

## Public Welfare Crowdfunding Development Issues and Legal Demands in the Era of "Internet +"

Yong-Mei XIA, Shao-Hua WU\*, Zhi-Jie LU, Qiao-Yan TU,  
Xuan-Lin WANG, Ye RAO

School of Public Affairs & Law, Southwest Jiaotong University, Cheng Du, China

\*Abnerwsh@163.com

**Keywords:** Online public welfare crowdfunding; Legal relationship; Project audit; Regulatory system; Fundamental rights.

**Abstract.** As an emerging public welfare model combining Internet finance and public welfare rescue, Internet+ public welfare crowdfunding grows rapidly with the advantages of the Internet. However lots of relevant issues arise, which have seriously restricted its development. This paper studied current situation and advantages of developing online public welfare crowdfunding, analyzed the main problems of public welfare on the Internet context, and proposed the legal means to solve the problems based on clarifying the corresponding legal indictments.

### Introduction

With the proposal of "Internet +" action plan and the formulation of "developing modern Internet industry system", "Internet +" public welfare crowdfunding has achieved rapid development in just a few years with advantages of the diversity of project types, project participation democratization, high efficiency of project progress and transparent project operation, forming a market size of billions. Relying on Internet to carry out social and crowdfunding public welfare activities is a great change to the traditional one. Meanwhile, due to the low threshold for launching public welfare crowdfunding, unclear qualification of the platform, unclear civil legal relationships between parties, insufficient supervision on the implementation of returns of public welfare projects, and difficulty in realizing investors' rights, online public welfare crowdfunding faces many challenges.

### Problems of Public Welfare Crowdfunding in the Era of "Internet +"

#### The Civil and Legal Relationship between the Parties is not Clear

The main players in online public welfare crowdfunding are investors, platforms and initiators. However, neither the Charity Law nor the Public Welfare Donation Law has clarified the legal relationships among them. Relevant theories are also being gradually explored and proposed.

Some scholars believe that it is suitable for the public welfare crowdfunding platform to be an intermediary, forming an intermediation legal relationship with investors and initiators. The initiators entrust the platform to release relevant information, the platform uses its information service function to connect initiators and investors, which helps initiators complete the goal. However, it is difficult to match the existing mode of operation. Firstly, compared with the rights of the intermediaries, the obligations and risks are higher. For example, the platform not only release the information, but also conducts project review and fund management. Secondly, in the intermediation relationship, the released information is the content between the initiators and the platform's entrusted relationship, that is, the person who initiate public welfare crowdfunding is still the initiator. After the edict of the Charity Law of the People's Republic of China, the main body of the fundraising qualification was clarified, and laws stressed that individuals are not qualified. Under such circumstances, the initiators has the possibility of breaking the law.

Based on the above issues and the charity law, organizations and individuals who are not eligible for fundraising, can complete public fundraising through cooperation with charitable organizations.

Another scholar advocates that there is a authorization relationship between the initiators and the platform, that is, the initiators entrusts the platform to develop public welfare crowdfunding. At the moment, public welfare crowdfunding can be seen as an initiator who does not have the qualification for fundraising to launch ribution activities with a capable public welfare crowdfunding platform. However, we know that the legal consequences of the trustee's entrusted matters will be directly attributable to the client. With the rapid development of “Internet +”, the crowdfunding platform represented by “Fun in Funding” has greatly promoted the innovation of the traditional public welfare model. With wide-ranging influence and attention from all social circles, investors' support for the project is more based on the trust of the platform itself. In the legal disputes, investors often abandon their rights due to they give a small amount of money and it is difficult to provide sufficient evidences. The overall public interest litigation system of investors has not been established, so they tend to pursue the platform. In this case, if the platform is out of the trustee's status, it will be difficult to truly protect the rights of investors.

### **Imperfect Project Audit System**

At present, many public welfare crowdfunding platforms focus on the formal review of the authenticity of the main content of the project, which means the public welfare crowdfunding project can be released after platforms confirm that it is true, lacking strict specifications, review standards and necessary substantive examination. For example, after a car accident, the driver used "Break dead 4 people, and can't afford it, please help me!" as the title to launch a public welfare crowdfunding project on the web, whose target amount was 200,000. After being exposed by the network, the “Fun in Funding” platform closed the project with the cause that “not meeting the application conditions”. However, the official did not formally respond to this<sup>1</sup>. During this process, the owner uploaded photos and accident videos on the platform, and some friends and relatives proved them. Formally, it met the conditions for publishing a project on “Fun in Funding” platform; but from an aspect of legal, the driver should be responsible for his own behaviors. What's more, the situation in his family has not reached the point that he must ask the public for help. The “Fun in Funding” platform remedied the error in time with closing the project. However, how was it successfully released through the audit? The steps and links of process had to be queried.

Compared with the fraudulent donations, absconding with money and other events that occurred in the public welfare crowdfunding project in the previous two years, the cases such as the above-mentioned are more frequent nowadays. This type of projects is not completely deceptive. But not accord with the mainstream value of society. From this angle, it is difficult to meet the expectations of investors for public welfare projects only in the form of existing forms of review. And it is also incompatible with the public welfare value of the public welfare projects themselves.

### **The Regulatory System is not Sound**

As a new thing, public welfare crowdfunding in China is still in its infancy, and it is constantly exploring and absorbing experience from foreign countries. Among them, the establishment of a sound regulatory system can not only prevent problems before they occur, but also an effective remedy for investors when their rights are damaged. As far as the current situation is concerned, the regulatory system for public welfare crowdfunding in China is not sound.

From an macroscopic angle, the industry of public welfare crowdfunding has not established a complete system of supervision systems. From the beginning of the project review, there is no corresponding mechanism to start, but a fragmented state. The platform just take action when problems happen, no timely measures, and the capacity of relief is poor.

Microscopically, one of the regulatory system's focuses is on the source – the access to the platform, and the other is the operation of funds. In terms of platform access, as the competent department, the civil affairs department has no standardization of the access to control platforms, which leads to the mixed platform market. On the other hand, there is a lack of review of the

---

<sup>1</sup>Wang M.P. "Beat 4 people, can't afford to pay" He raised the funeral expenses on the Internet, and there are still people who give money. "People's Network", 2018-7-18.

business scope of the public welfare crowdfunding platform. Since it itself has financing attributes, if it is not strictly regulated, it will easily face the risk of illegal fundraising once the platform exceeds the scope of business. From the perspective of capital operation. Firstly, the fund custody is not yet mature, and the fund account for the fundraising of public welfare projects is lack of supervision. Secondly, lacking of effective supervision of how initiators use funds, which can easily lead to misuse of funds and violate the original intention of public welfare. In addition, it is not clear that how to handle the remaining money after the accomplishment of crowdfunding project.

### **The Basic Rights of Investors are Difficult to Achieve**

In the online public welfare crowdfunding, investors should enjoy the right to know, supervise and refund about public welfare projects and funds. However, the existing laws and regulations have not yet clarified the information disclosure system, especially the lack of effective regulation of the content, extent and time of information disclosure, making it difficult for investors to act in a timely manner. The absence of an information disclosure system directly restricts the exercise of rights.

Online public welfare crowdfunding uses Internet media to make use of its efficient and convenient features to enable the rapid dissemination of sponsor information, in addition to its virtuality, indirectness, the true level of information is controversial, violating the rights of investors. First of all, the accuracy of information which is released cannot meet the public welfare requirements. Secondly, the existing information disclosure system of the platform cannot reflect the progress of the project in a timely manner.

At present, the transparency of public welfare crowdfunding is extremely poor, and the phenomenon of abusing funds appears frequently. Although most public welfare crowdfunding platforms require investors to disclose information in a timely manner and set up capital flow public notice column, but they do not really use this column. And there is no clear regulatory measures. According to this, Yu Liang, the person in charge of "Fun in Funding", said that the current laws and regulations do not support the crowdfunding platform to intervene in the follow-up use of funds raised by individual help-seekers. All they can do is repeatedly persuading the initiators to disclose the use of follow-up funds. Articles 69 to 76 of the Charity Law have made information disclosure requirements for civil affairs departments, charitable organizations, the trustees of charitable trusts, which requested them to disclose relevant information in a timely, true and complete manner, but there is no provision for public welfare crowdfunding, which aggravated the difficulty in establishing a management information disclosure system for the platform.

### **The Legal Indictment of the "Internet +" Public Welfare Crowdfunding**

#### **Clarify the Legal Relationship between the Parties**

Clarifying the legal relationship can clear the rights and obligations of the parties, which will contribute to the follow-up system construction and accountability. It is the basis and key to standardizing public welfare crowdfunding. According to the above discussion, the author believes that appropriate adjustment should be carried out on the entrusted contractual relationship and the Conditional gift contract relationship between initiators and investors. On the one hand, the public welfare crowdfunding platform must help the initiators to release the projects, review and supervise the projects at the same time, and it is also responsible for the fault of the projects operation. On the other hand, it is necessary to open a relief channel for investors and realize their refund claim right when the conditions are not fulfilled.

#### **Improve the Project Review System**

The formal review conducted by the platforms often ignore the public welfare review, feasibility review and initiators qualification review. What is reflected is the lack of substantive review of the entire project, which will trigger the crisis of confidence in public welfare crowdfunding. In addition, the online public welfare crowdfunding project has a wide range of radiation and a large

number of participants, if the project does not have the correct value oriented, even forming a bad social atmosphere, deviating from the essence of public welfare. Therefore, the author believes that the substantive review should be strengthened from the following three aspects to construct a reasonable review system.

**Strengthen Public Welfare Review.** Public welfare crowdfunding has altruism. So the public welfare crowdfunding platform should make a basic judgment on whether a project follows the public order and goodness of the society, whether it is honest, and the social core values, in order to avoid raising a lot of money for own use with a good title and an unrealistic personal idea.

**Conduct a Feasibility Review.** At present, there are many types of public welfare crowdfunding projects, but the feasibility of them is unsure. Some projects mislead the investors who lack relevant professional knowledge easily. The platform should conduct professional analysis on the feasibility of the project, thereby saving social welfare resources.

**Conduct Initiators Qualification Review.** The platform should require the initiators to provide proof of actual ability. Regard initiate qualification as one of the criteria for project access. At the same time, take the initiative to conduct a more comprehensive and detailed review of projects that have reached the funding target, provide the success rate of the projects and the utilization rate of the funds, and realize public welfare value.

### **Strengthening the Regulatory System**

The lack of a strong regulatory system for “online public welfare crowdfunding” will make the whole project in an unstable state. It is difficult for investors to find effective relief channels, so they become the most direct victims of public welfare crowd funding. As a new thing, public welfare crowdfunding in China is still in its infancy, exploring and learning from foreign experience. Strengthening the regulatory system can not only prevent it from embarking on illegal fundraising, fraudulent donations, etc., but also become a direct and effective relief channel for investors when their rights and interests are damaged.

The author believes that it should start from both external and internal supervision. External supervision should be supplemented by the supervision of government departments and industry associations. First of all, we must clarify the scope of government supervision (including public welfare crowdfunding project release, fund raising, implementation, etc.) to exert regulatory effectiveness. Secondly, it is necessary to establish an access system for the public welfare crowdfunding platform market and a registration evaluation system for the public welfare crowdfunding platform qualification, and remove the public welfare crowdfunding platform that does not comply with relevant regulations. In order to gain an in-depth understanding of the development of the industry, we need to set up public welfare crowdfunding industry associations, which should cooperate with the government to carry out effective supervision and promote the development of the industry. Internal supervision mainly refers to the supervision of the whole public welfare crowd funding process by the platform. It requires the platform to establish a sound self-management system and standardize the supervision system. In particular, it must have qualifications and responsibilities for public welfare crowd funding promoters, public welfare project access standards, and the number of investors. A number of important contents such as the amount of investment, the amount and frequency of funds raised are stipulated.

### **Realize the Basic Rights of Investors**

The rights of investors in online public welfare crowdfunding mainly include the right to know, supervise, claim returns and refund. Judging from the exposed problems at this stage, investors protection is so weak that the investors need to claim rights urgently. Judging from the concept of “publicity” pursued by “Internet +” public welfare crowdfunding, this “popularization” is not only for the general public to participate in public welfare activities, but more importantly, to make public welfare a public good for average people. Everyone who cares about public welfare projects can participate, and become the protagonist of public welfare activities. Therefore, it is necessary to strengthen the protection of investors rights, especially through the disclosure of information for the follow-up relief channels for investors.

The author believes that the realization of the above rights requires a set of laws and systems to regulate. At every stage of public welfare crowdfunding project, information disclosure should strictly abide by the principle of “openness, fairness, and fairness”. In addition, the author proposes to introduce block-chain technology, using the open and unchangeable nature of the technology data. Thereby we could solve the problem of information disclosure, make the project more credible and controllable, and better protect the investors’ rights.

### **Conclusion**

We can see from the analysis of the above problems that whether the legal relationship is clear, the corresponding system is constructed and improved, or the protection of investors rights lacks clear legal norms as the basis and guidance, so that the problem solving lacks legal basis and legal protection. In addition, we have to pay attention to the "Internet +" public welfare crowdfunding is still in the development stage, the legal means of timely intervention should be to promote the development of the industry, give a free growth space within a certain scope, and establish a complete, systematic institutional system ultimately.

### **Acknowledgement**

This research is sponsored by the project of “Study on the Protection of Investor’s Rights in ‘Internet+’ Public Welfare Crowdfunding” (No. 201810613095)(SRTP), issued by Southwest Jiaotong University.

### **Reference**

- [1] Yuan, Y. Research on the Status Quo and Trends of Public Welfare crowd-funding in China. Hebei Journal, 37(06): 154-158.(2017)
- [2] Wang, Q. Research on the development of public welfare crowd-funding in China. Jilin University.(2015)
- [3] Yang, R.Y., & Ma X. Research on the Status Quo and Risk Prevention of Internet Public Welfare Crowd [J]. Learning and Practice, 2017(02): 81-88.