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LEGAL FRAME WORK OF CROWD FUNDING IN INDIA

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Abstract
The present paper highlights about the formalities for setting up of crowd funding platforms, who can raise funds from Crowd funding Platform and Limitations on capital raised. The concept of crowd funding is not new in India. Traditionally, people have saved with and taken small loans from individuals and groups within the context of self-help to start businesses or farming ventures. Majority of poor are excluded from financial services. Crowd funding is a programme to support intelligent entrepreneurs by way of providing financial assistance for their projects from the crowd.

Crowd funding is an important tool for improving the standard of living of poor. In spite of many financial intuitions in India the eligible young entrepreneurs are not able to get the financial assistance easily because of number of formalities by these intuitions.

Crowd funding platforms are the best alternatives for the entrepreneurs to get finance for their projects from the crowd through internet. The potential for growing crowd funding in India is very high. Crowd funding platforms in India is expected to grow rapidly, supported by government of India Crowd funding has evolved rapidly into a global movement dedicated to provide financial services to young entrepreneurs. The organizations that provide these services are known as crowd funding platforms.

On the basis of growth and evolution related to crowd funding, the study focuses on the rule for setting up of a crowd Funding platform, who can invest in the projects, what is the limit for the investment.

What is Crowd Funding?

Crowd funding is solicitation of funds (small amount) from multiple investors through a web-based platform or social networking site for a specific project, business venture or social cause. Crowd sourced funding is a means of raising money for a creative project (for instance, music, film, book publication), a benevolent or public-interest cause (for instance, a community based social or co-operative initiative) or a business venture, through small financial contributions from persons who may number in the hundreds or thousands. Those contributions are sought through an online crowd-funding platform, while the offer may also be promoted through social media.

Crowd Funding Models

Crowd funding connects investors with small business start-ups and projects through an online transaction portal that removes barriers to entry and serves as the main point of connection. Just like an investor financially supports a company by buying shares in the stock exchange for profits, Crowd Funding allows investors to financially support a project through an online portal in exchange for benefits. The type of benefit that the investor earns or receives from the project defines the three Crowd funding models:

Donation Model

Much like an online charitable donation, individuals make a financial contribution to a project without any expectations of financial benefits. In this model, the contribution is a direct result of the donor's interest in the cause being addressed by the project. Under this model, donors often receive small gifts or rewards.

Lending Model

In this model, an investor will loan money to a project with the expectation of being repaid (in cash or in kind) under terms agreed upon before the transaction is made. Often, agreements are analogous to bank loans, where the principle plus interest is paid back within a certain time frame. Other types of agreements require the recipient to pay back only if the project is successful.

Equity Based Crowd Funding

In Equity Based Crowd Funding, in consideration of funds collected from investors, Equity Shares of the Company are issued. It refers to fund rising by a business, particularly early-stage funding, through offering equity interests in the business to investors online. Businesses seeking to raise capital through this mode typically advertise online through a Crowd Funding platform website, which serves as an intermediary between investors and the start-up companies

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Scope of the Study

As India being the one biggest country for Non Government Organizations (NGOs), crowd funding stands a big chance. Lot of new platforms are going to come in the next few years.

The new companies act, which mandates all companies to spend 2% of their profits on corporate social responsibility, will also help them crowd funding gain traction.

Objectives

- Who can raise funds from Crowd funding Platform and Limitations on capital raised?
- Who can set up a Crowd funding Platform?
- Who can raise funds from Crowd funding Platform and Limitations on capital raised?

Crowd funding is intended to solve the funding problems of early stage startups and SMEs. As crowd funding shall entail substitution or relaxation of requirements of prospectus or listing etc. Various jurisdictions have imposed different set of limitations on the amount allowed to be raised through online crowd funding platforms and the conditions to be satisfied by the issuing companies

Some jurisdictions have also imposed restrictions on the nature of companies which can raise capital from such crowd funding platforms, e.g. in Italy crowd funding is restricted only to innovative startups. To be innovative a firm must be recognized as such by the Chamber of Commerce and to be startup a firm can be no more than 48 months in existence.

Crowd funding can provide an alternative source of capital for startups and SMEs that either have limited access to capital or have exhausted other available sources of capital. It is, therefore, proposed that the additional channel of crowd funding platform to raise modest amount of funds is allowed to be accessed by early stage startup or SME which is an unlisted public company incorporated in India.

A company intending to raise capital not exceeding Rs. 10 Crores in a period of 12 months. Companies which intend to make issue more than size of Rs.10 Crores may raise funds by complying with the provisions of SEBI Regulations and list them on a SME Platform or main board of a recognized stock exchange,

- A company which is not promoted, sponsored or related to an industrial group which has a turnover in excess of Rs. 25 Crores or has an established business,
- A company which is not listed on any exchange,
- A company which is not more than 48 months old,
- A company which proposes to engage in non-financing ventures, i.e. funds raised through the crowd funding platform will not be further used for providing loans or investments in other entities, and
- A company which is not engaged in real estate and activities which are not permitted under industrial policy of Government of India.

Further, to ensure only genuine entities raise funds through this mode:

- The issuing company, its directors, promoters or associates have not been prohibited from accessing or operating in the capital markets or restrained from buying, selling or dealing in securities under any order or direction passed by the SEBI.
- The issuing company, its directors, promoters or associates are not mentioned as a 'defaulter' or a 'willful defaulter' by RBI or CIBIL.
- The director(s) or promoter(s) are not disqualified to be appointed as director(s) under the Companies Act 2013.
- The issuing company, its directors, promoters or associates are 'fit and proper' persons as specified under the Schedule II of the SEBI (Intermediaries) Regulations, 2008.

In addition to above, the issuers must also comply with the following:

In a given period of 12 months, Issuers shall not use multiple crowd funding platforms to raise funds.

- Issuers shall not directly or indirectly advertise their offering to public in general or solicit investments from the public.
- Issuer shall compulsorily route all crowd funding issues through a SEBI recognized Crowd funding Platform.
- Issuers shall not directly or indirectly incentivize or compensate any person to promote its offering.
- Issuers shall provide provisions for oversubscription. This may include maximum oversubscription amount to be retained, which should not exceed 25% of the actual issue size; intended usage of the oversubscribed amount. The total amount retained. including the actual issue size and oversubscription, shall not exceed the limit of Rs. 10 Crores.

Disclosure Requirements on Issuer

It is proposed that Crowd funding follow a disclosure based regime. It is very important that the companies seeking to raise funds through crowd funding disclose true and factual information to facilitate investors in an informed decision making. The disclosures are required when an issuer approaches the crowd funding platform with the intention of raising funds from the accredited investors registered with the platform, and at regular intervals on an ongoing basis.

Who Can Set Up a Crowd Funding Platform

It is necessary that crowd funding platforms are not established or not used to facilitate fund raising by fraudulent entities. It is therefore important to specify integrity, experience and solvency requirements applicable to crowd funding platform owner and the key persons associated with it. Therefore it is proposed that any online offering or issue or sale through the internet can be made only through a SEBI recognized crowd funding platform.

1. Class I Entities

1. Recognized Stock Exchanges with nationwide terminal presence (RSEs)
2. SEBI registered Depositories

2. Class II Entities

Technology Business Incubators (TBIs) Promoted by Central Government or any State Government through bodies such as NSTEDB (National Science & Technology Entrepreneurship Development Board) under Department of Science & Technology Functioning as a society registered under societies act of 1860/or as a non-profit making section 8 company,

1. Having at least 5 years of experience,
2. Having a minimum net worth of Rs 10 Crores.
3. Should have attained self-sufficiency.
4. Should display only those companies which share a common focus thrust areas as the TBI.

A joint venture of a Class I entity and a Class II entity is also acceptable for setting up a Crowd funding Platform as this would bring the best of both classes.

3. Class III Entities

Associations and Networks of PE or Angel Investors.

1. With a track record of a minimum of 3 years.
2. With a minimum member strength of 100 active members from the relevant industry.
3. Which are registered as Section 8 companies under Companies Act 2013 with a paid up share capital of Rs. 2 Crores.

SEBI also noted that platforms launched by Class I & Class III Entities can enable the FbC. It also noted that no entity can raise funds using crowd funding without channeling their issues through a recognized crowd funding platform, subject to the approval of Screening Committee.

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