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FEATURES OF STATE REGULATION OF CROWDFUNDING AS A NEW INSTITUTION OF THE FINANCIAL MARKET

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Abstract. *This paper investigates the features of regulation of crowdfunding as a new institution of the financial market. A comparative analysis of the main aspects of the regulation of this investment institution is carried out from the standpoint of legal provisions. For this, the authors performed a survey study of the current Russian and foreign developments in crowd-investment. This study also presents a comparative analysis of crowdfunding with other currently existing investment institutions. The authors provided basic information on the activities of the existing crowdfunding platforms and outlined the prospects for further research in this area. The relevance of the subject matter is determined by the need to search for effective government regulation of crowdfunding as a relatively new institution of finance investment. Nowadays, there is a considerable number of crowdfunding platforms that involve the collective collaboration of people (donors), pooling their funds (usually via the Internet) for material support to other people or organisations (recipients). State regulation of the activities of the platforms, exercised on the basis of existing legal provisions, would contribute to the provision of the crowdfunding institution with a certain order governed by regulations of the current legislation.*

Keywords: *crowdfunding, investments, comparative analysis, market relations, financial institution, legal field.*

Raktiniai žodžiai: *sutelktinis finansavimas, investicijos, lyginamoji analizė, rinkos santykiai, finansų įstaiga, teisinė sritis.*

Introduction

Consideration of all issues related to crowdfunding requires a clear definition of key terms and categories. Misunderstanding the terminology used in finance significantly complicates the perception and study of the issue. Crowdfunding is a collaboration of a donor team, based on their will of its members, combining funds and other resources (usually via the Internet) to support other organisations or entities (recipients) (Vyrubaev, 2014). The funds raised are used for various purposes – financing start-ups, construction projects, election campaigns, and disaster relief. The fund seeker is called the founder, investors who invest their funds are called backers.

As of today, many researchers understand crowd-investment as a concept subordinate to crowdfunding, which includes several other financing options that do not require quick returns (Kuppuswamy and Barry, 2017). Crowd-investment involves the mass of investors as one of the fundamental factors combined with the material and financial returns on their investments. An additional quality of the concept under study may be the use of the Internet to organise the investment process. For fiscal 2013, the global crowd-investment market approximately amounted to 400 million, of which about half was in the United States (Ancelle and Fischer, 2017). At this investment institution, investors are provided with a share in the share capital of the company, along with the risks of loss of invested funds.

In recent years, crowd-investment has been under the scrutiny of numerous researchers who investigate this concept from different perspectives (Fiyaksel et al., 2017). This is facilitated by the increasing development of the network structure of the modern economy. Transaction costs are reduced, aimed at finding new information, investment objects and investment partners, which is quite natural at the current pace of development of the IT sphere (Mishchenko et al., 2018). The ability to invest in promising, innovative projects is currently available to a huge number of people. Nevertheless, Russia has always been wary of the possibility of investing in various financial institutions. According to studies conducted by employees of the Centre for Sociological Research under Russian Presidential Academy of National Economy and Public Administration (RANEPa), financial activity of the population in Russia is about 1.5-2 times lower than in Western Europe (Josifidis and Supic, 2018; Josifidis and Supic, 2019). This results in the demand for financial products among an insignificant number of people.

Recently, there has been a rapid development of electronic financial instruments, there is a crisis and stagnation of the current banking system. Against this background, there is a need to create an increasing number of jobs in the high-tech sector, the creative segment, and the service sector. Naturally, states and societies are moving towards removing restrictions on attracting investment funds to commercial projects. The most famous draft law in this area is the United States Jump Our Business Startups (JOBS), the main

draft law of the Barack Obama administration that legitimised crowdfunding (Lombardi et al., 2016). To date, crowdfunding and crowd-investment are officially recognised as a form of generally accepted financial relations by the legislation of at least twenty countries. Many of these advanced economically developed countries have taken the path of legislative recognition of these financial institutions as forms of supporting high-tech risk projects and creating additional jobs.

The study sets the task of conducting a comparative legal analysis of issues related to state regulation of crowdfunding. The objectives of this study are to consider the essence of the concepts of crowdfunding and crowd-investment; to place the emphasis on approaches to the study of this issue presented in the studies of Russian and foreign researchers of the declared subject; to consider the differences in opinions on the subject matter that are expressed in the studies of scientists; to analyse the crowdfunding with other currently existing investment institutions.

Literature Review

Due to the fact that there are no heated discussions on the definition and the main features of crowd-investment, the discussions regarding the possibility of implementing such a model in Russian conditions are worth mentioning. Thus, P. Vyrubaev (2014) expresses the opinion that this problem is far-fetched in many respects and that the matter is “exclusively in finding a suitable form to circumvent restrictions on the part of the current legislation. Moreover, crowd-investment is extremely risky and in Russia there are no projects suitable for this investment model”. In turn, the general producer of “Shanti Production” M. Zeldin (2019) stated that at least ten attempts to create crowdfunding sites in Russia failed in his lifetime. In his opinion, the reason was “...the lack of a legislative framework and the lack of due trust and activity on the part of investors and project representatives”.

A study of literary sources which cover the state regulation of all issues concerning crowdfunding allows objectively evaluating the diversity of opinions expressed in studies within the framework of this topic. Thus, T. Zykova (2018) notes that “...crowdfunding is a very exotic phenomenon, and, despite its active discussion in certain circles, this primarily refers to venture capitalists and people related to the technology business, while for the mainstream population the economy remains a mysterious phenomenon, and for the state apparatus – a threat that contributes to the development of financial terrorism”. V.S. Vakhstein and P.M. Stepantsov (2013) also discuss the “high level of mistrust of Russians in financial investments”. According to researchers, the reason behind what is happening lies in numerous cases of fraud of the country's inhabitants by the organisers of financial pyramids in the 1990s. In this regard, it is not surprising that the bulk of Russian studies covering crowd-investment are written in a generalised manner, have an introductory, more descriptive nature and, basically, lack specificity. As a rule, they refer to the most common types of crowdfunding in the world, such as joint-stock crowdfunding, public funding, and royalties (Kievich and Koypash, 2016).

Furthermore, the place of crowdfunding will be determined in the contemporary established system of financing innovation, which is singled out as a separate, independent group – “non-conventional financial institutions” (Nikonova, 2016). Another part of literary sources states the urgent need to develop a system of socio-legal state regulation of all issues concerning the activities of organisations carried out based on crowdfunding (Kiselev and Fokanova, 2015). And only a small part of the articles of Russian researchers (almost isolated cases) touches on issues of improving the quality of products due to network-centric methods of attracting investment funds. One of the options in this aspect is crowdfunding. In particular, I.A. Tian (2012) developed a system of informational and motivational measures for the practical use of crowdfunding, which were based on altruistic and selfish motives. In turn, N.A. Larionov (2013) in his dissertation research, he conducted a thorough analysis of the financial behaviour of crowd investors.

The above suggests that Russian researchers have barely started to study crowdfunding issues and their evaluation from the standpoint of state regulation. This is not the case for studies conducted abroad (Allison, 2017; Mollick, 2014; Hatsuru, 2016). For example, in recent years, symposia on crowdfunding and related fields have been held in Germany. The German Research Society is actively funding some projects (Project “Crowd-investment in Deutschland...”, 2019). T.E. Lambert (2020) emphasised in his work that: “...financial innovations can affect the productivity of corporations, the creation of new jobs, and the formation of new business”. The author points out the significant impact of crowd-investment on the development of a business of almost any scale.

Materials and Methods

The methodology of this paper is based on the principle of combining quantitative and qualitative approaches to studying the features of state regulation of crowdfunding as a new institution of the financial market. The main issues are aimed at identifying aspects of state regulation of the issue from the standpoint of the current regulatory framework. The developments of Russian and foreign researchers are analysed within the framework of the legal state regulation of crowdfunding. A considerable number of materials used allows making the most objective picture of the system of views of researchers on the issues addressed. A significant amount of data was taken from publications in various sources: online publications, journal publications, book publications, scientific research of authors conducting the development of crowdfunding topics and the specific features of its regulation by the state. This was specially done for the most complete, in-depth study of the question posed and for making its objective evaluation.

The entire collected data array is carefully analysed so as to build logical reasoning and conclusions that help identify the main aspects that solve the tasks of this study. The bulk of the information used was obtained from foreign sources and these data were translated into English in order to enrich the materials of this study and facilitate its perception. Data from foreign sources allows considering the subject of the study as openly as possible, which allows drawing objective, independent conclusions. Based on the study,

fundamental evaluation features have been developed. The results are presented separately, the identified estimated discrepancies in the opinions of scientists and researchers are analysed within the framework of the subject matter. Quantitative analysis of information is carried out in a combination with qualitative analysis.

The data obtained are intended to add information to the available data regarding the understanding of various aspects of crowdfunding as a relatively new and effective institution of the financing market. The data of the study can contribute to the creation of a unified system of opinions on the matters of state regulation of issues concerning the use of various investment instruments.

Results and Discussion

According to most researchers, it is the underdevelopment of the legal framework that is the main reason for the underdevelopment of crowdfunding and crowd-investment in Russia. In particular, such a conclusion is made by M.E. Kosov and A.V. Sigarev (2010) in one of their collaborative studies. Researchers make their remarks proceeding from the specifics of the current legislation regarding regulation of syndicates. The diagram below illustrates the percentage of sources of start-up capital in Russia in 2011.

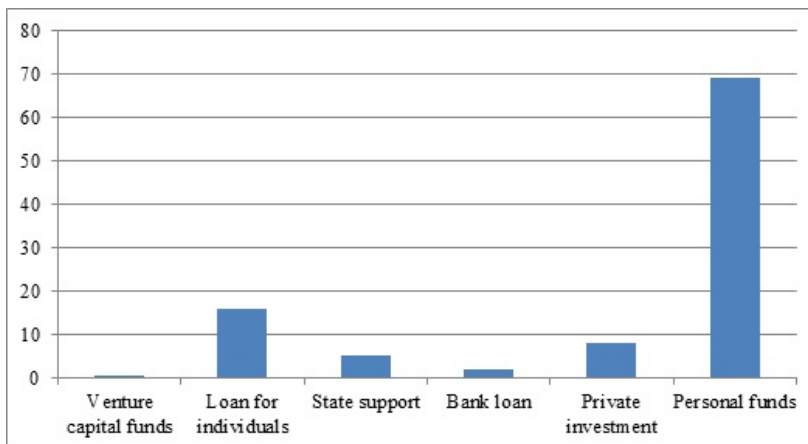


Figure 1. Sources of start-up capital in Russia in % (data as of February 2011) (Zeldin, 2019).

The data presented in Figure 1 indicate the distrust of Russian entrepreneurs in the institution of private investment and other forms of financing at the initial stage of conducting business. Russian start-ups prefer investing personal funds to other forms of financing their own business projects, including crowdfunding. Such state of affairs is largely conditioned by the underdevelopment of the regulatory framework in the country

in relation to crowdfunding issues and, accordingly, the distrust of entrepreneurs in this institution.

Economically developed states of Europe, Asia, North and Central America pay great attention to the high-quality organisation of issues of public administration of crowdfunding processes. In particular, the UK has developed and successfully implemented special programmes for the distribution of tax incentives to companies that develop crowd-investment products, which essentially constitute crowdfunding platforms. A similar experience also takes place in the United States and Israel. Tax breaks from the state are ensured by special legislation that is binding at all levels (Gilinsky, 2016). The UK, which is the European leader in terms of the volume of operations in the field of crowd-investment, also consistently sets the benchmarks in the development and consistent implementation of legislation that legally protect this type of activity. In the period from 2012 to 2015, the total profit of the country's crowd-investment platforms exceeded 3.5 billion euros, while maintaining a steady upward trend. This is largely conditioned by the direct state support of the activities of the structures under consideration.

The considered experience of Great Britain found its development in the activities of crowd-investment companies based in Germany. The legislation of this country does not yet have express, developed legal provisions that protect the interests of both the crowd-investors themselves and the owners of platforms that ensure the quality management of their finances. However, work in this area is already underway and approximately by 2020 it is planned to release the first legislative provisions governing the activities of the country's crowd-investment companies.

The study of the Australian crowdfunding market, carried out by leading experts of the well-known law firm MinterEllison, identified numerous problems in the activities of crowdfunding companies, due to the almost complete absence of a legislative framework in the country regulating their activities. To this date, numerous elements of the practical interaction of the owners of such platforms with investors, the issues of attracting depositors' funds and their effective subsequent use in various projects of crowd-investment activities remain unexplored from the standpoint of ensuring the proper level of legal protection. Such a situation does not contribute to the qualitative development of the crowdfunding market in Australia, indirectly influencing the emergence of numerous legal issues, where the managers of crowdfunding platforms who have lost considerable funds due to unsuccessful financial transactions through no fault of their own have no opportunity to defend their rights in court. Moreover, the Australian public is also not ready for the introduction of such laws, since numerous private investors have already expressed opinions regarding the illegality of reducing the maximum number of investors in one company, as required by certain previously prepared legislative provisions. At present, the Australian crowd-investment market is not yet ready for the changes associated with the introduction of legislative acts regulating the activities of these financial structures (Schulz и Mollica, 2015).

The results of a legal study of the issues of state regulation of the crowdfunding market in ASEAN countries in general and in Malaysia in particular are of particular interest.

In this country, the discussion of the issues under study has been ongoing for the past six to seven years, and opinions are being expressed both in support of the introduction of legal provisions to regulate the activities of the country's crowdfunding companies, and against it. The problem is that most of these companies in Malaysia are in the hands of representatives of the shadow economy, who are extremely unprofitable for government regulation of crowd-investment, which can result in the loss of a considerable amount of profit and complete or partial loss of control over financial transactions. The issues of state regulation of the activities of crowdfunding platforms in the country remain in the stage of permanent development (Hassan and Zainudin, 2015).

At the same time, in Japan, the state has made significant progress in regulating the activities of crowdfunding companies, almost completely controlling this area in the country. State structures, based on the developed and adopted legislative acts, actively control financial flows in crowdfunding activities, and both full transparency of all operations carried out and full legal security of both investors and platform owners are ensured. All emerging problematic issues are resolved in strict accordance with the provisions of the current legislation, which is fully satisfactory for all participants in the process (Hatsuru, 2016).

In the context of constant changes in the global economy, the issues of state control of the crowd-investment market are of substantial importance both for the economy of a single state and for the entire world economic community in general. This industry is very economically unstable, which largely determines and increases the already considerable risks of transforming the activities of investment projects, up to their complete disappearance and the cessation of any financial activity. This situation does not in any way contribute to an increase in investor confidence in constantly emerging financial projects, the activities of which proceed in the absence of high-quality levers of their regulation on the part of the state (Sokolov, 2018).

The lack of an appropriate legal framework governing the activities of crowdfunding platforms has an extremely negative impact on their development, substantially increasing the risk of fraudulent transactions, which is a direct factor scaring off numerous potential investors. Many authors have addressed this issue in their studies, both in Russia and abroad. In particular, they note that "...there are no legislative provisions in modern Russia that would guarantee the safety of crowdfunding platforms and protect the interests of both the investor and the one who actively manages the received finances" (Duk and Dzhambaldinova, 2016). At the same time, it is noted that "...it is simply impossible to develop legal mechanisms of regulation on the part of the state for the currently existing options for conducting crowd-investment activities in Russia, which creates chaos and anarchy in their activities, sometimes escalating to blatant fraud" (Alekseev, 2016). Currently, Russia simply fails to develop and implement appropriate legislation into the practical sphere, which would allow the state to ensure high-quality control of the functioning of numerous financial institutions, which gives rise to uncertainty, lack of confidence in this kind of financial schemes on the part of the population (Sokolov, 2018).

The studies of this subject, which are conducted abroad, also do not add clarity to the issues of determining the essence of regulation of crowdfunding technologies by regulations of the current legislation. The necessity of developing a coordinated position of the legislations of various countries is noted in view of the growing processes of globalisation of the activities of crowd investment platforms. In this aspect, the conclusion of the European Commission appears to be very logical, which notes that premature regulation can significantly impede the development of innovative crowdfunding technologies, and not contribute to their further development. Furthermore, it states the need to maintain a balance between protecting the interests of crowd-investment platforms and protecting the rights of consumers in this segment of the financial market (Omelchuk et al., 2020; Naumenkova et al., 2019).

With regard to the analysis of the legal regulation of the crowdfunding market in modern Italy, it should be noted that the system of government management of this kind of financial activity has also just started developing. The interests of exclusively crowd-investment companies that are just starting their business are protected by law. So far, there is no legislative framework necessary to regulate the activities of large financial structures, and this is the fact that the crowdfunding market in the country is already highly developed and, unlike Russia, is popular among various segments of the population who actively use the leverage of crowd-investment to qualitatively resolve their financial issues (Lombardi, 2016).

Notably, the technologies for crowd-investment operations that were developed and successfully tested in Russia were further developed in the Swiss market. Moreover, this was reliably supported by the legislative provisions already in force in Switzerland regulating the activities of crowdfunding companies. The main state legal regulation of the activities of the financial institutions in question is the so-called "Law on Banking", which is the main provision that determines the activities of all financial structures of the country. The state obliges large crowd-investment platforms that attract investors' funds to conduct their activities only after obtaining a state license for the right to conduct banking activities. Obtaining such is fraught with great difficulties, which in itself excludes the probability of random players and hype entering the market. Therewith, representatives of the financial circles of Switzerland have long expressed proposals for introducing amendments to the country's legislation that would greatly simplify the activities of crowdfunding institutions. However, at this point in time, such initiatives have found no support from the state (Ancelle and Fischer, 2017).

Thus, the authors can conclude that foreign researchers of the activity of financial markets have yet to reach a consensus on the specific features of state regulation of crowdfunding from the standpoint of the current legal provisions. Numerous proposals are being introduced to define such rules and provisions for the development of a coherent system of state regulation of crowdfunding activities.

Conclusions

A study of the features of state regulation of crowdfunding as a new institution of the financial market with the use of methods of comparative legal analysis led to the following conclusions:

1. The scope of crowdfunding is constantly growing and expanding, which makes it imperative to keep track of the latest trends in this area. Therewith, the lack of a coherent system of regulation of the activities of crowdfunding institutions by the state causes numerous violations of the financial activities of these structures, which does not in any way contribute to raising their popularity among the population and, accordingly, negatively affects the development of crowdfunding as the latest tool for attracting investment injections.
2. The main task in this situation is the early creation and practical implementation of modern methods for regulating this type of financial activity through existing legal provisions, as well as the early development and practical implementation of the legislative framework governing the operation of the financial structures under study. These measures would contribute to the widespread creation of financial institutions conducting activities related to attracting financial investments in long-term projects, which in itself is the basis of crowd-investment. Therewith, this imposes serious responsibility on the owners of crowd-investment projects themselves, who are obliged to conduct their activities within the framework of the existing legal framework and to prevent violations of the current legislation, which would otherwise lead to serious consequences.
3. State regulation of crowdfunding as a new financial market institution presupposes a high level of legal responsibility of all participants in the crowdfunding process, which should ensure that high results of the financial activities of these organisations are obtained and create the conditions necessary for safe investment activities in all possible areas.

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Sutelktinio finansavimo kaip naujos finansų rinkos institucijos valstybinio reguliavimo ypatumai

Anotacija

Straipsnyje nagrinėjami sutelktinio finansavimo, kaip naujos finansų rinkos institucijos, reguliavimo ypatumai. Atliekama lyginamoji pagrindinių šios investicinės įstaigos reguliavimo aspektų analizė teisinių nuostatų požiūriu. Tam yra atliktas dabartinių pokyčių, susijusių su investicijomis, tyrimas Rusijoje ir užsienio šalyse. Pateikiama lyginamoji sutelktinio finansavimo su kitomis šiuo metu egzistuojančiomis investicinėmis institucijomis analizė. Taip pat pateikiama pagrindinė informacija apie esamų sutelktinio finansavimo platformų veiklą, apibūdinamos tolesnių tyrimų perspektyvos šioje srityje. Temos aktualumą lemia poreikis ieškoti efektyvaus vyriausybės sutelktinio finansavimo, kaip palyginti naujos finansų investicijų institucijos, reguliavimo. Šiais laikais yra nemažai sutelktinio finansavimo platformų, kurios apima kolektyvinį žmonių (donorų) bendradarbiavimą, sutelkiant jų lėšas (paprastai internetu), kad būtų suteikta materialinė parama kitiems žmonėms ar organizacijoms (gavėjams). Valstybinis platformų veiklos reglamentavimas, atliekamas remiantis galiojančiomis teisinėmis nuostatomis, prisidės prie sutelktinio finansavimo institucijos veiklos sutvarkymo.

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