 months of the commencement of the review, including a statement about whether they are satisfied that IBB's compliance with the implementation plan and IBB's procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 5.7. Subject to the ACMA's written agreement, IBB may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by ACMA. If the ACMA does not approve the choice of independent consultant, IBB will repeat this process until it has the ACMA's approval.

6. Implementation Plan, Audit & Reporting

- 6.1. Within three calendar months of receiving the final initial report IBB will:
- 6.1.1. develop an implementation plan setting out the steps IBB has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented)
 - 6.1.2. provide a copy of the Regulatory Oversight Committee-approved implementation plan to the ACMA.
- 6.2. IBB undertakes to comply with the approved implementation plan (the **Implementation Plan**) in accordance with the timeframes specified in the plan.

- 6.3. The implementation plan may be modified at any time subject to the ACMA's written approval.
- 6.4. While these undertakings remain in force, every 8 months from the date the Regulatory Oversight Committee-approved implementation plan provided to the ACMA, IBB will provide a compliance report, approved by the Regulatory Oversight Committee, to the ACMA that covers the previous 8 months that includes:
 - 6.4.1. the status of actions it will take under the implementation plan
 - 6.4.2. a report of all de-identified consumer complaints made to IBB about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint
 - 6.4.3. action IBB has taken on all complaints the ACMA has notified IBB about or received by IBB directly from consumers
 - 6.4.4. all instances of identified non-compliance with the Spam Act, including the cause of any identified compliance issues and remediation taken or proposed to be taken.

7. Training

- 7.1. Within three months of the Commencement date, IBB undertakes to train all personnel that may be, or are currently responsible for creating or sending CEMs, and their direct line manager, to ensure compliance with the Spam Act.
- 7.2. IBB undertakes to provide training similar to that described in clause 7.1, for all new personnel that may be, or are currently responsible for creating or sending CEMs within 6 weeks of their commencement in such roles.
- 7.3. IBB undertakes to repeat the training, described in clause 7.1, every 12 months after IBB has undertaken the training referred to in clause 7.1 while this undertaking is in force.
- 7.4. IBB undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7.1 and 7.2.

8. Record-keeping

- 8.1. IBB undertakes to:
 - 8.1.1. keep accurate records of the consent given by electronic account-holders to the sending of CEMs by IBB to those account-holders, including the terms and conditions associated with that consent
 - 8.1.2. keep accurate records of withdrawal of consent requests
 - 8.1.3. keep accurate records of CEM complaints
 - 8.1.4. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

9. Acknowledgment of publication

- 9.1. IBB acknowledges that the ACMA may publish these undertakings.

SIGNED by Investbybit Pty Ltd



Signature of Director

Nicholas Falzon

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Name of Director

10-Nov-2022

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Date of signing

Signed on behalf of the **Australian Communications Media Authority** by its authorised representative:



Signature of the ACMA delegate

Jeremy Fenton

Executive Manager, Consumer, Consent and Numbers Branch

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Name and position of the ACMA delegate

30 November 2022

..... Date accepted by the ACMA