THE ROLE OF THE REGULATORY AND LEGAL FRAMEWORK IN PROMOTING EQUITY-BASED CROWDFUNDING IN IRAQ

MAHA MEZHER MOHSIN AL-RUBAYE
College of Administration and Economics - University of Tikrit - Department of Business Administration. Cade.2021.28@st.tu.edu.iq
PROF. DR. ABDULAZIZ SHWAISH ABDUL HAMEED,
College of Administration and Economics - University of Tikrit - Department of Business Administration. azizshwaish@yahoo.com

Abstract.
The aim of research is to explain the role of the regulatory and legal framework in promoting ownership-based crowdfunding in Iraq and to develop a general framework that includes principles and basic steps to support policy makers, especially in a country like Iraq, in formulating and implementing regulatory and legal frameworks for the work of ownership-based crowdfunding platforms, taking into consideration Lessons learned from international experiences. The problematic of the research is represented in the following question: Is establishing a legal framework for crowdfunding, especially based on property rights, an urgent necessity, to start crowdfunding activity in Iraq in an organized and deliberate manner to take advantage of the advantages of this type of financing and overcome its negative effects? The research problem was addressed by relying on the analytical approach to find out the regulatory and legal framework and its role in promoting ownership-based crowdfunding in Iraq.
Keywords: regulatory framework, legal framework, equity-based crowdfunding

The first axis: research methodology.

1-INTRODUCTION

The steady growth of the crowdfunding market and the many advantages that can be obtained, prompted many countries to pay attention to the issue of crowdfunding, which is one of the most important innovations in financial technology, especially in terms of regulatory and legislative aspects, as it has become a strong competitor to traditional financing methods that are shackled by the provisions of the law and subject to under strict control from the regulatory authorities.

The concept of crowdfunding is based on a basic principle that revolves around the community's contribution to financing startups and small, medium and micro enterprises (MSME) along with traditional financing institutions. These projects and the method or path they take in collecting these funds, and crowdfunding platforms cannot be viewed as a source of funding only, but rather an opportunity for project owners and new ideas to obtain constructive feedback and ideas before starting the project, and to obtain more feedback after operation to improve their products and use With the skills and knowledge of others to develop them, crowdfunding platforms are also a tool for promoting the project before its production and an effective way to market its products after its production.

Over the past few years, ownership-based crowdfunding activity - which is one of the most promising activities among modern financial technology activities - has received great interest in the field of entrepreneurship and the establishment of MSMEs, in light of its transformation from a tool for obtaining rewards into a successful financing mechanism. This would contribute to bridging an important aspect of the financing gap, which would have a significant impact on economic and social development.

2- RESEARCH PROBLEM

The work of crowdfunding platforms entails a set of advantages as well as a set of risks for the crowdfunding parties, who are the beneficiaries and financiers as well as the crowdfunding platforms, but the biggest risk is the impact of equity-based crowdfunding on financial, economic and social stability if it is practiced outside the framework. Regulatory and legal, and therefore the research problem lies in the following question: Is establishing a legal framework for crowdfunding, especially based on property rights, an urgent necessity, to start crowdfunding activity in Iraq in an organized and deliberate manner to take advantage of the advantages of this type of financing and overcome its negative effects?

3- HYPOTHESIS OF RESEARCH

The hypothesis of the research is that the development of a regulatory and legal framework for ownership-based crowdfunding contributes to the promotion of crowdfunding activity and contributes to bridging the financing gap created by the conditions of traditional financing and which the excluded and disadvantaged groups suffer from.

4- AIM OF RESEARCH

The research aims to shed light on the role of the regulatory and legal framework in the proper initiation of ownership-based crowdfunding activity and making the most of the advantages of this type of financing, as well as mitigating its negative effects on the economy and society.

5- IMPORTANCE OF RESEARCH

The importance of the research comes from the future role of ownership-based crowdfunding that it can play in enhancing the financial inclusion of the MSME as one of the sources of alternative financing, and draws attention to the danger of crowdfunding on monetary and security stability if it is practiced outside the official framework away from the control of the monetary authorities or Finance.

6- RESEARCH METHODOLOGY

In order to understand the various aspects of the subject and answer the research problem and test the validity of the hypotheses, we will adopt the descriptive approach to determine the nature of ownership-based crowdfunding, and will also rely on the analytical approach to demonstrate the role of the regulatory and legal framework in promoting ownership-based crowdfunding.

7- PLAN OF SEARCH

To reach the objectives of the research and prove its hypothesis, the focus will be on fifth axes:

The first axis: research methodology

The second axis: crowdfunding: concept and definition.

The third axis: the regulatory framework.
The fourth axis: the legal framework.
The fifth axis: conclusions and recommendations

The second axis: crowdfunding: concept and characteristics.

First: the concept of crowdfunding.

The concept of finance has developed during recent decades remarkably in terms of form, mechanism, and agencies that adopt or provide it, as a result of various factors, the most important of which was the financial crisis in 2008, as well as technological progress and the transition to the era of knowledge, digital economy, and financial technology, helped by the wide spread of the Internet. And smart phones, which led to the emergence of new forms of financing that compete with traditional financing mechanisms, on top of which comes crowdfunding, to finance entrepreneurial projects, which is done through the collective effort of individuals without being subject to bureaucratic policies of the traditional financial sector. (Abu Amuna, 2018, 373)

Some studies (Brahliya, 2019: 17) suggested that crowdfunding first appeared as a term (and not as a concept) to express a specific event when some artists in the United States of America during the nineties of the last century created websites to collect donations for the purpose of completing their young projects, but it turned Later on, it became a financing tool in the field of business, especially after the financial crisis, which is one of the main factors that helped spread crowdfunding. Noting that crowdfunding is an Arabized term from the English word crowd funding, which is a compound term of two words, crowd means gathering or crowding and funding means financing, and bringing them together means collecting and mobilizing money from the public.(LEXICO, 2019: 1)

The fundamental differences between crowdfunding and other traditional financing methods lie in the marriage that took place between financing and digital technologies, which allowed everyone who has a creative idea and does not have sufficient financial capabilities to bring it to light, to reach large numbers of investors and financiers wishing to support such ideas. With an emphasis on crowdfunding methods do not require complex and lengthy procedures, and in many cases it does not cost a single dirham. Crowdfunding is also characterized by its flexibility on the one hand, and its ability to adapt to the environmental changes around it in line with the objectives and policies of each country, and with the types of entrepreneurial projects prevailing in each country.

Historical facts and various practices throughout human history, which took place under the framework of crowdfunding, have produced different models of crowdfunding, whether those carried out by traditional means or by using digital technologies. Noting that the beginnings of collective work, which were aimed at financing non-profit humanitarian projects, are closer to cooperative funding than to crowdfunding in its modern sense, such as the establishment of charities and disaster relief operations, and cooperative or participatory financing sometimes took forms of technical sponsorship. Such as financing art project owners who do not have the financial means to record and distribute their artwork. With the development of technology and the transition to the era of knowledge and the digital economy, the spread of the Internet, smart phones, and financial technology, there has been a development in contemporary finance and participatory finance that takes another approach that is termed "crowdfunding". (Abu Amuna, & et al, 2017: 12)

Over the years, to best meet the needs of each type of project, several forms of crowdfunding have emerged, each differing in the way the user or investor earns a financial return. Crowdfunding has been categorized into two groups, commercial and charitable, with the project sometimes falling into both groups. In business initiatives, funders expect some kind of return on their investment, while funders do not expect any personal return from charitable projects, but rather want to be part of a larger cause. In the same context, (Hemer, 2011: 13-17) identified another type of crowdfunding that falls between the commercial and charitable types, given that the future commercial success of some projects such as Skype, Facebook, and YouTube is uncertain, at least in its early stages. Mokter (2009: 9) classified crowdfunding into social lending and microfinance.

Hemer (2013: 22) identifies five types of crowdfunding: pledge, microlending, tenure, and clubs. Adhikary (2012: 16) distinguishes between five distinct categories of crowdfunding based on the return that financiers expect to receive on their investment: (1) the donation model (2) the reward model (3) the purchase model, (4) the lending model (5) Equity Form. And when we think about commitment between entrepreneurs and financiers, crowdfunding can also be categorized into four types: donation-based, reward-based, lending-based, and equity-based models. (Zhang, 2016: 28)

However, we find that most of the literature that deals with the subject of crowdfunding, such as (Zhang & et al, 2016: 86), classifies crowdfunding based on what financiers expect in return for their money, or the main motive for investment, into four main categories of crowdfunding, which are debt crowdfunding or Based on lending and equity-based crowdfunding, which fall under the framework of (investment models), and crowdfunding based on donations and crowdfunding based on rewards, which fall under the framework of (non-investment models).

Second: Crowdfunding on the basis of equity.

The shift in corporate finance towards cyberspace, and the significant change that has taken place in financial technology in recent years that has led to the shift of collective capital formation towards the digital world, all of which paved new paths in capital financing and created great opportunities for fundraising at an early stage in the process. Starting to implement projects, and bridging a large financing gap that innovative startups suffer from. These financial innovations also opened the door for startups to obtain financing. In the aftermath of the global economic crisis, businessmen and capital owners increased their investment activity and their preference shifted to new-stage investments (Block & Sandner, 2009: 309). This trend highlighted the timing and opportunities provided by crowdfunding, including equity-based financing, which is It is likely to create great challenges and diverse opportunities for entrepreneurs and capital owners alike in the near future.

The biggest leap in the regulation of equity crowdfunding in the United States occurred with the introduction of the Jumpstart Our Business (JOBS) Act in 2012. This allows both accredited and non-accredited investors to participate in equity crowdfunding. The law also places limits on the amount of money that projects can raise, as well as on the amount each investor can invest. (IOSCO, 2015: 2) In some jurisdictions, particularly those where such financing is not prohibited, equity crowdfunding is subject to either general securities law or regulation. Noting that compliance with common securities law often conflicts with the innovative aspects of crowdfunding, leading to increased barriers to entry for investors and beneficiaries, by imposing strict restrictions on who can issue securities (the fundraiser) and under what circumstances, and who can invest in This form of equity (qualified investors), and the lack of clear rules creates a new environment in which platforms may find themselves unable to operate. (Kirby & Worner, 2014:12)

Third: The main features of ownership-based crowdfunding.

1- Advantages of equity-based crowdfunding.

The main advantage of this model lies in the effective and structured regulatory capacity of proprietary financing platforms to handle funds, allowing financiers to invest in a new asset class to generate a return and for entrepreneurs to access financing in a way that enhances financial inclusion. Kirby & Worner, 2014: 3)) In addition, there are a set of advantages that characterize this model, which can be stated as follows: (Gubler, 2013: 4)

A. Access to wide investment opportunities. Equity crowdfunding provides investment opportunities for a wide range of startups and MSMEs after investment was limited to certain groups who had access to traditional financing.
B. Unlimited potential for financial gain. Funders have the possibility to multiply their investment indefinitely if they bet on a new startup to become the next market leader.
C. Matching interests between financiers and financing applicants. In this model, the interests of financiers and fund-seekers are more aligned than in any other category of crowdfunding, because they share the same risk (including mitigation of risk or financial loss) and have similar options for exiting the investment (sale or merger).
D. access to the world. Equity crowdfunding gives access to funders around the world. This is particularly important in countries that do not have capital markets or where markets are still underdeveloped.
E. Improving investment attractiveness. A successful campaign may serve as a signal to professional investors (including venture capitalists), to see potential consumer demand, and thus attract additional funding sources.

2- Risks of proprietary crowdfunding:

The main parties involved in the ownership-based crowdfunding process are the platform, the funding applicant or the project owner as well as the investor, and those parties should be aware of the risks associated with it. The following is a review of these risks:

A- Risks of information asymmetry: The relationship between investors and project owners is riddled with a lot of information inconsistency and uncertainty, all of which are reasons for the emergence of risks and the possibility of failure. (Akerlof, 1970: 50) And then the two most important problems that occur in this context are the problems related to adverse selection versus ethical risks.

B- High risk of failure: startups are very risky projects, therefore, there is a high probability that the company will fail, and the reason for this is likely because companies in the early stages are inherently risky, and the risks are further exacerbated by the lack of incentives for Individual financiers to make a greater effort to pursue their investments on these platforms in light of their small stakes in stocks. (Altifi, 2015: 12)

C- Fraud risk: The term “fraud” usually includes activities such as theft, corruption, conspiracy, embezzlement, money laundering, bribery, and extortion. The legal definition varies from country to country. Fraud essentially involves the use of deception to dishonestly achieve personal gain or loss to another person. (CIMA, 2008: 3) At that point, one should be wary of possible fraud schemes in the process of crowdfunding shares, which are practiced by project owners or beneficiaries of financing, through asymmetric information, or loopholes in regulations, to deceive investors, despite the hard work they do. It is practiced by crowdfunding platforms to verify information provided by companies seeking equity financing (Ciuchta & et al, 2016: 514).

D- Low Liquidity Risk: Potential investors should be aware that the securities purchased on equity crowdfunding platforms are highly illiquid, given the limited options available for liquidating such assets, in the absence of a secondary market for selling these shares. In these cases, investors may have to sell their investments to any interested party or wait until these companies are acquired by an investor, or merge with another company, or offer the company's shares for public subscription. At that point, crowdfunding investors may have to wait several years for their investment to pay off. (CFI, 2022: 2)

E- Risks of losing the cost of the financing campaign: Many interested parties believe that crowdfunding is more accessible, affordable, and less expensive compared to other aspects of traditional financing, because it is a direct means between financiers, holders of shares, and beneficiaries, while others believe that crowdfunding is associated with various aspects of costs, including costs The platform, the costs of managing fundraising campaigns, and periodic communication with investors, however, this cost remains low compared to other aspects of financing with what crowdfunding may provide in terms of experience and technical, administrative or marketing advantages for the project. Valentina, 2021: 4))

F- Regulatory risks: Crowdfunding is still a new phenomenon. While some countries have issued regulations related to organizing fundraising operations, we find that other countries apply only broad general regulations. Thus, a new type of risk may appear through different rules or regulations adopted, and because one of the main goals of regulation is to protect investors, addressing regulatory risks is often done by imposing additional requirements that are regulatory requirements in the first place, such as asking the platform to take additional measures regarding Issuer evaluation of shares or scrutiny of crowdfunding offers, as well as restricting the amount that unqualified financiers can invest (IOSCO, 2015: 36).

G- Compliance risks: These risks arise from the impact of compliance with regulatory requirements on the competitiveness of companies or projects. It may require that some projects be subject to some regulatory requirements within the framework of such platforms, a greater disclosure of the nature of the projects' work and greater details of their activities. Which may affect its ability to retain trade secrets and technical knowledge for the benefit of competitors. (Saman & et al, 2016: 5)

The third axis: the regulatory framework for ownership-based crowdfunding.

The regulatory framework for proprietary crowdfunding includes four basic aspects: a description of this model of funding, how it is used, the stages of financing projects through crowdfunding platforms, as well as the regulatory requirements for the functioning of proprietary crowdfunding. Here is a description of each:

First: a description of the model.

Equity-based crowdfunding is a relatively new form of funding in which a startup or project receives financial resources from a large number of individual investors, usually via crowdfunding platforms. Ownership-based crowdfunding, as with other crowdfunding models mentioned above, offers investment opportunities, available to almost everyone, that were previously inaccessible. (Heminway, 2013: 827) Thus, equity crowdfunding can contribute to the crowdfunding of pioneering businesses and start-ups, noting that the first step in ownership-based crowdfunding is that the requesting companies must accept the terms of the platform. of the Platform, prior to its submission on the Platform's website. In order for investors to accept this offer and obtain a share in the project in exchange for providing capital. (Belleflamme & et al, 2014: 29)

Equity-based crowdfunding is the most attractive crowdfunding model for investors and the most organized as an investment platform. This is why this type is also known as crowd investing. In this type of financing, the financier is allowed to obtain a share of the project in exchange for providing liquidity for the project, with the necessity of providing the necessary data. for investors to make the right decision. The conditions dictated by this type of financing may sometimes include the project owner relinquishing part of his decision-making powers in favor of the investors. (Nir Vulkan & et al, 2015: 37)

Second: Use the form.

Equity-based crowdfunding allows individual and institutional investors to invest in projects listed on crowdfunding platforms in exchange for stakes in the form of shares in those projects. Equity crowdfunding contributes to financing companies that want to raise money by selling their shares, and it is suitable for startups in particular. particular. If the investment goal, which is the required amount, is reached, then the campaign is closed between the group of financiers, the issuer, and the platform. In this model, the platform charges a commission based on the amount collected, and in some cases, on the basis of future profit. (Allied Crowds, 2016: 12)

There are three related parties in equity crowdfunding: the platform, the entrepreneurs or projects, and a heterogeneous group of investors called the crowd. Depending on the platform of proprietary crowdfunding platforms, the platforms offer different services to entrepreneurs and investors alike, before, during and after the campaign. Post-campaign services offered by platforms, such as exiting the market or dealing with the secondary market, can increase the attractiveness of platforms and lead to more startups being successfully funded. Corporate governance mechanisms, the design of which mainly depends on national regulations, can also affect the success of the platform. (Vismara & Rossi, 2019: 251)

As for startups and small projects, they often rely on external supporters when requesting funding to ensure their emergence or continuation of their work. At that time, equity-based crowdfunding represents an indispensable alternative for them, especially in the early stages, as it may be difficult for those small projects to obtain financing through banks, and not only this, but there are many other reasons behind the participation of projects in crowdfunding, Such as benefiting from marketing influences and the ability to communicate with potential customers and investors. (Angerer & et al, 2017: 34)

As for the public, it is a group of heterogeneous investors who differ in terms of wealth and professionalism. But they meet under different goals, such as supporting entrepreneurs or building a network of relationships, which can also play a role, but to a small extent. Where an important issue arises here is the wisdom of the public in decision-making, which means that the public acts rationally or can achieve better results as a group by interacting with other investors. Some studies indicate that investors pay great attention to information provided on crowdfunding platforms and are influenced by it when making investment decisions. (Heminway, 2013: 82)

Third: Stages of financing projects through crowdfunding platforms.

The process of financing projects through crowdfunding platforms goes through the following basic steps or stages: (Al-Divar, 2021: 70)

The first stage: preliminary selection of projects by crowdfunding platforms:

This stage is represented by those in charge of managing crowdfunding platforms with the initial selection of projects that request funding, which may be eligible for funding through these platforms on the Internet, based on a set of criteria set by crowdfunding platforms.

The second stage: presenting the rationale for qualified projects through crowdfunding platforms.

This stage is represented by crowdfunding platforms displaying everything related to qualified projects initially on their website, and thus this stage is an essential stage that allows the public to express an opinion on these projects that request financing, which puts the public at the center of financing and investment decisions.

The third stage: collecting the necessary funds to finance the projects.

Crowdfunding platforms through the Internet collect the necessary funds to finance qualified projects by providing opportunities for a large number of the public to provide their financial contributions to finance projects, in proportion to the types of crowdfunding through these platforms, and in the event that the process of collecting the necessary funds for any project is not completed. This process is canceled and the money is returned to its owners.

Fourth stage: implementing projects.

After completing the process of collecting the necessary funds to finance any of the projects eligible for financing through crowdfunding platforms, the stage of implementing projects on the ground comes by providing the necessary funds to project owners. Crowdfunding platforms receive bonuses for managing operations related to financing these projects.

Fourth: Regulatory requirements for proprietary crowdfunding.

Finally, the use of equity crowdfunding includes several elements that must be available for the financing process to be acceptable, and on the basis of which the project owner is allowed to offer his shares on the platform. The most prominent of these elements are as follows: (Battisti & et al, 2020: 353-368)

A- The offering of shares shall be organized by the authorized platform, in the practice of equity crowdfunding.

B- That the requirements for safekeeping the clients' money that it receives in the course of crowdfunding practice be regulated.

C- The completion of the financing process requires opening and operating investment accounts through the platform.

There is also a set of rules set by the regulatory authorities and those supervising the crowdfunding process, which oblige the licensed platform in charge of crowdfunding operations, and these rules include: (Harianto, 2020: 23-45)

1- Appropriateness: It means the applicability of the provisions issued by the supervisory authorities to the work carried out by the platform when offering securities.

2- Purpose and Scope: A platform licensed to engage in proprietary crowdfunding may keep the clients' money that it receives until the specified financing period is fulfilled for the purpose of handing it over in full to the owner of the project, provided that the money kept does not exceed a certain limit that is determined by the Central Bank or responsible party. It differs from one country to another and is commensurate with the minimum and maximum requirements for establishing companies.

3- Investment accounts: Binding the platform to the provisions and instructions for opening investment accounts when providing any services related to investment business through proprietary crowdfunding platforms.

4- Customer acceptance: Upon accepting any customer, the platform must not provide any services related to management, custody, or investment through proprietary crowdfunding platforms, except after signing a contract with that customer that includes all data and instructions, and then opening an investment account for him.

5- Requirements for Offering Shares: What is meant is organizing the offering of shares through the platform licensed to practice crowdfunding business with securities, which includes: defining the type of offering in accordance with the rules for offering securities and continuing obligations, stating its requirements and conditions, determining the type of securities that can be offered, specifying The type of issuers who can offer shares, specifying the categories of customers who are allowed to participate in subscribing to the offered shares, as well as indicating the information that must be available in the share offering document.

6- The offering documents: Determine the minimum information that must be included in the share offering document, such as essential information related to the issuer, and disclose it in a fair and non-misleading manner, in a way that enables the investor to understand the nature of the offering and make his investment decision based on awareness and knowledge, and that the document contains, At a minimum, the following information (Holm, 2019: 1-7):

- ✓ The name of the issuer, its place of registration, the address of its main place of business, and the number and categories of shares to be offered.▫
- ✓ The issuer's capital.
- ✓ The total number of shares of the issuer.
- ✓ The nominal value of the share.
- ✓ The offering period and conditions.
- ✓ Actions to be taken by the issuer in the event of incomplete offering.

The fourth axis: the legal framework.

Preface.

Many researchers believe that establishing a legal framework for crowdfunding, especially based on property rights, is an urgent necessity, in order to catch up with developed countries or at least neighboring countries, as the trend towards crowdfunding as an alternative to traditional causes in financing has become of great importance both from economic or social aspect.

As we mentioned earlier, many researchers classified forms of crowdfunding into two main categories: investment models and non-investment models. Crowdfunding based on ownership are similar in that they are investment models to achieve financial returns in exchange for financing, and what the project owners get is a return on investment, despite the fact that the loan contract was originally a donation contract unless it was interest. (Al-Zami'a, 2019: 73) The main difference between them is that the investors in the first type become creditors of the project and not shareholders in it, as is the case in the second type, meaning that the first is an investment based on debts, while the second is an investment based on participation in the property rights of the project. In this paragraph, the equity-based crowdfunding platform will be introduced first, and then the subscription mechanism on the crowdfunding platform will be identified.

In order to establish a legal framework for equity-based crowdfunding, it will be necessary to first know the mechanism of subscription on equity-based crowdfunding platforms. Then follow the texts of the financial legislation in force in Iraq, in order to find out the extent to which crowdfunding is compatible with these legislations.

First: Subscription on crowdfunding platforms based on equity.

The public offering refers to "opening the way for the public to contribute to the company's capital and to express its acceptance to be a partner and shareholder in the company, by presenting the share values and then becoming a partner in the company." (Raba'a, 2018: 46) Underwriting on proprietary crowdfunding platforms is not much different from that. As the subscription on the crowdfunding platform is based on two aspects, the first, it is called the public round, which is a round of subscription available to the public, and the second, a private tour directed to friends, family members and acquaintances of the entrepreneurs. (Bradford, 2012: 25)) But most commonly, subscription on crowdfunding platforms is always public and not private, as the nature of the financing process requires offering projects for public subscription to platform users and allowing them to participate in these projects, and this requires going to the public and not to a specific group of Investors as in private placements. (Barahlia, 2019: 74)

Equity-based crowdfunding takes place by inviting investors to participate in the company's capital by owning stakes or shares in it on one of the ownership-based crowdfunding platforms, as companies are allowed to apply for campaigns on the electronic platform to attract investors for public subscription in shares or shares, The aim is to achieve profits, as the investor expects an increase in the value of the stakes or shares after the establishment and launch of the project, which allows them to participate in the profits that are distributed periodically or to resell their shares or shares while achieving an acceptable margin of profits. (Barahlia, 2019: 75) Knowing that the issuance of securities, offering them for subscription, and announcing the subscription takes place through the crowdfunding platform, while trading - buying and selling - takes place in the secondary market called the stock exchange.

On the other hand, the growth of the equity-based crowdfunding market is greatly affected by the nature of the regulatory frameworks, which often restrict equity investment to professional investors as opposed to a few individual investors who usually engage in this type of crowdfunding platform, as well as the risks of non-realization. target return. As the issue most affecting the growth rates of this type of financing lies in the difficulty of liquidating investment through crowdfunding platforms due to the limited options available for liquidating such assets in the absence of a secondary market to sell these shares, and in this case investors may be forced to sell their investments to any party Interested, or wait until these companies are acquired by a strategic investor, merge with another company, or offer the company's shares for public subscription. (Al-Munim, Obaid, 2019: 30).

Second: Crowdfunding work in light of banking work.

Through a simple review of the Banking Law in Iraq No. 94 of 2004, we find that the practice of crowdfunding activity collides with a number of matters stipulated in the Iraqi Banking Law, especially those related to making credit activity confined to the scope of banks and financial institutions, as well as the need to fulfill some legal conditions of Order Payment Services Practices. As Article (1) of the law states that the word bank means a person who holds a license or permit under this law to conduct banking business, including a government company established in accordance with Government Companies Law No. (22) of 1997 as amended. (12: 2004 CBI,). Knowing that the term banking business expresses the receipt of cash deposits or any other money due from the public for the purposes of depositing credits or investments in its own account.

On the other hand, Article 27 of the Iraqi Banking Law states that banking activities include the following businesses, subject to the terms and conditions of their license or license for the practice of banking business: (19: 2004 CBI,)

1- Receiving cash deposits (in the form of demand deposits, term deposits or other types of deposits) or any other money that is payable or does not bear interest
2- Granting credits such as consumer credits, mortgages, sale of accounts receivable at a discount, and financial leasing services are exclusively within the competence of banks.
3- Subscribing to contingent liabilities, including guarantees and letters of credit, for its own account and for the account of the customer
4- Providing clearing, settlement and transfer services for cash, securities, payment orders and payment instruments (including cheques, credit and debit cards and other payments, travelers checks, bank transfers, wire transfers, debit and credit amounts previously authorized).
5- Preserving and managing valuables, including securities.
6- Providing services as a custodian manager, financial advisor, or financial advisory agent.
7- Providing financial information and credit reference services.
8- Any future incidental activities and other activities that are not prohibited in accordance with Article (28) and as permitted by the regulations of the Central Bank of Iraq as banking activities.
9- The Central Bank of Iraq may require banks, at its discretion and subject to the conditions it stipulates, to carry out certain banking activities through subsidiaries with independent capital that these banks own wholly or majority of their shares.

As for the prohibited activities, they are mentioned in Article (28), which stipulates that no bank that participates as an agent, partner, or co-owner in wholesale or retail trade, or in manufacturing, transportation, agriculture, fisheries, mining, construction, insurance, or activities Other activities except for the activities authorized under Article (27). (20: 2004 CBI,) Notwithstanding the foregoing, a bank may, with a prior written authorization from the Central Bank of Iraq, temporarily practice or participate in the practice of these activities to the extent necessary for the payment of dues, and the Central Bank of Iraq may request the bank to stop these activities on a date specified in the authorization While Article 3 mentioned a set of prohibitions, some of which can be explained in connection with the practice of financing activities outside the banking framework, including crowdfunding, as follows: (19: 2004 CBI,)

1- No person in Iraq has the right to practice banking business without obtaining a license or permit issued by the Central Bank of Iraq except for the person who has been exempted by the Central Bank based on Paragraphs (3) and Paragraph (6) and except as otherwise stated in this law. Any person may engage in the business of receiving deposits or other payable funds from the public without obtaining a license or permit issued by the Central Bank of Iraq (CBI, 2004: 17).
2- No one may use the word “bank” or derivatives of the word “bank” in any language in connection with any business, products or services without obtaining a license or permit issued by the Central Bank of Iraq unless such use is provided for or recognized by law or agreement International, unless it is clear from the context in which the word “bank” is used that it is not related to banking activities. Representative offices may not use the word bank in their name except in cases where the word bank forms an integral part of the name of the foreign bank to which those offices belong, provided that The phrase "representative office" is added in such cases. (6: 2004 CBI,).

3- In accordance with Article (3), it is permitted to practice activities related to small and partial projects or other similar programs by institutions other than banks, and also authorizes entities that exercise governmental authority, and these activities are excluded from the conditions of this law. (6: 2004 CBI,)

4- Any person who engages in banking activities and works without a banking license or authorization issued by the Central Bank is considered guilty and liable to prosecution and the penalty of fraud stipulated in the Penal Code shall be applied against him (34: 2004 CBI,)

Third: Crowdfunding and the monopoly of payment services.

Article 39 of the Iraqi Banking Law indicates the payment system as follows: “Banks may establish cooperative systems and clearing houses for transferring funds and for settling accounts and payment tools among other financial institutions. The Central Bank may set rules and procedures to govern the conduct of these activities.” Also, the monopoly of payment services was stipulated in Article 56 Payment Systems of the Banking Law, meaning that receiving money, seizing it, and giving it to a third party are all payment services, and according to the Banking Law, everyone who wishes to do it must obtain the approval of the Central Bank of Iraq, This applies to crowdfunding platforms. (56: 2004 CBI,).

From the foregoing, we see the following:

1- The credit work in Iraq is the monopoly of banks and financial institutions, as they are the ones that practice the credit process. It also appears to us that banking operations, such as receiving money from the public or managing means of payment, are the monopoly of banks only.

2- This monopoly of banking operations undoubtedly collides with the work of crowdfunding, as the goal pursued by crowdfunding platforms is for the largest possible number of small, medium and micro enterprises to obtain financing, and this can only be achieved by carrying out several lending operations for several people, which is inconsistent with upfront with the law.

3- By extrapolating the text of Article 28, it can be said that the stipulated exception relates only to natural persons, and therefore legal persons may not lend through crowdfunding platforms, just as this financing through borrowing that is limited to natural persons must not be for commercial or professional purposes.

Therefore, it is necessary for any proposed crowdfunding law to address this issue by setting new procedures, these procedures are related to the mediator system in crowdfunding, as it is necessary for the law to include allowing crowdfunding platforms to perform payment services as an intermediary. The crowdfunding law must also address a set of other obligations that crowdfunding platforms must abide by, for example: informing the public about the projects that will be funded, means of communication with the beneficiaries of financing projects, publishing an annual report on financing activity and transparency with regard to rewards. charged for carrying out the financing activity. At that point, crowdfunding platforms can practice payment services whenever the conditions established by the law are met, and among these services:

1- Deposit operations in a bank account.
2- Withdrawals from a bank account.
3- Operations related to the bank account: such as transfer fees, debit card.
4- Banking operations related to credit.

The fifth axis: a proposed regulatory framework for the work of crowdfunding platforms in Iraq.

Crowdfunding platforms are organized around the world in two ways. The first is the interactive method in which the state leaves the matter to the regulations and laws actually in force, and not to introduce a law or regulations for crowdfunding. The second is the proactive method, which is when the state establishes special legal rules to regulate crowdfunding, knowing that the responsible authorities such as the Central Bank have not adopted or dealt with both methods. It may be necessary for the Central Bank to adopt the proactive method by issuing a law regulating crowdfunding activities in Iraq, provided that this law allows the practice of crowdfunding activity in general without specifying a specific type of platform so that the matter is flexible in front of the parties to whom it will be entrusted. The issue of the license, in addition to the necessity of leaving the executive regulations regarding the requirements for issuing the license, the conditions that must be met, and the forms and procedures that must be taken as an internal matter for the regulatory, supervisory and licensing authorities. Thus, a regulatory framework can be put in place for the work of crowdfunding platforms in Iraq, as follows:

1- Work on developing a unified license for crowdfunding platforms, in order to help achieve a greater degree of control and guidance and make it easier for the parties involved in that, since this mechanism is not linked to a specific audience in a specific place, as it works on the international information network, similar to the unified license for financing platforms. group in the European Union.

2- Given that the crowdfunding platform can have clients from all over the world, regardless of the audience base of the platform's headquarters, international cooperation with countries licensed to operate crowdfunding platforms must be taken into account.

2- In view of the development the world is witnessing in financial services related to technology, however, it is not accompanied by the same development in terms of monitoring and supervising the operations carried out by financial technology platforms and their outputs represented by crowdfunding platforms, which may cause an increase in the frequency of fraud, money laundering and terrorist financing. Therefore, the risks of these companies' operations must be managed through a third party and with a specific general system decided by everyone.

3- With regard to the operating risks of the platforms, a "regulatory laboratory for innovative technology applications" must be established, which has been approved by some countries to remove legal and regulatory obstacles to financial innovation and crowdfunding.

4- With regard to public subscription on crowdfunding platforms, the regulations related to it must be completely exempted, on top of which is the prospectus imposed by the legislator, which is not suitable for small and medium startups. What is meant is that the subscription is of a special nature, in which the usual terms and conditions of subscription differ.

5- Based on the Companies Law, the establishment of the company, increasing its capital, or borrowing for its account is prohibited through public subscription, and it is not permissible for it to issue negotiable shares or bonds, and this is a legal obstacle for companies applying to the platform to request financing, because most of these companies are small and medium, and they cannot be A joint stock company, due to the complexity of the procedures and the high costs of incorporation. The solution lies in placing the limited liability companies that are applying to establish or increase their capital, or borrow for their account through the mechanisms of crowdfunding platforms, in a legal position unlike other limited liability companies.

6- With regard to risks and their disclosure, the platforms must be obligated and stressed, by placing them in the electronic contractual framework that appears on the platform with their clients in order to explain to them the risks associated with the investment process in startup companies and that their money is exposed to losing it, unless there is an error that requires responsibility, and this leads to increased confidence in the operation of these platforms.
7- Information security risks, fraud, money laundering and terrorist financing, as well as credit risks, should be entrusted to the control of the central risk management in the Central Bank of Iraq, which was included in the Central Bank of Iraq Law No. 94 of 2004.

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