



# REVISTA INCLUSIONES

HACIA UN FUTURO PROMETEDOR

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Octubre / Diciembre

2020

ISSN 0719-4706

**CUERPO DIRECTIVO**

**Director**

**Dr. Juan Guillermo Mansilla Sepúlveda**  
Universidad Católica de Temuco, Chile

**Editor**

**OBU - CHILE**

**Editor Científico**

**Dr. Luiz Alberto David Araujo**  
Pontificia Universidade Católica de Sao Paulo, Brasil

**Editor Europa del Este**

**Dr. Aleksandar Ivanov Katrandzhiev**  
Universidad Suroeste "Neofit Rilski", Bulgaria

**Cuerpo Asistente**

**Traductora: Inglés**

**Lic. Pauline Corthorn Escudero**  
Editorial Cuadernos de Sofía, Chile

**Portada**

**Lic. Graciela Pantigoso de Los Santos**  
Editorial Cuadernos de Sofía, Chile

**COMITÉ EDITORIAL**

**Dra. Carolina Aroca Toloza**  
Universidad de Chile, Chile

**Dr. Jaime Bassa Mercado**  
Universidad de Valparaíso, Chile

**Dra. Heloísa Bellotto**  
Universidad de Sao Paulo, Brasil

**Dra. Nidia Burgos**  
Universidad Nacional del Sur, Argentina

**Mg. María Eugenia Campos**  
Universidad Nacional Autónoma de México, México

**Dr. Francisco José Francisco Carrera**  
Universidad de Valladolid, España

**Mg. Keri González**  
Universidad Autónoma de la Ciudad de México, México

**Dr. Pablo Guadarrama González**  
Universidad Central de Las Villas, Cuba

**Mg. Amelia Herrera Lavanchy**  
Universidad de La Serena, Chile

**Mg. Cecilia Jofré Muñoz**  
Universidad San Sebastián, Chile

**Mg. Mario Lagomarsino Montoya**  
Universidad Adventista de Chile, Chile

**Dr. Claudio Llanos Reyes**  
Pontificia Universidad Católica de Valparaíso, Chile

**Dr. Werner Mackenbach**  
Universidad de Potsdam, Alemania  
Universidad de Costa Rica, Costa Rica

**Mg. Rocío del Pilar Martínez Marín**  
Universidad de Santander, Colombia

**Ph. D. Natalia Milanesio**  
Universidad de Houston, Estados Unidos

**Dra. Patricia Virginia Moggia Münchmeyer**  
Pontificia Universidad Católica de Valparaíso, Chile

**Ph. D. Maritza Montero**  
Universidad Central de Venezuela, Venezuela

**Dra. Eleonora Pencheva**  
Universidad Suroeste Neofit Rilski, Bulgaria

**Dra. Rosa María Regueiro Ferreira**  
Universidad de La Coruña, España

**Mg. David Ruete Zúñiga**  
Universidad Nacional Andrés Bello, Chile

**Dr. Andrés Saavedra Barahona**  
Universidad San Clemente de Ojrid de Sofía, Bulgaria

**Dr. Efraín Sánchez Cabra**  
Academia Colombiana de Historia, Colombia

**Dra. Mirka Seitz**  
Universidad del Salvador, Argentina

**Ph. D. Stefan Todorov Kapralov**  
South West University, Bulgaria

**COMITÉ CIENTÍFICO INTERNACIONAL**

**Comité Científico Internacional de Honor**

**Dr. Adolfo A. Abadía**

*Universidad ICESI, Colombia*

**Dr. Carlos Antonio Aguirre Rojas**

*Universidad Nacional Autónoma de México, México*

**Dr. Martino Contu**

*Universidad de Sassari, Italia*

**Dr. Luiz Alberto David Araujo**

*Pontificia Universidad Católica de Sao Paulo, Brasil*

**Dra. Patricia Brogna**

*Universidad Nacional Autónoma de México, México*

**Dr. Horacio Capel Sáez**

*Universidad de Barcelona, España*

**Dr. Javier Carreón Guillén**

*Universidad Nacional Autónoma de México, México*

**Dr. Lancelot Cowie**

*Universidad West Indies, Trinidad y Tobago*

**Dra. Isabel Cruz Ovalle de Amenabar**

*Universidad de Los Andes, Chile*

**Dr. Rodolfo Cruz Vadillo**

*Universidad Popular Autónoma del Estado de Puebla, México*

**Dr. Adolfo Omar Cueto**

*Universidad Nacional de Cuyo, Argentina*

**Dr. Miguel Ángel de Marco**

*Universidad de Buenos Aires, Argentina*

**Dra. Emma de Ramón Acevedo**

*Universidad de Chile, Chile*

**Dr. Gerardo Echeita Sarrionandia**

*Universidad Autónoma de Madrid, España*

**Dr. Antonio Hermosa Andújar**

*Universidad de Sevilla, España*

**Dra. Patricia Galeana**

*Universidad Nacional Autónoma de México, México*

**Dra. Manuela Garau**

*Centro Studi Sea, Italia*

**Dr. Carlo Ginzburg Ginzburg**

*Scuola Normale Superiore di Pisa, Italia*

*Universidad de California Los Ángeles, Estados Unidos*

**Dr. Francisco Luis Girardo Gutiérrez**

*Instituto Tecnológico Metropolitano, Colombia*

**José Manuel González Freire**

*Universidad de Colima, México*

**Dra. Antonia Heredia Herrera**

*Universidad Internacional de Andalucía, España*

**Dr. Eduardo Gomes Onofre**

*Universidade Estadual da Paraíba, Brasil*

**Dr. Miguel León-Portilla**

*Universidad Nacional Autónoma de México, México*

**Dr. Miguel Ángel Mateo Saura**

*Instituto de Estudios Albacetenses "Don Juan Manuel", España*

**Dr. Carlos Tulio da Silva Medeiros**

*Diálogos em MERCOSUR, Brasil*

**+ Dr. Álvaro Márquez-Fernández**

*Universidad del Zulia, Venezuela*

**Dr. Oscar Ortega Arango**

*Universidad Autónoma de Yucatán, México*

**Dr. Antonio-Carlos Pereira Menaut**

*Universidad Santiago de Compostela, España*

**Dr. José Sergio Puig Espinosa**

*Dilemas Contemporáneos, México*

**Dra. Francesca Randazzo**

*Universidad Nacional Autónoma de Honduras, Honduras*

**Dra. Yolando Ricardo**

*Universidad de La Habana, Cuba*

**Dr. Manuel Alves da Rocha**

*Universidade Católica de Angola Angola*

**Mg. Arnaldo Rodríguez Espinoza**

*Universidad Estatal a Distancia, Costa Rica*

**Dr. Miguel Rojas Mix**

*Coordinador la Cumbre de Rectores Universidades  
Estatales América Latina y el Caribe*

**Dr. Luis Alberto Romero**

*CONICET / Universidad de Buenos Aires, Argentina*

**Dra. Maura de la Caridad Salabarría Roig**

*Dilemas Contemporáneos, México*

**Dr. Adalberto Santana Hernández**

*Universidad Nacional Autónoma de México, México*

**Dr. Juan Antonio Seda**

*Universidad de Buenos Aires, Argentina*

**Dr. Saulo Cesar Paulino e Silva**

*Universidad de Sao Paulo, Brasil*

**Dr. Miguel Ángel Verdugo Alonso**

*Universidad de Salamanca, España*

**Dr. Josep Vives Rego**

*Universidad de Barcelona, España*

**Dr. Eugenio Raúl Zaffaroni**

*Universidad de Buenos Aires, Argentina*

**Dra. Blanca Estela Zardel Jacobo**

*Universidad Nacional Autónoma de México, México*

**Comité Científico Internacional**

**Mg. Paola Aceituno**

*Universidad Tecnológica Metropolitana, Chile*

**Ph. D. María José Aguilar Idañez**

*Universidad Castilla-La Mancha, España*

**Dra. Elian Araujo**

*Universidad de Mackenzie, Brasil*

**Mg. Romyana Atanasova Popova**

*Universidad Suroeste Neofit Rilski, Bulgaria*

**Dra. Ana Bénard da Costa**

*Instituto Universitario de Lisboa, Portugal  
Centro de Estudios Africanos, Portugal*

**Dra. Alina Bestard Revilla**

*Universidad de Ciencias de la Cultura Física y el  
Deporte, Cuba*

**Dra. Noemí Brenta**

*Universidad de Buenos Aires, Argentina*

**Ph. D. Juan R. Coca**

*Universidad de Valladolid, España*

**Dr. Antonio Colomer Vialdel**

*Universidad Politécnica de Valencia, España*

**Dr. Christian Daniel Cwik**

*Universidad de Colonia, Alemania*

**Dr. Eric de Léséulec**

*INS HEA, Francia*

**Dr. Andrés Di Masso Tarditti**

*Universidad de Barcelona, España*

**Ph. D. Mauricio Dimant**

*Universidad Hebrea de Jerusalén, Israel*

**Dr. Jorge Enrique Elías Caro**

*Universidad de Magdalena, Colombia*

**Dra. Claudia Lorena Fonseca**

*Universidad Federal de Pelotas, Brasil*

**Dra. Ada Gallegos Ruiz Conejo**

*Universidad Nacional Mayor de San Marcos, Perú*

**Dra. Carmen González y González de Mesa**

*Universidad de Oviedo, España*

**Ph. D. Valentin Kitanov**

*Universidad Suroeste Neofit Rilski, Bulgaria*

**Mg. Luis Oporto Ordóñez**

*Universidad Mayor San Andrés, Bolivia*

**Dr. Patricio Quiroga**

*Universidad de Valparaíso, Chile*

**Dr. Gino Ríos Patio**

*Universidad de San Martín de Porres, Perú*

**Dr. Carlos Manuel Rodríguez Arrechavaleta**

*Universidad Iberoamericana Ciudad de México, México*

**Dra. Vivian Romeu**

*Universidad Iberoamericana Ciudad de México, México*

**REVISTA  
INCLUSIONES** M.R.  
REVISTA DE HUMANIDADES  
Y CIENCIAS SOCIALES

**Dra. María Laura Salinas**  
*Universidad Nacional del Nordeste, Argentina*

**Dr. Stefano Santasilia**  
*Universidad della Calabria, Italia*

**Mg. Silvia Laura Vargas López**  
*Universidad Autónoma del Estado de Morelos, México*

**CUADERNOS DE SOFÍA  
EDITORIAL**

**Dra. Jaqueline Vassallo**  
*Universidad Nacional de Córdoba, Argentina*

**Dr. Evandro Viera Ouriques**  
*Universidad Federal de Río de Janeiro, Brasil*

**Dra. María Luisa Zagalaz Sánchez**  
*Universidad de Jaén, España*

**Dra. Maja Zawierzeniec**  
*Universidad Wszechnica Polska, Polonia*

Editorial Cuadernos de Sofía  
Santiago – Chile  
OBU – C HILE

## Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:





REX



UNIVERSITY OF  
SASKATCHEWAN



Universidad  
de Concepción

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

Hellenic Academic Libraries Link

HEAL LINK

Σύνδεσμος Ελληνικών Ακαδημαϊκών Βιβλιοθηκών

**CROWDFUNDING AS FINANCING METHOD: POTENTIAL AND ASPECTS OF REGULATION**

**Ph. D. (c) M. V. Afonin**

Russian State Social University, Russia

ORCID: 0000-0002-6291-3732

AfoninMV@rgsu.net

**Dr. O. F. Lobazova**

Russian State Social University, Russia

ORCID: 0000-0002-8601-6665

lobazovaof@gmail.com

**Ph. D. (c) Alla Vasilievna Kiseleva**

Southern Federal University, Russia

ORCID: 0000-0003-0905-0357

daffi-rostov@yandex.ru

**Ph. D. (c) Yuriy Aleksandrovich Tarasov**

Southwest State University, Russia

ORCID: 0000-0001-5625-5617

tarasov@mail.ru

**Ph. D. (c) Vitaly V. Goncharov**

Kuban State Agrarian University named after I.T. Trubilin, Russia.

ORCID: 0000-0003-3029-4727

vitaly.goncharov@inbox.ru

**Fecha de Recepción:** 28 de mayo de 2020 – **Fecha Revisión:** 11 de junio de 2020  
**Fecha de Aceptación:** 17 de septiembre 2020 – **Fecha de Publicación:** 01 de octubre de 2020

**Abstract**

The present paper explores the aspects and practical issues of crowdfunding as one of the modern investment techniques supporting many social processes and business ideas. Amid the wide adoption of digital technologies in many areas of social life, crowdfunding progresses to a new level of consideration and the issues of regulation arise in the most advanced economies. The purpose of this study is to analyse the practical issues arising before the lawmakers and to develop recommendations on elaborating efficient organisational and legal solutions. The authors analyse potential applications of crowdfunding, international regulatory approaches and the projected legal norms of the Russian draft law on digital technologies in crowdfunding. The vast potential of innovative technologies in crowdfunding is outlined, as well as the risks involved. The outlook is analysed as to the development of legal regulation concerning digital technologies in crowdfunding and the problems arising in the area. It is observed that for now, there is yet no developed legal regulation of crowdfunding in the Russian Federation. However, one can already find successful examples of crowdfunding applications in global social and business practices. Conclusions are drawn and the outlook is described as to the development of crowdfunding regulation associated with the application of blockchain technology. The authors offer an assessment of legal regulatory options and propose to adopt the most plausible solutions for the Russian legal framework.

**Keywords**

Investment – Funding – Digital technologies – Tokens



**Para Citar este Artículo:**

Afonin, M. V.; Lobazova, O. F.; Kiseleva, Alla Vasilievna; Tarasov, Yuriy Aleksandrovich y Goncharov, Vitaly. Crowdfunding as financing method: potential and aspects of regulation. Revista Inclusiones Vol: 7 num Especial (2020): 430-442.

Licencia Creative Commons Attribution Non-Comercial 3.0 Unported  
(CC BY-NC 3.0)  
Licencia Internacional



## Introduction

Financing socioeconomic development, modernisation of educational institutions and healthcare and providing economic assistance for newly-established enterprises make top government priorities at the current stage. However, resource constraints limit the state's capabilities to ensure they are met properly<sup>1</sup>. That is why alternative instruments have to be found for financing federal and especially regional projects of socioeconomic development and providing support to small enterprises<sup>2</sup>.

One of the methods of collective project funding that involves attracting money for new product development from potential end consumers is crowdfunding. Apart from actual funding, this method provides an opportunity to evaluate potential investor interest, social profile and needs and to evaluate the viability of the investment idea. Moreover, it is also a way to generate publicity and engage those who may not be aware of the investment project<sup>3</sup>. Crowdfunding arranges task distribution in major groups via a public call<sup>4</sup>. The term is thought to date back to 2006 and is attributed to Jeff Howe, however, the phenomenon of collective funding had emerged long before that. A good case in point is the construction of the Statue of Liberty in New York for which money was raised in a collective public effort<sup>5</sup>. Apart from actual funding, the accompanying priorities in crowdfunding may include: marketing of a service or product; event management; assistance for the underprivileged; support of legal entities and individuals<sup>6</sup>.

Based on the objectives and expectations of investors, there are two models in the modern understanding of crowdfunding activities. The first group of crowdfunding types (models) is non-financial crowdfunding. In this case, investors might be driven by a variety of motives, e. g., contributing to a public cause or aspirations to complete the development of a product or service. The second group of crowdfunding types (models), also known as crowdfunding, is exclusively financially-driven and aims at gaining expected profits and assurance in the viability of the proposed business model.

---

<sup>1</sup> M. E. Kosov; S. P. Solyannikova; A. V. Sigarev; V. P. Karpenko y S. Y. Popkov, "Public Investment in Russia: Peculiarities of Implementation and Ways to Improve Efficiency", *Journal of Advanced Research in Law and Economics* Vol: 10 num 4 (2019): 1288-1295; E. V. Levkina; L. A. Sakharova y D. A. Edelev, "Comprehensive assessment of investment attractiveness of regions (Based on the example of the regions of the far east)", *Revista Inclusiones* Vol: 7 (2020): 546-555 y G. Serikbaeva Gaukhar; B. Bektanov y A. Bekturganova, "Sources of Attracting Investments in Technological Innovation Projects to Ensure the Sustainable Development of Rural Areas", *Journal of Environmental Management and Tourism* Vol: 10 num 4 (2019): 935-941.

<sup>2</sup> E. A. Kirillova; O. E. Blinkov; N. I. Ogneva; A. S. Vrazhnov y N. V. Sergeeva, "Artificial Intelligence as a New Category of Civil Law", *Journal of Advanced Research in Law and Economics* Vol: 11 num 1 (2020): 91 – 98 y E. Kirillova; O. Blinkov; T. Zulfugarzade; A. Bocharov y A. Avdalyan, "El estado legal de los tokens y su herencia", *JURÍDICAS CUC*, Vol: 16(1) (2020): 287–302.

<sup>3</sup> C. K. Prahald y M. S. Krishnan, *Prostranstvo biznes-innovatsii: sozдание tsennosti sovместno s potrebitелеm* (Moscow: Alpina Publisher, 2012)

<sup>4</sup> K. Eleanor y W. Shane, *Crowd-funding: an infant industry growing fast*. Staff working paper of the IOSCO Research Department. Retrieved from: <https://www.iosco.org/research/pdf/swp/Crowd-funding-An-Infant-Industry-Growing-Fast.pdf>

<sup>5</sup> Crowdfunding innovative ventures in Europe. The financial ecosystem and regulatory landscape. 2013. Retrieved from: <https://ec.europa.eu/digital-agenda/en/news/crowdfunding-innovative-ventures-europe-financial-ecosystem-and-regulatory-landscape-smart>

<sup>6</sup> Kakim kraudfandingovym ploshchadkam možno doveryat v Rossii. Retrieved from: <http://svoedelo-kak.ru/finansy/kraudfanding.html>

The term "crowdfunding" refers to a model of funding of an investment project relying on the Internet to raise available cash from the public (individuals, microinvestors) pursuing their own interests to fund commercial projects with financial rewards for investors. Crowdfunding is a specific type of crowdfunding with financial rewards for investors<sup>7</sup>.

The most popular model of crowdfunding in Europe is reward-based crowdfunding (approximately a half of all projects), followed by donation-based and lending-based crowdfunding in the second place (approximately 25% each). There is a direct link between the amount of investment and the model used. On average, the respective amount is 1,054 EUR for the donation-based type; 1,732 EUR for the reward-based type; 3,540 EUR for the lending-based type and 143,085 EUR for the equity-based type<sup>8</sup>. Thus, crowdfunding allows attracting considerable funds for various projects. In areas such as real estate requiring significant financial resources from an investor, the participatory economic mechanism allows attracting retail investors, which considerably expands the potential of such investment<sup>9</sup>.

Of particular interest today are Initial Coin Offerings (ICO), an innovative form of crowdfunding targeting the development of a new cryptocurrency. This type of crowdfunding is arranged as follows: digital platform organisers attract funds in the form of fiat currencies, investors are issued tokens of the initial offering of the new cryptocurrency, which they get in their disposal, gaining the advantages of the initial offering<sup>10</sup>. E. g., TELEGRAM's TON project in 2018 raised 1.8 billion USD for a launch of the new GRAM cryptocurrency in a private ICO engaging 175 investors, with the minimum limit of 20 million USD. However, the project failed. The United States Securities and Exchange Commission (SEC) won a court ruling that the token of TON, GRAM, should be considered a security only transferable with prior registration, which meant investors could not receive tokens and it eventually led to project shutdown<sup>11</sup>.

In May 2020, the project was announced to shut down, however, no further details were provided as to how the attracted funding would be repaid. The above example shows the high level of risks borne by those engaging in such ICO projects, which calls for the development of a strong legal framework to govern crowdfunding activities in general and, particularly, ICO platforms. Given that, the interest in crowdfunding and its innovative forms is quite strong in research circles in the areas of high technologies, economics and law. There are now many published works worth attention.

<sup>7</sup> A. V. Kievich y D. A. Koipash, "Kraudininvesting kak alternativnaya model finansirovaniya investitsionnogo proekta", *Ekonomika i banki* Vol: 1 (2016) 58–64.

<sup>8</sup> Consultation document: Crowdfunding in the EU – Exploring the added value of potential EU action. Brussels. 2013. Retrieved from: [https://ec.europa.eu/finance/consultations/2013/crowdfunding/docs/consultation-document\\_en.pdf](https://ec.europa.eu/finance/consultations/2013/crowdfunding/docs/consultation-document_en.pdf)

<sup>9</sup> R.M. Garcia-Teruel, "A legal approach to real estate crowdfunding platforms", *Computer Law & Security Review* Vol 35 num 3 (2019): 281-294.

<sup>10</sup> N. Artemov; L. Arzumanova; A. Sitnik; Y. Smirnikova y S. Zenin, "El modelo de regulación legal de la circulación de monedas virtuales: La investigación sociológica y legal", *JURÍDICAS CUC* Vol: 16 num 1 (2020): 127–144.

<sup>11</sup> Sud SShA priznal kriptovalyutu Telegram tsennoi bumagoi. 2020. Retrieved from: <https://www.rbc.ru/crypto/news/5e7b02729a7947bafa0c48>

These include works by Iu. A. Tarasov, V. D. Khudo<sup>12</sup>, A. V. Dergachev<sup>13</sup>, D. L. Panin<sup>14</sup> and others. However, most papers available for review discuss individual aspects of crowdfunding, such as applications in specific economic sectors, risks involved or innovations (ICO). Complex studies are still rare, which is why the present paper addressing both the overall idea of crowdfunding and its digital constituent deserves a claim to scholarly novelty.

Research hypothesis. The widespread adoption of innovative technologies and high risks for investors suggest Russia urgently needs to develop legal regulation in the area of crowdfunding and ICO.

## Methods

The research combines the dialectic method with the methods of theoretical generalisation, comparative analysis and synthesis and the statistical method to substantiate the need for developing legal acts needed to govern public relations around the use of crowdfunding in Russia and to select an appropriate model of state regulation. The formal legal method helped to isolate notions to be incorporated in the projected legal regulation. The information basis to prove the hypothesis of the study comprised papers by Russian and foreign researchers concerning the functioning and legal regulation of crowdfunding, statistics available online in the public domain and news published at specialised websites.

## Results

The diverse scope of financial types of crowdfunding involving equity may pose a challenge not only for retail investors but even for experienced market participants, as investor rights may differ in different crowdfunding platforms and depending on the country, as national regulations governing this type of activities are not uniform. Another important issue for potential investors is the high risk of startup investments, particularly at the early stage, as project success in such cases is hard to forecast<sup>15</sup>. A major concern is how to settle the situations when a crowdfunding platform abruptly ceases operations, e. g., how loan repayment is to be arranged by the companies that receive financing (investments) in line with the signed agreements and without lost cash.

This suggests legal regulation should be prioritised in research concerning crowdfunding, as there are no clear legal foundations in the Russian Federation for this type of investment, meanwhile, international practice may provide the basis for further elaborations in this aspect.

<sup>12</sup> Iu. A. Tarasov y V. D. Khudo, "Perspektivy pravovogo regulirovaniya kraudfandinga i drugikh vidov kraudinvestinga v Rossii", *Izvestiya Yugo-Zapadnogo gosudarstvennogo universiteta. Series: History and Law. Vol: 9 num 3 (2019): 26–32.*

<sup>13</sup> A. V. Dergachev, K voprosu pravovogo regulirovaniya ICO-proektov. In the book: *Sovremennye problemy pravotvorchestva i pravoprimeneniya. Baikal Student Legal Forum 2019: Proceedings of the All-Russian student research and practical conference (2019): 9-12.*

<sup>14</sup> D. L. Panin, ICO kak sposob privlecheniya investitsii – rossiiskii i zarubezhnyi opyt. Collection of papers: *Traditsionnaya i innovatsionnaya nauka: istoriya, sovremennoe sostoyanie, perspektivy. International research and practical conference: in five parts (2018): 27-30.*

<sup>15</sup> Iu. A. Tarasov, y V. D. Khudo, "Perspektivy pravovogo regulirovaniya...26–32

Further institutional development of crowdfunding involves the problem of selecting a model of its regulation. The following options of coordination are currently considered with regard to the analysed activities: ban; no specialised regulatory framework; banking regulation; intermediate option and American regulatory model. A study conducted by the Bank of Russia indicates that the first option implies an outright regulatory taboo, while the second one refers to an absolutely free market, though, potentially, with some statutes in place aimed at investor protection. The model of banking regulation, as the name shows, addresses the operation of P2P-platforms within the framework of the banking sector, i. e., crowdfunding sites are required to obtain banking licences, to file reports, etc. The study also describes the "intermediate" model as operating with regulations governing the functioning of P2P-platforms, with clearly stated licencing and advertising aspects in this area and defined mechanisms of calculating interest rates; meanwhile, the American model involves two levels of regulation administered by the SEC and each state<sup>16</sup>.

The Russian Federation is now among those countries where there is no regulation of crowdfunding. However, since 2015, the Bank of Russia has taken on monitoring the operation of P2P (crowdfunding) and P2B (crowdinvesting) sites, encouraging voluntary filings and hosting working meetings<sup>17</sup>. In one of his papers, V. A. Kuznetsov, member of the Expert Board for National Payment System Legislation under the State Duma Committee on Financial Market, proposed a range of approaches to financial market regulation with regard to new market players: – development and adoption of a special set of regulatory acts defining the scope of subjects under regulation, competent bodies administering oversight of their operations, requirements concerning anti-money laundering regulations and combating the financing of terrorism and security issues (in case of fraud or technical disruptions of IT-platforms) and so on; – institutionalising self-regulation; – adoption of licencing (as in Malaysia)<sup>18</sup>.

Crowdfunding ICO projects based on blockchain technology are now extremely popular. In many cases, the expected returns are calculated in hundreds or thousands per cent, which attracts crowds of investors and the market overheats. Investment risks multiply, too. This calls for the governments to take control of the situation by setting clear legal standards for organisers of ICO platforms.

In 2018, the Ministry of Finance and the Central Bank of the Russian Federation initiated draft laws "On Digital Financial Assets"<sup>19</sup> and "On Alternative Investment Raising (Crowdfunding)"<sup>20</sup>. The object of the latter is the relations around attracting investment by legal entities or individual entrepreneurs through investment platforms. The draft law also defines the legal foundations for investment platform operators in arranging retail funding (crowdfunding).

<sup>16</sup> Ravnopravnoe kreditovanie: shag v ekonomiku sovmestnogo potrebleniya. Obzor regulirovaniya finansovykh rynkov Num 1 (2016): 12–17.

<sup>17</sup> Obrashchenie k rukovoditelyam kraudfandingovykh (P2P) i kraudinvingovykh (P2B) ploshchadok. Bank of Russia. 2016. Retrieved from: [http://cbr.ru/finmarkets/files/supervision/Inf\\_note\\_jun\\_0716.pdf](http://cbr.ru/finmarkets/files/supervision/Inf_note_jun_0716.pdf)

<sup>18</sup> V. A. Kuznetsov, "Kraudfanding: aktualnye voprosy regulirovaniya", Dengi i kredit. News and analysis Vol: 1 (2017): 65–73.

<sup>19</sup> Draft of the federal law "On Digital Financial Assets" (prepared by the Ministry of Finance of Russia) (not submitted to the State Duma of the Federal Assembly of the Russian Federation). February 16, 2018.

<sup>20</sup> V. A. Kuznetsov, "Kraudfanding: aktualnye voprosy regulirovaniya", Dengi i kredit. News and analysis Vol: 1 (2017): 65–73.

An important regulatory role, according to the draft law, is reserved to the Bank of Russia. E. g., Article 14 of the Draft law on crowdfunding assigns the following functions to the Bank of Russia: maintaining a register of investment platform operators; administering inspections of operators' business; issuing obligatory corrective instructions, etc. This kind of strict control and focused policies, presumably, would help to squeeze out shadow structures from the market and bring down the risks of losses associated with fraud<sup>21,22</sup>.

The operator, on its part, is entitled by Article 4, clause 4 of the Draft law on crowdfunding to unilaterally adopt adjustments in the regulations of the investment platform. Relations between investment platform participants existing prior to such adjustments shall not be affected. Such flexible system would support the efficient and prompt achievement of investment project objectives and would help to clear the market of "dead" projects<sup>23</sup>.

According to clause 3, part 1, Article 13 of the Draft law on crowdfunding, delivering an agreement for services at an investment platform, apart from the operator' details, would also require the identification of the subject attracting investment and its main objects. The lawmakers' intent is that it would help to prevent the financing of terrorism and other criminal groups and money laundering. A similar approach is already adopted by the tax authorities in Australia where investor identification for those attracting digital funds is used to levy taxes<sup>24</sup>.

## Discussion

Timely development of the legal regulatory base for ICOs is the determining factor of country attractiveness for companies opting for this method to attract investment. In turn, such companies provide clear benefits for the host country: tax revenues on attracted capital, capital inflows in the economy, job creation and attraction of foreign highly-skilled talent. The first country to adopt ICO regulations is the USA. In the summer of 2017, the SEC announced that initial token offerings represented risky investments and the US securities laws should apply to digital tokens having features typical of securities. This means, any company arranging an ICO should be prepared for regulatory oversight of the SEC or would have to prove that the tokens issued are not securities<sup>25</sup>.

Neighboring Canada followed the lead of the USA; late in August, the Canadian Securities Administrators (CSA) announced the securities law would apply to ICOs if the token issue is proven to classify as securities. If tokens fall within this category, the issuer will be obliged to request regulatory recommendations on the token sale. Technologically advanced Asian economies followed the lead of North America, e. g., Hong Kong and

<sup>21</sup> A. V. Dergachev, "K voprosu pravovogo regulirovaniya ICO-proektov. In the book: *Sovremennye problemy pravotvorchestva i pravoprimereniya*", Baikal Student Legal Forum 2019: Proceedings of the All-Russian student research and practical conference (2019): 9-12.

<sup>22</sup> E. Kirillova; V. Bogdan; I. Lagutin y E. Gorevoy, "Estado legal de los contratos inteligentes: características, papel, significado", *JURÍDICAS CUC Vol: 15 num 1* (2019): 285-300.

<sup>23</sup> A. V. Dergachev, "K voprosu pravovogo regulirovaniya ICO-proektov. In the book: *Sovremennye problemy pravotvorchestva i pravoprimereniya*", Baikal Student Legal Forum 2019: Proceedings of the All-Russian student research and practical conference (2019): 9-12.

<sup>24</sup> A. V. Dergachev, K voprosu pravovogo regulirovaniya ICO-proektov. In the book: *Sovremennye problemy pravotvorchestva i pravoprimereniya*. Baikal Student Legal Forum 2019: Proceedings of the All-Russian student research and practical conference (2019): 9-12.

<sup>25</sup> D. L. Panin, *ICO kak sposob...* 27-30

Singapore adopted similar regulations along the lines of those in the USA. However, not all Asian countries would take this stance. In China and South Korea, ICO was rejected as an illegal method of fundraising, which is prohibited in the countries. Notwithstanding their dogmatism, European countries would not forgo ICOs. The Swiss financial watchdog, Financial Market Supervisory Authority (FINMA), announced it would explore all ICOs taking place in the country to find out whether some ICO types may fall within the range of the applicable regulatory competences. Switzerland is now one of the best countries to arrange an ICO<sup>26</sup>.

An important observation here concerns the obvious ambiguity of the legal foundations developed in ICO regulation in foreign countries. Based on the analysis of regulatory framework development for ICO operations in foreign countries, A. V. Tolokov classified countries in the following blocks<sup>27</sup>:

- countries without a declared clear stance as to ICOs and cryptocurrencies (a majority of countries);
- countries where ICOs are banned (Bolivia, Bangladesh, Brazil, Afghanistan, etc.);
- countries where there is no official ban against ICOs but no regulation is currently administered pending the development of an official stance on ICOs (Greece, Denmark, France, etc.) or due to the ongoing preparation of the regulatory framework (Belgium, Italy, Russia, etc.);
- countries where the legal framework of ICOs is already integrated in the national legal framework and regulatory stance (Estonia, Lithuania, the UK, Germany, Canada, Luxembourg, Australia, Japan, etc.)<sup>28</sup>.

Generally speaking, in most cases, specifically in the EU, national legislation with regard to ICOs is technologically neutral. In other words, new ICO-related developments are subject to traditional legal regulation. E. g., in Germany, the applicability of regulations with regard to an ICO depends on the type of tokens. If tokens are acquired by consumers, laws on consumer protection apply. In Estonia, if tokens issued in an ICO have features typical of securities, then securities laws will apply. A similar approach is applied in Lithuania and other countries. Some countries with aspirations to develop a national digital industry are creating a favourable environment by bringing down bureaucratic entry barriers for digital products and services and launching the so-called regulatory sandbox. E. g., the UK financial regulator has now progressed into the testing stage, as it practices the case-by-case approach in licencing the operations of ICO organisers and provides support and consultations in legal aspects. Meanwhile, some EU countries are only on their way to formulating regulatory approaches to address new phenomena. E. g., the conclusions of the public consultations concerning ICOs were released in France on February 22, 2018<sup>29</sup>.

<sup>26</sup> D. L. Panin, ICO kak sposob privilecheniya investitsii – rossiiskii i zarubezhnyi opyt. Collection of papers: Traditsionnaya i innovatsionnaya nauka: istoriya, sovremennoe sostoyanie, perspektivy. International research and practical conference: in five parts (2018): 27-30.

<sup>27</sup> A. V. Tolokov, "Finansovo-pravovoe regulirovanie kriptovalyuty i ICO v zarubezhnykh stranakh", Vestnik Moskovskogo universiteta MVD Rossii Vol: 1 (2019): 7.

<sup>28</sup> A. V. Tolokov, "Finansovo-pravovoe regulirovanie...7

<sup>29</sup> Draft of the federal law No. 419090. March 20, 2018.

In particular, three propositions were put forth in the consultations initiated by the French financial regulator, Autorite des marches financiers, AMF, including adjustments to ICOs to avoid the need to revise applicable laws, while maintaining the best practices of technological neutrality; expansion of the existing legal base to approach ICOs as an initial public offering of securities (IPO); elaborating and adopting new legislation to regulate ICOs. The third option gained the most support at the public consultations, and the AMF decided to proceed with the development of the legal framework for ICOs, focusing specifically on guarantees for investors and compliance with the requirements concerning anti-money laundering regulations and combating the financing of terrorism<sup>30</sup>.

That said, the EU member states should take into consideration not only national regulation, but also the supranational legislation of the EU. In particular, the European Securities and Markets Authority (ESMA) set out the requirements for ICOs in the EU member states in 2017<sup>31</sup>. ESMA does not prohibit ICOs in the EU. In addressing the possibility for ICO projects to be taken beyond the existing legal framework, there is the key indication that ICO projects should not contradict the EU laws, particularly, the EU Prospectus Directive, implying the requirement, where an ICO project meets the criteria of an IPO (initial public offering of securities), to publish a prospectus for the offering upon its approval by the regulator; the EU Markets in Financial Instruments Directive in case the markers have features typical of financial instruments; the EU Alternative Investment Fund Managers Directive in case the ICO qualifies as an alternative investment fund; and the Fourth Anti-Money Laundering Directive setting the requirement for obligatory customer identification<sup>32</sup>.

In the Russian Federation, initial token offerings are not regulated in any way and for that reason, many companies avoid conducting ICOs there<sup>33</sup>. Meanwhile, 50% of ICOs are arranged by Russian citizens who have to go abroad, even though they might potentially accomplish it in Russia<sup>34</sup>.

## Conclusion

Crowdfunding is a high-tech and convenient instrument to modernise the financial and investment system. It provides certain clear advantages and represents a promising and potentially rewarding financing and investment technique. Firstly, an initial coin offering, ICO, represents one of the new forms of attracting investment through a sale of coins (tokens) to the public. On the one hand, decentralisation spurs the popularity of this approach to project financing, while, on the other hand, as observed above, it creates risks both for the traditional government institutions and for private individuals (potential investors). Other serious barriers for crowdfunding and particularly ICOs in Russia include fraud; faulty practices of borrowers failing to comply with loan agreements; unresolved tax issues; low confidence levels, etc.

<sup>30</sup> A. V. Tokolov, "Finansovo-pravovoe regulirovanie...7"

<sup>31</sup> Advise and publications for investors: Official website of the European Securities and Markets Authority. Retrieved from: <https://www.esma.europa.eu/search/site/ICO>

<sup>32</sup> A. V. Tokolov, "Finansovo-pravovoe regulirovanie...7"

<sup>33</sup> E. Kirillova; O. Blinkov; T. Zulfugarzade; A. Bocharov y A. Avdalyan, "Estado legal de los contratos inteligentes: características, papel, significado", JURÍDICAS CUC Vol: 15 num 1 (2019): 285-300.

<sup>34</sup> D. L. Panin, ICO kak sposob privilecheniya investitsii – rossiiskii i zarubezhnyi opyt. Collection of papers: Traditsionnaya i innovatsionnaya nauka: istoriya, sovremennoe sostoyanie, perspektivy. International research and practical conference: in five parts (2018): 27-30.



Such problems have to be analysed and resolved shortly primarily by way of development of a sound and adequate legal base. Therefore, the conducted analysis suggests that new phenomena such as crowdfunding and, particularly, its digital variety, ICOs, call for regulation, and one of the most relevant issues for investment is the issue of legal regulation of new applications of investment techniques. The research hypothesis is thus confirmed. Further research into crowdfunding regulation could be concerned with the elaboration of efficient mechanisms to ensure investor protection and guarantees of repayment of contributed funds in case the crowdfunding project fails.

## References

Advise and publications for investors: Official website of the European Securities and Markets Authority. Retrieved from: <https://www.esma.europa.eu/search/site/ICO>

Artemov, N.; Arzumanova, L.; Sitnik, A.; Smirnikova, Y. y Zenin, S. “El modelo de regulación legal de la circulación de monedas virtuales: La investigación sociológica y legal”. JURÍDICAS CUC Vol: 16 num 1 (2020): 127–144.

Consultation document: Crowdfunding in the EU – Exploring the added value of potential EU action. Brussels. 2013. Retrieved from: [https://ec.europa.eu/finance/consultations/2013/crowdfunding/docs/consultation-document\\_en.pdf](https://ec.europa.eu/finance/consultations/2013/crowdfunding/docs/consultation-document_en.pdf)

Crowdfunding innovative ventures in Europe. The financial ecosystem and regulatory landscape. 2013. Retrieved from: <https://ec.europa.eu/digital-agenda/en/news/crowdfunding-innovativeventures-europe-financial-ecosystemand-regulatory-landscape-smart>

Dergachev, A. V. “K voprosu pravovogo regulirovaniya ICO-proektov. In the book: Sovremennye problemy pravotvorchestva i pravoprimereniya”. Baikal Student Legal Forum 2019: Proceedings of the All-Russian student research and practical conference (2019): 9-12.

Draft of the federal law "On Digital Financial Assets" (prepared by the Ministry of Finance of Russia) (not submitted to the State Duma of the Federal Assembly of the Russian Federation). February 16. 2018.

Draft of the federal law No. 419090. March 20, 2018.

Eleanor, K. y Shane, W. Crowd-funding: an infant industry growing fast. Staff working paper of the IOSCO Research Department. Retrieved from: <https://www.iosco.org/research/pdf/swp/Crowd-funding-An-Infant-Industry-Growing-Fast.pdf>

Garcia-Teruel, R. M. “A legal approach to real estate crowdfunding platforms”. Computer Law & Security Review Vol: 35 num 3 (2019): 281-294.

Kakim kraudfandingovym ploshchadkam mozno doveryat v Rossii. Retrieved from: <http://svodelo-kak.ru/finansy/kraudfanding.html>

Kievich, A. V. y Koipash, D. A. “Kraudininvesting kak alternativnaya model finansirovaniya investitsionnogo proekta”. *Ekonomika i banki* Vol: 1 (2016) 58–64.

Kirillova, E.; Blinkov, O.; Zulfugarzade, T.; Bocharov, A. y Avdalyan, A. “El estado legal de los tokens y su herencia”. *JURÍDICAS CUC* Vol: 16 num 1 (2020): 287–302.

Kirillova, E.; Bogdan, V.; Lagutin, I. y Gorevoy, E. “Estado legal de los contratos inteligentes: características, papel, significado”. *JURÍDICAS CUC* Vol: 15 num 1 (2019): 285-300.

Kirillova, E. A.; Blinkov, O. E.; Ogneva, N. I.; Vrazhnov, A. S. y Sergeeva, N. V. “Artificial Intelligence as a New Category of Civil Law”. *Journal of Advanced Research in Law and Economics* Vol: 11 num 1 (2020): 91 – 98.

Kosov, M. E.; Solyannikova, S. P.; Sigarev, A. V.; Karpenko, V. P. y Popkov, S. Y. “Public Investment in Russia: Peculiarities of Implementation and Ways to Improve Efficiency”. *Journal of Advanced Research in Law and Economics* Vol: 10 num 4 (2019): 1288-1295.

Kuznetsov, V. A. “Kraudfanding: aktualnye voprosy regulirovaniya”. *Dengi i kredit. News and analysis* Vol: 1 (2017): 65–73.

Levkina, E. V.; Sakharova, L. A. y Edelev, D. A. “Comprehensive assessment of investment attractiveness of regions (Based on the example of the regions of the far east)”. *Revista Inclusiones* Vol: 7 (2020): 546-555.

Obrashchenie k rukovoditelyam kraudfandingovykh (P2P) i kraudininvestingovykh (P2B) ploshchadok. Bank of Russia. 2016. Retrieved from: [http://cbr.ru/finmarkets/files/supervision/Inf\\_note\\_jun\\_0716.pdf](http://cbr.ru/finmarkets/files/supervision/Inf_note_jun_0716.pdf)

Panin, D. L. “ICO kak sposob privilecheniya investitsii – rossiiskii i zarubezhnyi opyt. Collection of papers: Traditsionnaya i innovatsionnaya nauka: istoriya, sovremennoe sostoyanie, perspektivy”. *International research and practical conference: in five parts* (2018): 27-30.

Prahalad, C. K. y Krishnan, M. S. *Prostranstvo biznes-innovatsii: sozdanie tsennosti sovместno s potrebitелеm*. Moscow: Alpina Publisher. 2012.

Ravnopravnoe kreditovanie: shag v ekonomiku sovместnogo potrebleniya. *Obzor regulirovaniya finansovykh rynkov* Num 1 (2016): 12–17.

Serikbaeva, G.; Bektanov, B. y Bekturganova, A. “Sources of Attracting Investments in Technological Innovation Projects to Ensure the Sustainable Development of Rural Areas”. *Journal of Environmental Management and Tourism* Vol: 10 num 4 (2019): 935-941.

Sud SShA priznal kriptovalyutu Telegram tsennoi bumagoi. 2020. Retrieved from: <https://www.rbc.ru/crypto/news/5e7b02729a7947bafa0cfb48>

Tarasov, Iu. A. y Khudo, V. D. “Perspektivy pravovogo regulirovaniya kraudfandinga i drugikh vidov kraudinvestinga v Rossii. *Izvestiya Yugo-Zapadnogo gosudarstvennogo universiteta*”. Series: History and Law. Vol: 9 num 3 (2019): 26–32.

Tokolov, A. V. “Finansovo-pravovoe regulirovanie kriptovalyuty i ICO v zarubezhnykh stranakh”. Vestnik Moskovskogo universiteta MVD Rossii Vol: 1 (2019).

REVISTA  
INCLUSIONES M.R.  
REVISTA DE HUMANIDADES  
Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA  
EDITORIAL

Las opiniones, análisis y conclusiones del autor son de su responsabilidad y no necesariamente reflejan el pensamiento de **Revista Inclusiones**.

La reproducción parcial y/o total de este artículo debe hacerse con permiso de **Revista Inclusiones**.

PH. D. (C) M. V. AFONIN / DR. O. F. LOBAZOVA / PH. D. (C) ALLA VASILIEVNA KISELEVA  
PH. D. (C) YURIY ALEKSANDROVICH TARASOV / PH. D. (C) VITALY V. GONCHAROV