INDIAN LEGAL ECOSYSTEM AND EQUITY CROWDFUNDING

Annjoe J Palathra
Research Scholar, Dept. of Commerce,
Fatima Mata National College (Autonomous), Kollam, University of Kerala
annjoejp@gmail.com

Dr. Sajeeve V. P.
Head & Associate Professor, Dept. of Commerce,
Bishop Moore College, Mavelikara, University of Kerala
sajeevevp@gmail.com

ABSTRACT
Equity crowdfunding (ECF) for investments is becoming a popular way to raise external funds for small businesses and Startups. As the main financial actors, such as the traditional banking system, stock markets, venture capitalists and angel investors, find it difficult in addressing the funding needs of SMEs and entrepreneurs. We also contend that India has the potential to create an ECF ecosystem to provide financing to entrepreneurial enterprises. The ECF ecosystem's credibility depends on investors' willingness to join, ECF platform setup, and entrepreneurs. To adopt ECF, an economy must be knowledgeable in the ecosystem, have support from communities and regulatory bodies, and also have the government's interest in supporting new initiatives. We investigate India's law and order. Equity crowdfunding legislation in India also synchronises with other legal regulations and permits some exemptions. This would enable start-ups and SMEs to get finance and create scalable employment for Indian youngsters, boosting the economy. It will be advisable to have a tailored legal framework that facilitates ECF as an alternative for entrepreneurs to finance to start their companies through proper awareness and careful differentiation of business needs in India. The report concludes that regulatory harmonisation is crucial to developing a crowdfunding-based business environment.
Keywords: Equity crowdfunding, small businesses, startups, regulation, India, Company Act, SEBI, Depository Act.

Introduction

Crowdfunding's rapid global expansion has made it a cutting-edge social and financial innovation for start-ups that find difficulty in securing funding traditionally (Best 2013). Crowdfunding has created new startup funding structures and business rationale. Rewards, contribution, equity, and debt/leading models dominate crowdfunding (Ehrenhard 2013). It is possible to link the rise of the collaborative economy (Menor-Campos 2019) to the surge in crowdfunding. When it comes to raising funds, start-up businesses are constrained since they have hardly any access to traditional types of funding (Brown 2019; Lombardi 2016) (venture capital, Angel business). This is especially true for risky new ventures in pioneering industries. The 2008 global financial crisis worsened this financial deficit. Also, banks collapse due to high non-recovery rates, particularly in India. Therefore, Capital Adequacy Norms-Basel III resulted in further stringent regulatory standards adopted by banks, making loans for startups and SMEs tough (Nikam, 2019). Crowdfunding services are gaining in popularity due to this liquidity shortage.

Crowdfunding, which uses technology (mostly the Internet) to raise funds from the "crowd," emerged around this time as an enticing alternative for startups (Colombo & Grilli, 2010). Since then, crowdsourcing has risen dramatically, although securities rules in several nations may limit their usefulness (Majumdar & Varottil, 2017). As an emerging entrepreneurial financing, allowing young and creative enterprises to issue stocks cheaply and easily (Drover 2017). Crowdfunding platforms, which are part of the financial technologies (FinTech) industry, allow people and enterprises to access a large number of investors without having to meet personally. Regulatory harmonisation is crucial to developing an Equity crowdfunding (ECF) business environment. So the legislative system in India is examined and that may legalize or restrict ECF.

Literature review

Most of the authors try to find a grip from the investors' perspective (Johan & Zhang, 2021; Kleinert & Volkmann, 2019), Entrepreneurial requirements (Drover 2017), ECF campaign Success or failure (Hornuf & Schmitt, 2016; Lukkarinen 2016) and authored from developing countries like European countries, the USA, China etc. (Ashta, 2018; European Commission. Directorate-General for the Information Society and Media. & SpaceTec Capital Partners GmbH 2014; Funk, 2019; Lin, 2017a; Rossi & Vismara, 2018). Studies throw light on the irrational behaviour of investors, who try to reduce the risk of information asymmetry (Zhang 2022) by imitating ex-crowdfunders' activities as a roadmap (Fernández 2011; Surowiecki, 2004). There are risks of default or unsuccessful investments by companies (Bouaiss 2020; Wojahn & Wilms, 2020) risk disclosure for

 Copyright © The Online Journal of Distance Education and e-Learning

innovative ventures(Pattanapanyasat, 2021), fraud and cyber threats(Bijkerk, n.d.; Lin, 2017a; Yeon 2022). These emphasise the need to understand the legal contexts is even more crucial (Ashta, 2018) and an economy must understand this ecosystem, have community and regulatory backing, and the government's interest in new projects to embrace ECF (Ashta, 2018; Shneor 2020). This article addresses this regulatory gap.

Methodology
The methodology of research consists mostly of online academic publications and research reports on ECF and also reviewed Company Act (CA) 2013, SEBI Act 1992, SEBI (Listing Obligations and Disclosures Requirements) Regulations 2015, Securities Contracts (Regulation) Act (SCRA) 1956, the SEBI (Issue of Capital and Disclosure Requirements) Regulation 2018 and Depository Act 1996 and last but not the least the SEBI's Consultation paper on ECF.

Regulatory ecosystem for equity crowdfunding in India
Equity crowdfunding, like other new forms of financing, needs a supportive regulatory framework with rules and regulations that safeguard individual investors. Thus, to develop a crowdfunding-based entrepreneurial ecosystem in India, national legal settings must be made more "crowdfunding-friendly" (Ashta, 2018; Nikam, 2019; Shneor 2020). In India, there are several limits imposed on the process of soliciting finances from the general public.

Public issues
In India, public issues are a prominent way to raise capital from the public. A public issue can be either Initial Public Offering (IPO) or Further Public Issue (FPO). The Companies Act of 2013 says that a company that raises money from the public must follow SEBI regulations. Public issues must adhere to Chapter III requirements such as a prospectus, listing, and application to register with recognised stock exchanges where shares are listed, exchanged, and managed as per SEBI regulations. ICDR Regulations, 2009 for equity securities include promoter contributions and lock-in-period restrictions, merchant banker, registrar to issue, detailed draft prospectus (offer document), detailed disclosure like minimum eligibility criteria of track record, monitoring agency, etc.

The SEBI obliges the company to declare its IPO capital use. Then, an initial prospectus on details of the share must be filed by the company directors. It is referred to as the Red Herring Prospectus since it includes a disclaimer stating that it is not the final prospectus. The issuing company should fix the offer price in 2 ways viz Fixed Price Issue or Book-Built Issue (investors can bid within a price band). FPOs are for those companies that are already listed and has gone through the steps of an IPO that will give shares to the public, for public investment. Since investors are acquainted with the company's record and growth prospects, FPOs are less risky than IPOs.

Private Placement
Section 42 of the Companies Act 2013 and the Companies (Prospectus and Allotment of Securities) Rules, 2014 under Chapter III restrict private placements. Private Placements Offer Letters are limited to 200 people every financial year. As per the SEBI (ICDR) Regulations, (2009), Private Placements Offer Letters issued to Qualified Institutional Buyer (QIB) like Mutual Fund, Foreign Portfolio Investor (FPI), AIF, Scheduled Commercial Banks, IRDA registered Insurance Companies, and under Employees Stock Option Scheme is exempt from such restriction.

Alternative Investment Funds (AIFs)
'Alternative Investment Fund' refers to funds that is a privately pooled investment vehicle (from investors, both domestic and international), to invest according to the strategy for the benefit of its investors, and is regulated by the Securities and Exchange SEBI (Alternative Investment Funds) Regulations, 2012). Alternative Investment Funds (AIF) include;

1. Venture capital, social venture, SME, and infrastructure funds.
2. Debt (they are not permitted to undertake borrowings except for daily operations)
3. Hedge funds (consist of funds that make short-term investments).

Restriction on AIF in Raising Funds
- AIFs can raise money through private placement, from investors only up to Rs. 1 crore. More than a thousand investors are not allowed in such a fund, and each is set to have a corpus of Rs. 20 crores.
- Category I and II AIFs cannot invest more than 25% of investible capital in one business (investee), whereas Category III AIFs may invest 10% only.

 Copyright © The Online Journal of Distance Education and e-Learning

- The sponsor or manager of AIF must have a progressive stake of more than 2.5% of the initial amount of Rs. 5 crores, whichever is lower.
- AIF units can be listed on public stock exchanges with a minimum tradable of Rs. 1 crore upon the fund's final closure.
- Quarterly, any alternative investment funds must comply with the reporting criteria of SEBI.
- AIFs are a kind of investment vehicle that require the applicants to be registered with SEBI (AIF) regulations, 2012.

The Funding Sources of Start-ups

India alone gave birth to 44 unicorns in 2021, with a total estimated value of $93 billion. In 2021, unicorn firms increased exponentially. Twenty-one unicorns have been born thus far in 2022, worth a combined $26.99 billion (as of 07th September 2022). This is evidence of the thriving startup environment in India. Startups in India can now only receive funding from angels and venture capitalists if the concept has been approved and asset-backed credits from banks (Brown 2019; Lombardi 2016; Mokhtarrudin 2017). It is crucial to offer seed capital to innovative start-ups to enable them to undergo actual evidence for their ideas (Lukkarinen 2016). So, Startup India Seed Fund Scheme (SISFS) has made it easier for entrepreneurs in India to raise money for proof of concept, prototype development, product testing, market entrance, and commercialization (*Guidelines for Startup India Seed Fund Scheme*, 2021).

To boost capital availability, private investment, and startup ecosystem growth, the government has launched a Fund of Funds for Startups (FFS) at the Small Industries Development Bank of India (SIDBI) with Rs 10,000 crores (David 2016). In June 2016, the Cabinet authorised the Fund of Funds for Startups (FFS) created by the Department for Promotion of Industry and Internal Trade (DPIIT). FFS invests indirectly in high-potential Indian companies through SEBI-registered Alternate Investment Funds (AIFs), known as daughter funds[1]. Venture capital and alternative investment funds invest in start-ups through the fund of funds. SIDBI has committed 7527.95 crores to 93 AIFs and released 3,204.29 crores to 70 AIFs as of November 30, 2022. 773 Start-ups received 13,493 crores.

SEBI's Consultation Paper On Equity Crowdfunding

As is the case with any emerging methods of financing, Equity crowdfunding (ECF) also necessitates the establishment of a legal and regulatory framework that is both accommodating to the needs of entrepreneurs and protects individual investors.

According to Kirby & Worner (2014), global ECF regulation falls into three areas;

a) The regulatory framework completely bans ECF practices while reinforcing the prevailing legislature on fundraising by companies.
b) The second concerns governments that have accepted this unique means of raising capital and treated it as a public offer of securities, with proper exemptions.
c) Last, tailored legislation by governments to support this type of funding without compromising investor protection.

ECF has recently been a target of legislators around the world as investing in ECF is more sophisticated than other kinds of crowdsourcing. The "Jumpstart Our Business Startups (JOBS) Act" was passed in the United States of America in 2012.

Regulating authority	The Securities and Exchange Board of India ('SEBI'), the Indian securities regulator issued a consul paper in June 2014 (SEBI Consultation Paper)

 Copyright © The Online Journal of Distance Education and e-Learning

<table>
<tr><td rowspan="3">The Crowd</td><td>Type</td><td>Qualified Institutional Buyers (QIBs)</td><td>Indian Companies (with minimum net worth)</td><td>High Net Worth Individuals (HNIs)</td><td>Eligible Retail Inve (ERIs)</td></tr>
<tr><td>Investment norms</td><td>Individually: at least 5 times the minimum offer value per person
Collectively: a minimum of 5% of the issue.</td><td>More than 4 times the minimum offer value per person</td><td>≥ 3 times the minimum offer value per person</td><td>At least the minimu value per person
Maximum investme
≤ 60,000/- for Indiv ERIs
Total Investment (p
≤10% of the ERI's worth</td></tr>
<tr><td>No. of Investors</td><td colspan="4">● Limited to 200 except for QIBs
● No limit for QIBs</td></tr>
<tr><td rowspan="3">The Entrepreneurs</td><td>Eligible companies</td><td colspan="4">Indian early-stage start-ups & SMEs, provided;
a) not more than Rs. 100 million in 12 months
b) a company which is not promoted, sponsored or related to an industrial group with a turno exceeding Rs. 250 million
c) Unlisted companies
d) Must have been in operation for not more than 4 years
e) Non-financing ventures
f) Not engaged in real estate & other prohibited activities
Private Company not allowed to be an issuer.</td></tr>
<tr><td>Capital could be raised</td><td colspan="4">Cannot exceed Rs. 10 Crores within 12 months.</td></tr>
<tr><td>Investors Protection Norms</td><td colspan="4">Disclosure obligations</td></tr>
<tr><td colspan="2">ECF Platforms</td><td colspan="4">● Class I, Class II, Class III entities are permitted to set up a crowdfunding platform
● To be fund-based crowdfunding, in addition to Class I entities, a dedicated set of Class III Entities have also been prescribed.</td></tr>
<tr><td colspan="2">Restriction on Transferability</td><td colspan="4">● Transfer not permissible on secondary markets
● Exit available to the investor only on the occurrence of certain events
● Lock-in period for exit – not prescribed</td></tr>
</table>

Table 1. Overview of national Equity crowdfunding Regulation in India

 Copyright © The Online Journal of Distance Education and e-Learning

The Chinese authority issued the "Equity-based Crowdfunding Regulations" in 2015 (Chen 2018; Lin, 2017b), and the Malaysian regulator issued the "Guidelines on Market Regulation under Section 34 of CMSA" (Haniff 2019; Kunhibava & Muneeza, 2020) the same year. Likewise, the Indian security regulator Securities and Exchange Board of India (SEBI) also developed a tailored regulatory framework named “Consultation Paper on Crowdfunding in India” (2014) (SEBI, 2014). These laws, like those in other capital markets, attempt to oversee the fundraising operations of start-ups and SMEs, with the ultimate purpose of safeguarding (International Organizations of Securities Commissions, 2017). In this section, we look at how the consultation paper has approached this balance, with a focus on the key players in the process: the ECF platform, Crowdfunders, and Fund seekers (Table 1)
.

Conclusion

In recent years, the popularity of Equity crowdfunding (ECF) is proliferating. India's huge population and its dependence on technology and creativity will aid the start-up industry to become much more prominent in future which ultimately demands the limitless potential for crowdfunding (Majumdar & Varottil, 2017; Sharma, 2019). Legal interventions have the potential either to promote or kill crowdsourcing. Eventually, a balance between the growth of startups and small businesses and investor protection must be achieved by regulators. Existing Legislation considers the issuer's needs and how they affect industry competitiveness and platform efficiency. ECF legislation in India also synchronises with other legal regulations and permits some exemptions. The future will determine whether this financing innovation will help solve this growing crisis. As with other financial instruments, ECF legislators should not consider it as a perfect solution for funding means. Instead, authorities with a tailored legal framework might facilitate ECF as an alternative for entrepreneurs to finance to start their companies through proper awareness and careful differentiation of business needs.

This study has its limitation because it is a deep conceptual analysis of enacted regulatory frame for startups and SMEs in India and published literature around the world. Using primary data (such as interviews with industry experts) in conjunction with various statistical and econometric analysis techniques, it is possible to research the potential, opportunities, and pitfalls of employing ECF as entrepreneurial finance within the Indian financial ecosystem.

Reference

Ashta, D. (2018). A Critical Comparative Analysis of the Emerging and Maturing Regulatory Frameworks: Crowdfunding in India, USA, UK. Journal of Innovation Economics & Management, n° 26(2), 113–136.

Best, J Lambkin, A Neiss, S Raymond, S & Swart, R. (2013). Crowdfunding’s Potential for the Developing World.

Bijkerk, W. (n.d.). Risks and Benefits of Crowd-funding.

Bouaiss, K Girard-Guerraud, C & Zopounidis, C. (2020). Bankruptcy of ECF-funded firms: Evidence from France. Finance, 42(3), 93–131.

Brown, R Mawson, S & Rowe, A. (2019). Start-ups, entrepreneurial networks and equity crowdfunding: A processual perspective. Industrial Marketing Management, 80, 115–125.

Chen, J Chen, L Chen, J & Xie, K. (2018). Mechanism and policy combination of technical sustainable entrepreneurship crowdfunding in China: A system dynamics analysis. Journal of Cleaner Production, 177, 610–620.

Colombo, M. G & Grilli, L. (2010). On growth drivers of high-tech start-ups: Exploring the role of founders’ human capital and venture capital. Journal of Business Venturing, 25(6), 610–626.

David, D Gopalan, S & Ramachandran, S. (2016). ADBI Working Paper Series THE STARTUP ENVIRONMENT AND FUNDING ACTIVITY IN INDIA Asian Development Bank Institute.

Drover, W Busenitz, L Matusik, S Townsend, D Anglin, A & Dushnitsky, G. (2017). A Review and Road Map of Entrepreneurial Equity Financing Research: Venture Capital, Corporate Venture Capital, Angel Investment, Crowdfunding, and Accelerators. Journal of Management, 43(6), 1820–1853.

Ehrenhard, M Berlin Supervisor, T Ing Sebastian Pepper, D & de Visser, M. (2013). Crowdfunding-A Multifaceted Phenomenon Table of Content.

European Commission. Directorate-General for the Information Society and Media & SpaceTec Capital Partners GmbH. (2014). Crowdfunding innovative ventures in Europe: the financial ecosystem and regulatory landscape. [European Commission].

Fernández, B Garcia-Merino, T Mayoral, R Santos, V & Vallelado, E. (2011). Herding, information uncertainty and investors’ cognitive profile. Qualitative Research in Financial Markets, 3(1), 7–33.

Funk, A. S. (2019). The matter of crowdfunding in China. In Contributions to Management Science.

Guidelines for Startup India Seed Fund Scheme. (2021).

Haniff, W. A. A. W Halim, A. H. A & Ismail, R. (2019). The regulation of equity crowdfunding in United Kingdom and Malaysia: A comparative study. Academic Journal of Interdisciplinary Studies, 8(3), 45–56.
Hornuf, L & Schmitt, M. (2016). Success and Failure in Equity Crowdfunding. In CESifo DICE Report (Vol.
International Organizations of Securities Commissions. (2017). IOSCO Research Report on Financial Technologies (Fintech). www.world-exchanges.org/home/index.php/files/18/Studies%20-
Johan, S & Zhang, Y. (2021). Investors' industry preference in equity crowdfunding. Journal of Technology Transfer.
Kirby, E & Worner, S. (2014). Crowdfunding: An Infant Industry Growing Fast. Staff Working Paper of the IOSCO Research Department.
Kleinert, S & Volkmann, C. (2019). Equity crowdfunding and the role of investor discussion boards. Venture Capital, 21(4), 327–352.
Kunhibava, S. B & Muneeza, A. (2020). Regulating FinTech Businesses. In Impact of Financial Technology (FinTech) on Islamic Finance and Financial Stability (pp. 149–173).
Lin, L. (2017a). Managing the risks of equity crowdfunding: Lessons from China. Journal of Corporate Law Studies, 17(2), 327–366.
Lin, L. (2017b). Managing the risks of equity crowdfunding: Lessons from China. Journal of Corporate Law Studies, 17(2), 327–366.
Lombardi, R Trequattrini, R & Russo, G. (2016). Innovative start-ups and equity crowdfunding. International Journal of Risk Assessment and Management, 19(1/2), 68.
Lukkarinen, A Teich, J. E Wallenius, H & Wallenius, J. (2016a). Success drivers of online equity crowdfunding campaigns. Decision Support Systems, 87, 26–38.
Lukkarinen, A Teich, J. E Wallenius, H & Wallenius, J. (2016b). Success drivers of online equity crowdfunding campaigns. Decision Support Systems, 87, 26–38.
Majumdar, A. B & Varottil, U. (2017). Regulating equity crowdfunding in India: walking a tightrope. In Global Capital Markets (pp. 172–198). Edward Elgar Publishing.
Menor-Campos, A García-Moreno, M. de los B López-Guzmán, T & Hidalgo-Fernández, A. (2019). Effects of collaborative economy: A reflection. Social Sciences, 8(5).
Mokhtarrudin, A Masrurah, I. M. K & Muhamad, S. C. R. (2017). Crowdfunding as a funding opportunity for youth start-ups in Malaysia. Pertanika Journal of Social Sciences and Humanities, 25(June), 139–153.
Nikam, R. J. (2019). Bespoke crowdfunding regulation: A boost up to startups and smes in india. Hasanuddin Law Review, 5(1), 55–76.
Pattanapanyasat, R.-P. (2021). Do conventional financial disclosures matter in alternative financing? Evidence from equity crowdfunding. Journal of Accounting and Public Policy, 40(3).
Rossi, A & Vismara, S. (2018). What do crowdfund platforms do? A comparison between investment-based platforms in Europe. Eurasian Business Review, 8(1), 93–118.
SECURITIES AND EXCHANGE BOARD OF INDIA (Alternative Investment Funds) Regulations, 2012. (2012).
SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009. (2009
Sharma, G. (2019). CROWDFUNDING IN INDIA: AN EMPIRICAL STUDY. International Journal of Advanced Research, 7(3), 935–942.
Shneor, R Zhao, L & Flåten, B.-T. (2020). Advances in Crowdfunding (R. Shneor, L. Zhao, & B.-T. Flåten, Eds.). Springer International Publishing.
Surowiecki, J. (2004). The Wisdom of Crowds.
Wojahn, O. W & Wilms, J. F. (2020). The Bankruptcy Risk of Equity Crowdfunded Companies in Germany. In Eurasian Studies in Business and Economics (Vol. 12, Issue 2, pp. 317–325).
Yeon, A. L Yaacob, N Hussain, M. A & Ismail, C. T. M. (2022). Equity Crowdfunding Vs Cybercrime: A Legal Protection. BiLD Law Journal, 7(1), 139–150.
Zhang, M Nazir, M. S Farooqi, R & Ishfaq, M. (2022). Moderating Role of Information Asymmetry Between Cognitive Biases and Investment Decisions: A Mediating Effect of Risk Perception. Frontiers in Psychology, 13.

 Copyright © The Online Journal of Distance Education and e-Learning