

Legal Regulation of Crowdfunding in Russia and Foreign Countries

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ABSTRACT: The article discusses the legal regulation of crowdfunding in Russia and some foreign countries. Crowdfunding is analyzed as a category that is an integral part of e-commerce law. The analysis of the formation of this institution in foreign countries, such as the USA, Italy, Belgium. Conclusions have been formulated regarding risks that should be considered before investing in crowdfunding. The prospects of the development of crowdfunding in Russia are also considered.

Keywords: investment activities, crowdfunding, utilitarian digital rights, digital platform.

INTRODUCTION

Crowdfunding usually refers to a method of financing in which money is collected by attracting relatively small individual investments or contributions from a large number of people. Over the past few years, crowdfunding websites, especially in some foreign countries, have proven to be a popular way of collecting charitable donations and funds for art projects such as films and music recordings. Crowdfunding is a way to raise capital using special platforms. Funds can be used in various projects, for example: consumer loans; loans to small and medium enterprises; participation in a business startup; acquisition of property. But, often, this method of financing develops at the expense of small and medium-sized businesses. The main feature of crowdfunding is the ability to collect funds collectively for the implementation of the project. Crowdfunding markets around the world have experienced significant growth in recent years. With a total amount of nearly 50 billion euros collected worldwide from 2010 to 2017, crowdfunding has attracted more and more attention in the economic, political and legal fields at the international level (Chervyakov & Rocholl, 2009).

Crowdfunding as a process of attracting investment capital begins to develop in the Russian Federation. However, the legal regulation of these relations is in its infancy.

In this regard, it becomes relevant to analyze the legal regulation of crowdfunding in foreign countries in order to draw on positive experience (Murzinova et al, 2018; Akbari, et al, 2013). Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods (Wyrasti et al., 2019; 12. Mambile, & Machuve, 2018; Akuzova, et al, 2018).

RESULTS

In the Russian Federation, the law governing crowdfunding, namely, investment relations using special platforms on the Internet, was signed on August 2, 2019 by the President of the Russian Federation. According to this federal law dated 02/08/2019, No. 259-Φ3 “On attracting investments using investment platforms and on amending certain legislative acts of the Russian Federation,” non-cash cash flows in the form of investments occur within the framework of special investment platforms in the Internet network based on relevant agreements. The operator may be a Russian company that organizes investment attraction and is entered in the corresponding register of the Bank of Russia. Organizations and individual entrepreneurs have the opportunity to attract investments, and investors can be individuals and legal entities. Investing is carried out in three ways: providing loans; acquisition of securities or utilitarian digital rights.

The main goal of federal law No. 259 - FZ is to protect potential investors. Investors have such rights as obtaining complete information about the project and their organizers. Also, investors receive full protection regarding the return of funds in case the project does not attract a minimum amount of money during the term of the investment proposal. The law contains restrictions for unskilled investors, their investment per year should not exceed 600 thousand rubles. A positive aspect is the fact that the law indicates what rights can be attributed to utilitarian digital rights, the procedure for their circulation and certification, as well as the status, rights and obligations of participants in crowd funding legal relations. According to lawyer Marina Momzikova, the crowdfunding law already gives a clear idea of regulatory approaches, requirements for the procedure for raising funds using investment platforms (Crowdfunding in the Russian legislation).

It is worth noting that this law circumvents a number of key points such as the possibility of acquiring utilitarian rights using cryptocurrency and regulating crowdfunding relations using the public blockchain to distribute utilitarian digital rights. According to the law, the interaction between the investor and the creator of the project is carried out through the operator of the investment platform, that is, centrally, which does not correspond to the principle of building a blockchain, and raising funds bypassing the investment platform is not allowed by law. There is no information on working with foreign crowdfunding projects, because the law only mentions Russian legal entities and individual entrepreneurs when attracting investments. According to the lawyer, the practice of intellectual property A. Alekseychuk, based on the definition of investments contained in the law, we can conclude that he regulates exclusively commercial crowdfunding. At the same time, it is not entirely clear from this wording how crowdfunding will be regulated, carried out not according to the loan model and at the same time not involving the receipt of any benefits by the financier. With this model, donations are often structured, for example, by activists or to finance individual creative projects.

The law also provides that one of the methods of financing within the framework of the investment platform may be the acquisition of “utilitarian digital rights” - digital

rights that certify the right to demand the transfer of things, performance of work, provision of services, alienation of the exclusive right to the result of intellectual activity or provision of the right to use such result. Utilitarian digital rights should arise on the basis of agreements concluded using the investment platform, and their turnover is also recorded in the investment platform. It can be assumed that, taking into account the definition of digital rights established by law, regulation will extend to many ICO projects.

We characterize the regulation of crowdfunding in other countries. The US legal framework for crowdfunding appeared much earlier than in Russia. On April 5, 2012, the US President signed the JOBS Act (Jumpstart Our Business Startups Act; hereinafter referred to as the Law) (United States Code Congressional and Administrative News, 2012-06). One of the main goals of the adoption of this law is the creation of additional jobs and attracting investments to stimulate the economic growth of new companies. Section 3 amends the Securities Act of 1933 (Securities Act 1933) regarding the registration of a number of securities transactions and is dedicated to crowd investing, despite the fact that it is entitled “Crowdfunding” (Crowdfunding. Regulatory framework in EU member states and perspectives for the EU. European Commission, 2015). You can find this approach not entirely successful from the point of view of legislative technology, since the heading is misleading, and the content involves the regulation of one crowdfunding model, which is contradictory.

Based on the presented law, a company calling itself an “issuer” has the right to issue shares and other securities, the nominal aggregate value of which should not exceed \$ 1 million per calendar year. When issuing an emission in order to attract investment, this activity is carried out through specialized online services within the framework of the current legislation. In order to obtain the necessary permission to carry out a public offer, an application is submitted to the Securities Commission, and the issuer is also obliged to disclose information about the top management of the company, the composition of the board of directors, holders, whose share in the company’s capital exceeds 20%, and financial position. Moreover, it is necessary to report what kind of activity the company is engaged in, and what the raised funds will be spent on, especially if the amount is more than planned. Also, it is necessary to indicate the value of the security and explain the pricing procedure.

The rules that were adopted by the Securities Commission indicate that the regulation of the law does not apply to some companies, for example: domiciled in a foreign country; previously engaged in investment activities in accordance with the Securities Exchange Act of 1934 (The Laws That Govern the Securities Industry); violated the rules for reporting within two years prior to the filing of an application for a permit to implement a public offer; not having a clear business strategy, or being reorganized, that is, merged or merged with another company; also organizations with a negative reputation in the market. With regard to individual investors, there are also restrictions, only in terms of the amount of investments made during the calendar year. You need to know that the size of securities sold to one investor cannot exceed \$ 100 thousand. This means that the investor has the right to purchase securities only within this amount. Spouses can take into account the joint annual income, and include personal property in the common property. There are also restrictions on investors regarding the volume of investments. The price of the sold and accordingly acquired security should not exceed 100 thousand dollars per investor.

It is worth noting that the level of regulation of crowdfunding in the United States is higher. This is due to the early introduction of such a concept as “crowdfunding” into the legislation, in contrast to Russia. In Belgium, the activities of crowdfunding venues are

regulated by the E-commerce Act (<https://www.consumereurope.dk>) and the provisions of Book VI of the Belgian Economic Law Code. Subject to the amendments made to Articles XII.15 and XII.16 of the Code of Economic Law, the Belgian lawmaker is taking further steps to encourage the conversion of transactions into digital form, equalizing contracts concluded in writing with contracts concluded in electronic form.

In Estonia, there is no special crowdfunding law as such, but on March 21, 2016, the Creditors and Credit Intermediaries Act (Creditors and Credit Intermediaries Act) came into force, according to which all lenders and credit intermediaries are required to contact the Estonian Financial Supervisory Authority to obtain consent to conduct transactions.

In Italy, crowd investing is mainly regulated by the order of the National Securities and Exchange Commission “The Commissione Nazionale per le Società e la Borsa” dated 06.06.2013 No. 18592/2013 “Consob Regulation” (Laws and regulations). Currently, these requirements are under revision, as the Law of March 24, 2015 No. 33/2015 allowed small and medium-sized enterprises to raise capital using crowdfunding venues. Risks to consider before investing in crowdfunding can be identified as follows:

1. Speculative. Investments in start-ups and enterprises in the early stages of development are speculative, because these enterprises often fail and all investments may be lost. In contrast to investing in a mature business, which reports on income and profits, the success of a startup or enterprise at an early stage of development often depends on the development of a new product and on the success of subsequent commercialization.

2. Illiquidity. Certain restrictions on the possibility of resale of investments during the first time. Unlike investing in companies listed on the stock exchange, where the opportunity is provided to quickly and easily trade securities in the market, the investor will have to look for an interested buyer himself to resell crowdfunding investments.

3. Valuation and capitalization. A crowdfunding investment may be aimed at acquiring a share in the startup’s share capital. Unlike listed companies, which are valued publicly through stock market prices, valuation of private companies, especially start-ups, is complex and there is a risk of overpayment for a share in the share capital.

4. Limited disclosure. The company must disclose information about the activity, its business plan, proposal and, including, the intended use of revenue. The company at an early stage of development can provide only limited information about its business plan and operations, since it does not have a fully developed business plan or a long history to provide more complete disclosure. The company is also required to submit annual information on its activities, including financial statements. The public joint-stock company is obliged to submit annual and quarterly reports and timely disclose certain information that can be used to assess the state of investments. In contrast to crowdfunding, there is only limited disclosure of investment information.

5. Investing in staff. Investments at an early stage of development of an organization are also investments in an entrepreneur or company management. The ability to execute a business plan is often an important factor in whether a business is viable and successful. Part of the investment may be directed to the remuneration of employees of the company, including its management. Therefore, it is necessary to carefully study any information regarding the use of revenue by the company.

6. The possibility of fraud. In the light of the relative ease with which companies can raise funds through crowdfunding in the early stages of development, it is possible that certain opportunities turn out to be fraudulent schemes that bring losses. As with other investments, there is no guarantee that crowdfunding investments will be protected from fraud.

7. Lack of vocational guidance. Many successful companies often attribute their early success to the leadership of professional investors in the early stages (for example, through business angels and venture capital firms). These investors often negotiate a place on the board of directors of the company and play an important role through their resources, contacts and experience in helping companies at an early stage in the implementation of their business plans. Startups, funded mainly by crowdfunding, may not have advantages over such professional investors.

There is no doubt that the competent legal regulation of such a significant circle of social relations will minimize these risks and positively affect the development of the country's economy as a whole.

CONCLUSION

In conclusion, we can say that the crowdfunding market is still at the development stage due to the incomplete legal regulation system. Turning to the statistics, it is important to note that the crowdfunding market decreased over the past 9 months by 3.2 billion rubles and amounted to 5.2 billion rubles, when in 2018 the market amounted to 8.9 billion rubles (CBR statistics on crowdfunding in 2019). This decrease was likely influenced by the high activity of banks in lending to small and medium-sized businesses. The time for receiving an application and issuing funds was reduced. Of course, crowdfunding provides investors with the opportunity to participate in the early stages of a venture project. Nevertheless, it must be remembered that investments at an early stage can involve very high risks, and a rather thorough study of any proposal is required before making an investment decision.

Conflict of interest

The authors confirm that the information provided in the article does not contain a conflict of interest.

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