



LEGAL REGULATION OF EQUITY-BASED CROWDFUNDING

Aminjon Kalandarov

Tashkent State University of Law
Department of Business Law
Mail: aminjongalandarov9@gmail.com

Article history:	Abstract:
Received: 6 th June 2023 Accepted: 6 th July 2023 Published: 8 th August 2023	Equity-based crowdfunding (EBC) has emerged as a significant alternative financing mechanism for startups and small businesses. This article delves into the legal regulations surrounding EBC, highlighting the balance regulators must strike between fostering innovation and ensuring investor protection.
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INTRODUCTION

The digital revolution has not only transformed the way we communicate, shop, or entertain ourselves but has also reshaped the financial landscape, introducing novel mechanisms for raising capital. One such innovative mechanism that has gained traction in recent years is equity-based crowdfunding (EBC). At its core, EBC is a confluence of traditional investment and the democratic ethos of the internet, allowing a broader spectrum of individuals to participate in early-stage financing of businesses.

Historically, startups and small businesses faced significant challenges in securing funding. Traditional financial institutions, such as banks, often deemed these ventures too risky, and venture capitalists or angel investors were accessible to only a select few. This financing gap left many promising businesses without the necessary capital to grow or even commence operations [1]. EBC emerged as a solution to this challenge, democratizing investment and providing entrepreneurs with a platform to present their business ideas directly to potential investors.

However, the very nature of EBC, which makes it so attractive – its accessibility, democratization, and online presence – also introduces a set of complexities. The online platform means a global audience, varied levels of investor expertise, and a heightened risk of misinformation or misrepresentation. These intricacies underscore the pressing need for a robust legal framework that can navigate the dual objectives of promoting financial innovation while safeguarding investor interests.

As we delve deeper into the world of EBC and its legal regulations, it's crucial to understand its transformative potential and the challenges it poses. This article aims to provide a comprehensive overview of the current regulatory landscape, the inherent challenges in framing these regulations, and the potential pathways for the future evolution of EBC.

1. The Evolution of Equity-Based Crowdfunding

Equity-based crowdfunding (EBC) is a relatively recent phenomenon, but its roots can be traced back to the broader concept of crowdfunding, which has been in practice for centuries. The evolution of EBC can be understood by examining its historical context, technological advancements, and the changing dynamics of investment.

Long before the digital age, communities often pooled resources to support businesses, projects, or individuals in need. This collective effort, known as crowdfunding, was a testament to the power of community collaboration. For instance, in the 19th century, the base of the Statue of Liberty was funded by thousands of small donations from individuals, a crowdfunded project in its essence.

With the advent of the internet, the late 1990s and early 2000s saw the emergence of online crowdfunding platforms. Websites like Kickstarter and Indiegogo allowed creators to raise funds for projects ranging from films to gadgets. However, these were reward-based platforms, where backers received products, services, or acknowledgments in return for their contributions. The idea of offering equity or a stake in the company was not yet mainstream.

The financial crisis of 2008 played a pivotal role in the rise of EBC. With traditional financing avenues constricting, startups began looking for alternative funding sources. The idea of merging crowdfunding with equity investment began to gain traction. Instead of just receiving a product or a 'thank you' note, backers could now obtain a share in the company, benefiting from its potential success.

Recognizing the potential of EBC as a legitimate financing tool, regulators began to step in. In the United States, for instance, the Jumpstart Our Business Startups (JOBS) Act of 2012 laid the groundwork for EBC, allowing non-accredited investors to participate under specific conditions. This regulatory recognition marked a significant milestone in the evolution of EBC,



transitioning it from a novel idea to a mainstream investment avenue.

Today, EBC platforms operate globally, with startups from various sectors leveraging them for capital. From tech startups in Silicon Valley to sustainable farms in Africa, EBC has democratized investment, allowing everyday individuals to play a part in fostering innovation and entrepreneurship.

2. THE NEED FOR REGULATION

Equity-based crowdfunding (EBC) represents a paradigm shift in the way startups and small businesses raise capital. While its democratizing potential is undeniable, the inherent risks associated with this form of investment make a compelling case for regulatory oversight. This section delves into the primary concerns that underscore the need for a robust regulatory framework around EBC.

2.1 Fraud Prevention [2]

Misrepresentation: The digital nature of EBC platforms can make it easier for businesses to misrepresent their operations, financial health, or future prospects. Without proper checks and balances, unsuspecting investors might be lured into funding ventures based on exaggerated claims or outright falsehoods.

Ponzi Schemes: There's a risk of platforms or businesses operating Ponzi-like schemes, where returns are paid to earlier investors using the capital of newer investors, rather than legitimate business profits.

2.2 Investor Protection

Diverse Investor Base: EBC platforms attract a wide range of investors, from seasoned professionals to novices. Regulations need to ensure that all investors, especially those with limited financial knowledge, are provided with clear, transparent information to make informed decisions.

Investment Caps: To prevent undue financial harm, there might be a need for regulations that cap the amount an individual can invest through EBC platforms, especially for non-accredited investors.

2.3 Market Integrity

Transparency Standards: For the EBC market to function efficiently, there must be transparency standards in place. This includes clear disclosure of business financials, risks associated with the investment, and the rights of investors.

Platform Accountability: EBC platforms should be held accountable for ensuring that the businesses seeking funds meet certain criteria and that the information presented to investors is accurate.

2.4 Ensuring Fair Practices

Conflict of Interest: There's potential for conflicts of interest, especially if the platform has a stake in the

businesses listed or if there are undisclosed relationships between the platform operators and the businesses.

Fair Pricing: Without regulatory oversight, there's a risk of unfair pricing of equity, which could either undervalue the business or inflate its worth, misleading investors.

2.5 Global Considerations

Cross-border Investments: EBC's online nature means businesses can attract international investors. Regulations need to address the complexities of cross-border investments, including jurisdictional issues and compliance with foreign investment laws.

The transformative potential of equity-based crowdfunding is immense, but so are the associated risks. A well-structured regulatory framework is not just desirable but essential to ensure that EBC serves as a sustainable and trustworthy mechanism for investment. Balancing the dual objectives of fostering innovation and ensuring investor protection will be key to the long-term success of EBC.

3. Global Regulatory Landscape

Equity-based crowdfunding (EBC) has garnered attention worldwide, leading to a diverse regulatory landscape that reflects the unique economic, cultural, and legal contexts of different regions. This section provides an overview of the regulatory approaches adopted by various countries and regions, highlighting the similarities and differences in their efforts to balance innovation with investor protection.

United States

JOBS Act: The Jumpstart Our Business Startups (JOBS) Act of 2012 [3] was a landmark legislation that paved the way for EBC in the U.S. Title III of the Act, known as Regulation Crowdfunding, allows non-accredited investors to participate in EBC with specific investment caps based on their income and net worth [4].

SEC Oversight: The U.S. Securities and Exchange Commission (SEC) oversees EBC platforms, ensuring they adhere to registration requirements, disclosure norms, and investor protection measures [5].

European Union

ESMA Guidelines: While the European Securities and Markets Authority (ESMA) has provided overarching guidelines for EBC, the responsibility for actual regulations lies with individual member states [6].

UK's FCA Framework: The UK, through its Financial Conduct Authority (FCA), has been a pioneer in EBC regulation in Europe. The FCA mandates platforms to conduct due diligence on businesses, provide clear risk warnings to investors, and ensure that promotional materials are fair and not misleading [7].

Asia



Singapore: The Monetary Authority of Singapore (MAS) has set up a regulatory framework that requires EBC platforms to hold a Capital Markets Services (CMS) license. The framework emphasizes transparency, due diligence, and risk disclosures [8].

Malaysia: The Securities Commission Malaysia (SCM) has established guidelines that require EBC platforms to be registered, conduct background checks on issuers, and provide educational materials to investors [9].

Australia

ASIC Guidelines: The Australian Securities and Investments Commission (ASIC) has laid out regulations that require EBC platforms to hold an Australian Financial Services (AFS) license. The guidelines also set investment caps for retail investors and mandate risk disclosure. [10]

The global regulatory landscape for equity-based crowdfunding is diverse and evolving. While there are common themes of investor protection, transparency, and platform accountability, each region tailors its approach based on its unique socio-economic context. As EBC continues to grow in popularity, it will be crucial for regulators worldwide to collaborate, share best practices, and ensure that the global EBC ecosystem thrives in a secure and sustainable manner.

4. Challenges in Regulation

Equity-based crowdfunding, while promising as an alternative financing method, presents unique regulatory challenges. These challenges arise from the intersection of democratizing access to capital and ensuring investor protection. This section will delve into the complexities and challenges faced by regulators in crafting and implementing effective rules for this nascent industry.

4.1. Balancing Innovation and Investor Protection

One of the primary challenges in regulating equity-based crowdfunding is striking the right balance between fostering innovation and ensuring investor protection [11]. On one hand, overly stringent regulations can stifle the growth of the sector, making it less attractive for startups and small businesses. On the other hand, lax regulations can expose unsophisticated investors to undue risks, leading to potential financial losses and eroding trust in the platform.

4.2. Diverse Investor Base

Equity crowdfunding platforms attract a wide range of investors, from seasoned venture capitalists to novice individuals looking to support a local business². Crafting regulations that cater to this diverse investor base is challenging. For instance, setting high minimum investment thresholds can exclude smaller investors,

while setting them too low can lead to uninformed investment decisions.

4.3. Cross-Border Transactions

With the rise of digital platforms, equity crowdfunding campaigns can attract investors from across the globe³. This presents regulatory challenges related to cross-border transactions, currency conversions, and differing legal jurisdictions. Ensuring compliance with multiple regulatory frameworks and addressing potential disputes becomes a complex task.

4.4. Information Asymmetry

Startups and early-stage companies, which are the primary beneficiaries of equity crowdfunding, often lack a track record or detailed financial disclosures⁴. This leads to information asymmetry, where investors might not have complete or accurate information to make informed decisions. Regulators face the challenge of determining what level of disclosure is appropriate for these companies without imposing burdensome requirements.

4.5. Potential for Fraud

Like any online platform, equity crowdfunding sites are susceptible to fraudulent activities⁵. Ensuring the authenticity of campaigns, verifying the claims made by fundraisers, and safeguarding investor funds are paramount. Regulators must devise mechanisms to detect and prevent fraud while ensuring that genuine campaigns are not unduly hindered.

4.6. Regulatory Fragmentation

Different jurisdictions have approached the regulation of equity crowdfunding in varied ways, leading to a fragmented regulatory landscape³. For platforms operating in multiple countries, navigating this patchwork of regulations can be daunting. Harmonizing regulations or at least ensuring some level of consistency can aid in the global growth of the industry. While equity-based crowdfunding offers immense potential as a financing tool, it comes with its set of regulatory challenges. Addressing these challenges requires a nuanced approach that takes into account the unique characteristics of the industry, the diverse needs of its stakeholders, and the overarching goal of ensuring a fair and transparent ecosystem.

5. The Way Forward

Equity-based crowdfunding (EBC) has undeniably transformed the landscape of startup financing, offering a more democratic and accessible avenue for both entrepreneurs and investors. However, as with any nascent industry, its evolution is accompanied by challenges that necessitate thoughtful interventions. This section will explore potential strategies and considerations for the future development and regulation of EBC.



5.1. Collaborative Regulatory Approach

Given the global nature of EBC, there's a pressing need for regulatory bodies across different jurisdictions to collaborate [12]. Sharing best practices, insights, and challenges can lead to more harmonized regulations, reducing complexities for platforms operating internationally.

5.2. Embracing Technological Solutions

Regtech, or regulatory technology, can play a pivotal role in addressing some of the challenges associated with EBC [13]. Automated compliance checks, AI-driven fraud detection, and blockchain-based transaction records can enhance transparency, reduce risks, and streamline regulatory compliance.

5.3. Continuous Education and Awareness

One of the inherent challenges of EBC is the diverse investor base, which includes many who might be unfamiliar with the intricacies of equity investment [14]. Regulators and platforms should prioritize investor education, offering resources, webinars, and tools that help investors make informed decisions.

5.4. Flexible Regulatory Frameworks

Given the rapid evolution of the digital landscape and the EBC industry, regulations need to be agile [15]. Adopting a sandbox approach, where startups and platforms can test innovations within a controlled regulatory environment, can strike a balance between fostering innovation and ensuring investor protection.

5.5. Strengthening Due Diligence Processes

To address concerns related to information asymmetry and potential fraud, platforms should be encouraged (or mandated) to adopt robust due diligence processes⁵. This includes thorough background checks, financial audits, and verifying the claims made by businesses seeking funds.

5.6. Encouraging Self-Regulation

While external regulations are crucial, there's also a case for promoting self-regulation within the EBC industry. Industry associations can develop codes of conduct, best practices, and ethical guidelines, ensuring that platforms operate with integrity and prioritize investor interests.

5.7. Feedback and Iteration

Given the novelty of EBC, regulators should adopt a feedback-driven approach. Engaging with platforms, investors, and businesses to gather insights, understand challenges, and iterate on regulations can lead to a more effective and responsive regulatory framework.

CONCLUSION

Equity-based crowdfunding (EBC) stands at the intersection of technological innovation, financial democratization, and entrepreneurial spirit. As a transformative force in the world of startup financing, it

has redefined the traditional paradigms of investment, making capital more accessible to businesses and investment opportunities more available to the masses. However, like any disruptive innovation, it brings with it a set of challenges that necessitate thoughtful reflection and intervention.

The journey of EBC, from its inception to its current global presence, offers valuable insights into the dynamic interplay between market forces, regulatory frameworks, and stakeholder interests. While the potential of EBC to democratize finance is immense, its sustainable growth hinges on a balanced approach that prioritizes both innovation and protection¹. The challenges in regulation, ranging from ensuring investor protection to addressing cross-border complexities, underscore the need for a proactive, collaborative, and agile regulatory stance.

The global regulatory landscape, with its diverse approaches and frameworks, highlights the complexities of crafting universally applicable rules. Yet, it also offers opportunities for cross-border collaboration, knowledge exchange, and harmonization². As EBC platforms continue to evolve, leveraging technological solutions, such as Regtech, and fostering industry self-regulation can further enhance transparency, trust, and efficiency.

Looking ahead, the future of EBC is not just about connecting businesses with capital; it's about creating an ecosystem where innovation thrives, risks are managed, and opportunities are democratized³. It's about fostering a culture of informed investment, where every stakeholder, from the novice investor to the seasoned entrepreneur, is empowered with knowledge, tools, and safeguards.

In essence, the story of equity-based crowdfunding is a testament to the power of collective effort, the promise of technology, and the potential of human ingenuity. As we navigate the challenges and embrace the opportunities, EBC offers a glimpse into a future where finance is not just a privilege of the few but an opportunity for many.

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