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The Contribution of Limited Liability Principle and Crowdfunding Concept to Access Finance[1]

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A B S T R A C T

Especially in the early 19th century, states have been in search of finding finance for large projects such as dams, bridges and road construction that they could not finance on its own. As a result of evaluations, it was concluded that the necessary financing could be provided by limiting liability of investors and then the limited liability principle, which is one of the prime building blocks of modern business life, has been legally accepted. Thanks to limited liability also small and medium-sized enterprises (SMEs) and start-ups have become more easily able to access the equity capital they need. However, although the limited liability principle makes it easier to reach equity capital, it makes it difficult to access debt capital (credit), especially in times of crisis. For this reason, alternative finance models such as crowdfunding emerged in the early 2000s to facilitate startups' access to debt capital. In this article, the contribution of limited liability principle and crowdfunding to access to capital are examined.

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1. Introduction

It is difficult to obtain necessary financing especially in terms of projects that require high financing (Ramos, 2014: 3). Therefore, in the early 19th century various investigations were made in order to finance large projects such as dams, bridges and roads that were beneficial for the society but states couldn’t finance alone. As a result of these investigations, it has been concluded that the capital needed couldn't be obtained from a small number of investors, and for this, it was necessary to reach a large number of small investors (crowd). To ensure this, limited liability principle has been legally accepted. Thanks to the limited liability principle, small contributions from many small investors were combined to create a large pool of capital easily (Hermes, 2006: 20; Trautmann, 2020: 69). Because if investors risks only the amount invested, they will be more willing to invest.

However, while limited liability facilitates access to capital in the form of equity, it makes difficult to access capital in the form of debt. Because in limited liability system, creditors cannot apply to shareholders for company debts. The only assurance of creditors is company assets. For this reason, especially during crisis periods businesses have difficulty in finding debt capital in a limited liability system. Thus, different sources have been researched to facilitate investors' access to debt capital.

Development of technology in the early 2000s and the difficulty in accessing financing through traditional means especially after the 2008 crisis, led to the emergence of alternative finance methods such as crowdfunding. Crowdfunding has made it easier and faster for enterprise, start-ups and SMEs to access debt capital.

In fact, it could be argued that the purpose of limited liability and crowdfunding is same. Both of them aims to create a large pool of capital by reaching large crowds willing to invest small amounts. However, the main difference between them is that limited liability principle facilitates access to equity capital, whereas crowdfunding generally facilitates access to debt capital.

This article focuses on the contribution of the limited liability principle and crowdfunding, enterprise, start-ups and SMEs' access to (equity or dept) capital.

2. Limited Liability Principle

2.1. Meaning of the Limited Liability Principle

Since the property of the company and shareholders are separate in a stock corporation (separation principle), it is not possible to hold shareholders responsible for the debts of the company. Shareholders are only responsible for the amount of capital they undertake and to the company. Therefore, creditors cannot demand payment from the shareholder for the company's debts. This is known as the limited liability principle (Easterbrookt & Fishel, 1985: 90; Macey, 1995: 447).

2.2. Limited Liability Facilitates Access the Capital

Although the limited liability principle has many positive effects, the most important one is that it facilitates access to capital. Because investors are more willing to invest when they risk only the amount they have invested. In order to understand the ease provided by limited liability in obtaining the capital, it is useful to first focus on the risk propensity of investors. There are three types of investor profiles in the market. The first and most common of these are risk-averse, second is risk-neutral and third is risk-seeking/loving (Safdari & Scannell, 2005: 1). Risk-seeking/loving investors would rather invest in a high-risk business and earn higher income, rather than investing in a less risky business and earning less income. The higher income for such investors, the greater marginal utility. Risk-neutral investors treat all investments equally. The risk-averse investors, on the other hand, prefer to take a low risk and earn a lower income, rather than take high risk and earning high income. For such investors, the marginal utility decreases as income increases (Halmer, 2013: 12; Markowitz, 1952: 152; Trautmann, 2020: 98). In other words, as Safdari & Scannell (2005) stated, risk-averse investors have diminishing marginal utility of income and prefer certain income to uncertain income. Risk-lovers have increasing marginal utility of income and prefer uncertain income to certain income.

Investors, whether natural or legal persons, are generally risk-averse. The basis of this is the diminishing marginal utility theory. According to this theory, as consumption (income) increases, marginal utility decreases. Each additional income unit brings less and less utility to individual. Conversely, each additional loss results in a greater loss of utility. An equal amount of loss affects individuals more than an equal amount of income (Friedman & Savage, 1948: 294; Halmer, 2013: 12; Koçaslan, 2011: 5; Markowitz, 1952: 155). For this reason, individuals often strive to maintain their current conditions rather than earning more income.

Because investors are generally risk-averse, the expected value of investment plays an important role in investment decisions (Friedman & Savage, 1948: 279). The expected value of investment consists of the difference between the probability of positive and negative outcomes, calculated with the formula $E(X) = \Sigma x_i f(x_i)$. If the outcome is positive, it makes economic sense to invest in this area, no matter how high risk. However, generally risk-averse investors avoid investing in this field when it involves the slightest risk, even if it has a very high rate of positive expected value. Consequently, investments desired in economic sense don't take place. The limited liability principle encourages investors to invest in such line of businesses by breaking their risk resistance, as it limits the risk of investors only to the amount of capital they invest. In this context, it can be said that limited liability encourages investors to run economically useful risks that they would not undertake under unlimited liability (Meyer, 2000: 970; Trautmann, 2020: 103; Vandekerckhove, 2007: 7). In this way, especially start-ups that have difficulty obtaining the finance due to the fact that they are new and have a huge amount of risk in their structure can access the resource in the form of equity more easily and cheaply (Gloger, 2007: 24; Lehman, 1986: 353; Meyer, 2000: 990).

While limited liability principle facilitates access to capital, it contains an important problem of legitimacy. As a matter of fact, the person who gains by investing should also undertake the negative consequences of the investment. Nonetheless, in the limited liability system, investors only risk their invested capital and the remaining risks are transferred to creditors (Bainbridge, 2000: 488). For this reason, the question of why the investor, who benefits from the profits alone, should be allowed to transfer some of the risks to company's creditors, comes to the fore and therefore, the limited liability principle needs a legitimate justification (Bainbridge, 2000: 488; Roth, 2009: 373). In response to this question, it is stated that not only investors but also the society as a whole benefits from the increased investment thanks to limited liability. Because when investment increases, employment and tax revenue of the states increase (Halmer, 2013: 18; Schall, 2009: 295).

2.3. Limited Liability Allows Risk Diversification

In the unlimited liability system, investors run the risk of losing all their assets. Because when invested company goes bankrupt, partners are liable with all their assets. As a number of companies invested increases, this risk also increases. Hence, instead of investing in a large number of companies, investors only invest in a small number of companies that they can influence their management. This makes it difficult for enterprise to access equity capital (Smith, 2008: 1027; Trautmann, 2020: 92).

On the other hand, in the limited liability system, investors only risk the capital they have allocated to the company. Thus, they diversify their risks by investing in a wide range of companies operating in different fields, instead of investing in a couple of companies. In this way, metaphorically investors put their eggs in different baskets instead of placing them in one basket, and so they hedge the risk of losing all their eggs when the basket falls. In other words, limited liability prevents a house fire from burning down an entire city or even whole country (Easterbrookt & Fishel, 1985: 97; Macey, 1995: 450; Trautmann, 2020: 92). Therefore, investors are more willing to invest as opposed to unlimited liability. Thereby limited liability encourages investment and facilitates access to equity capital.

As can be seen, the limited liability principle in modern business life plays a crucial role in bringing together the (equity) capital necessary for the realization of entrepreneurial ideas. As a matter of fact, therefore it is considered as the greatest discovery of modern times and by far the most influential legal invention made for commercial purposes in the 19th century (Bainbridge, 2000: 479; Cataldo, 1953: 473; Trautmann, 2020: 27).

It is also possible to see the role of the limited liability principle in business life in empirical studies on investors' choice of company type. As a matter of fact, in these studies, it is seen that the most important factor affecting the choice of company type is whether the limited liability principle is applied in the company (Hermes, 2006: 20; Hicks et al., 1995: 24).

3. The Concept of Crowdfunding and Its Role on Accessing Finance

3.1. The Concept of Crowdfunding

New established small businesses are much more likely to be inadequate staffed and resourced, and fail than businesses that have been operating for a long time (Bradford, 2012a: 5; Stemler, 2013: 274). Because of that investing in these businesses is inherently risky. But as Stemler (2013) and Bradford (2012a) point out, risk is inherent in all new ventures and worthwhile business endeavors. There is no way to completely eliminate this initial risk. Enterprisehip plays an extremely important role in terms of economic and technological development. Thus, someone has to run that risk for the economic growth.

Without enough funding, potentially promising enterprise can never go beyond the idea stage (Fink, 2012: 4). Therefore, the fund providing phase is the most vital for enterprise, start-ups and SMEs (Cicchiello et al., 2020: 238). However especially enterprise, start-ups and small and medium-sized enterprises (SMEs) that have just started operating, have very limited opportunities to meet their financial needs (Huang et al., 2018: 300). Since they are new in the market and their recognition is low, they have difficulty getting loans or have to pay very high interest (Fink, 2012: 2). Therefore, today financing of enterprises, start-ups and SMEs that provide employment, produce innovation and accelerate economic growth is one of the most current issues worldwide (Aschenbeck-Florange et al., 2013: 5; Block et al., 2018: 239; Cicchiello, 2019a: 300; De Buysere et al., 2012: 5; Kuvaeva et al., 2020: 1052).

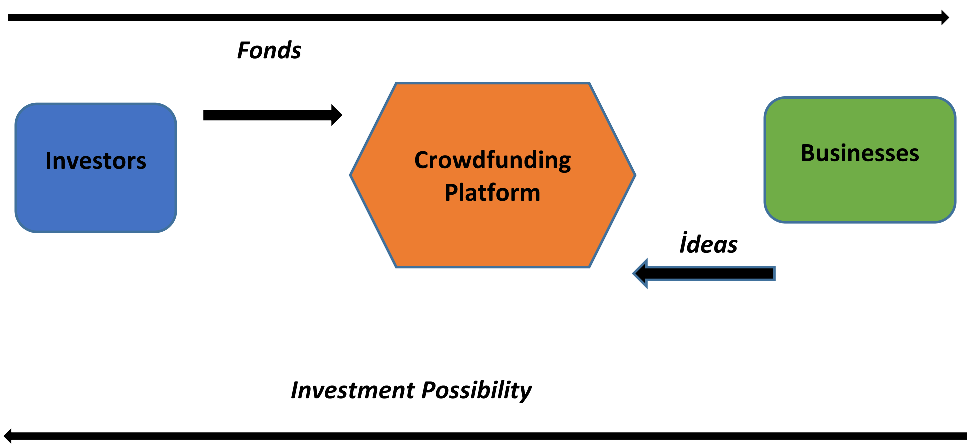
Enterprises, start-ups and SMEs are usually financed only by the entrepreneur herself, his family or friends during the establishment phase due to high risk (Agrawal et al., 2014: 5; Belleflamme et al., 2014: 31; Bradford, 2012a: 5; Dasgupta et al., 2020: 2; Irwin & Scott, 2010: 5). However, after the business reaches a certain size, it is unlikely that the entrepreneur himself, his family or friends will be able to provide finance. Hence, after a certain point, they need external financing. They are largely dependent on the banking system to obtain external financing (Bradford, 2012a: 5; Irwin & Scott, 2010: 4; Stemler, 2013: 272). Nonetheless, since they aren't well known in the market and have the risk of being terminated shortly after their establishment, they have difficulty in obtaining financing through bank loans, especially during crisis periods when lending rates decrease (Block et al., 2018: 244; Fink, 2012: 18; Sadzius & Sadzius, 2017: 52; Stemler, 2013: 272; Valanciene & Jegeleviciute, 2014: 600). As a matter of fact, it is stated that there is a huge difference (approximately 5 trillion USD worldwide) between the financing demand of such enterprises and the financing actually obtained by these enterprises (Kuvaeva et al., 2020: 1052). In addition according to the research conducted by Nguyen et al., (2022), approximately 60% of 72,564 SMEs have difficulties in obtaining bank loan. Hence, as Block et al. (2018) and Cicchiello (2019a) point out, especially in post-crisis times characterised by strict credit conditions and liquidity constraints, finding new financing alternatives is crucial for the surviving of entrepreneurial activity, which plays a significant role in innovation, growth and employment.

For this reason, more effective alternative finance models have emerged in order to meet the financing needs of potentially promising enterprises, start-ups and SMEs

(Beaulieu & Sarker, 2015: 2; Belleflamme et al., 2014: 2; Kuvaeva et al., 2020: 1053). One of them is crowdfunding. At the present time, to overcome finance problem, many entrepreneurial initiatives turn to the crowd rather than banking (Cicchiello et al., 2020:238). Therefore, crowdfunding has become an alternative source of finance alongside traditional bank loans (Kuvaeva et al., 2020: 1052). Because, undertaking the total risk of an investment by the small contribution of many investors (crowd) is easier than undertaking by a single investor (bank) (Sadzius & Sadzius, 2017: 55).

Crowdfunding platforms, which eliminate the necessity for physical interaction thanks to their use of digital environment, enable fund seekers to reach a large number of small potential investors easily and cheaply (Cicchiello, 2019a: 315; Cicchiello, 2019b: 3). They match project owners, who are looking for fund with a large number of small investors who want to generally invest with a small portion of their assets. This system mediates fund seekers to receive funding from investors who find their projects promising (De Buysere et al., 2012: 9; China, 2014: 175). In the crowdfunding system, there are three actors, namely fund seeker, funder and intermediary (Sadzius & Sadzius, 2017: 60). In this context, it is possible to define crowdfunding as a system that brings together investors in need of funds and fundholders through the internet platform (Belleflamme et al., 2014: 7; Fink, 2012: 5; Valanciene & Jegeleviciute, 2014: 601). The aim of this system is to benefit from the power of the crowd to find finance for small ventures that are unlikely to get fund by traditional means (Gerber et al., 2012: 9). It is possible to see the operation of crowdfunding on the figure 1 below.

Figur 1: Operation of the crowdfunding financing model



Thanks to crowdfunding, the high risks of start-ups and SMEs are distributed to a large number of small investors (Aschenbeck-Florange et al., 2013: 7; Huang et al., 2018: 301). Just like in the limited liability, investors are more willing to take the risks of start-ups and SMEs as they risk only a small part of their assets. Furthermore, crowdfunding contributes to the diversification of the financing source and thereby to the finance security (De Buysere et al., 2012: 16).

Nowadays, crowdfunding is seen as a hope to fund innovative projects that would not be carried out otherwise (Belleflamme et al., 2015: 1). Indeed, it is the first choice in providing funds for businesses (start-ups) that cannot access the capital they need through other traditional means, due to their newly establishment and high risk of bankruptcy (Bradford, 2012b: 196; Kuvaeva et al., 2020: 1052; Valanciene & Jegeleviciute, 2014: 601). As a matter of fact, according to the 2017 report, 17% of the equity resources provided to UK start-ups companies were provided by equity-based crowdfunding (Zhang et al., 2017: 6).

3.2. Types of Crowdfunding

There are four main types of crowdfunding, namely donation-, reward-, lending/debt- and equity/investment-based crowdfunding (Beaulieu & Sarker, 2015: 8; Block et al., 2018: 241; Cicchiello et al., 2020: 235).

In donation-based crowdfunding model, funder doesn't demand any compensation from fund seeker and acts with a charitable purpose (Beaulieu & Sarker, 2015: 19; Block et al., 2018. 241; Cicchiello, 2019b: 3; Cicchiello et al., 2020: 235). This type is used in areas such as scientific research, education or health (Sadzius & Sadzius, 2017: 54). GoFundMe (http://www.gofundme.com/), YouCaring (https://www.youcaring.com/) and Crowdrise (https://www.crowdrise.com/) are examples of this type in the world (Cicchiello, 2019b: 3).

Also, in reward-based crowdfunding model, funder doesn't demand any compensation from the fund seeker. However, if the initiative is successful, the entrepreneur gives the reward that he proposed earlier to the funder. These are generally symbolic valuable awards such as giving the name of funder to the project (Beaulieu & Sarker, 2015: 16; Block et al., 2018: 241; Cicchiello et al., 2020: 236; Özer, 2022: 114). Kickstarter (http://www.kickstarter.com) is the one of the oldest and largest reward-based crowdfunding platforms in the world (Cicchiello, 2019b: 5). Therefore, reward-based crowdfunding is also called the Kickstarter model (Sadzius & Sadzius, 2017: 53).

In the equity-based crowdfunding model, fund seekers offer their company's shares to the funders in return for the funds they obtain. This type of crowdfunding is an alternative to the capital market system (Beaulieu & Sarker, 2015: 9; Block et al., 2018: 242; Özer, 2022: 291; Sadzius & Sadzius, 2017: 52). One of the world’s first equity-based crowdfunding platforms is the English Crowdcube (https://www.crowdcube.com/) launched in 2010 (Cicchiello, 2019b: 5).

In the lending-based crowdfunding model, fund seekers borrow from funders via an internet platform, on condition that they repay with interest on the agreed date, instead of taking loans from banks. This model, which is described as peer-to-peer (P2P) lending is the most common crowdfunding model (Beaulieu & Sarker, 2015: 10; Block et al., 2018: 241; Cicchiello, 2019b: 5; Cicchiello et al., 2020: 236). As a matter of fact, in researches, this type has always been in the first place since 2013 (Massolutıon, 2015: 43; Ziegler et al., 2021a: 41-42). This model first emerged in 2005 in the U.K. under the name of Zopa and in 2006 in the U.S. under the name of Lending Club (Sadzius & Sadzius, 2017: 52). Today Prosper (https://www.prosper.com/), Twino (https://www.twino.eu/) and Bondora (https://www.bondora.com/) are most popüler examples of the this type in the world (Cicchiello, 2019b: 5).

In general, donation- and reward-based crowdfunding are models that don't aim at the financial return (non-investment models), while lending- and equity-based crowdfunding are models that pursue financial objectives (Herrera, 2016: 4; Massolutıon, 2015: 42). For this reason, lending- and equity based crowdfunding models are regulated in many countries, while donation- and reward based crowdfunding models remain outside the jurisdiction of lawmakers (Sadzius & Sadzius, 2017: 54). As a matter of fact, as can be seen below, the legal regulations that have come into force are generally related to lending- and equity-based crowdfunding models.

3.3. Historical Development of Crowdfunding

Crowdfunding emerged after the technological developments in the early 2000s and in particular the 2008 crisis that made it difficult for enterprise, start-ups and SMEs to access (debt) financing they need through the banking system (Block et al., 2018: 241; Sadzius & Sadzius, 2017: 52; Valanciene & Jegeleviciute, 2014: 600). Because after the global financial 2008 crisis, banks became more conservative in lending to start-ups and SMEs. Therefore, during the post-crisis period, various searches have been initiated to finance these enterprises (Sadzius & Sadzius, 2017: 53; Worldbank, 2013: 3).

The first crowdfunding platform in the world was established by ArtistShare in the early 2000s to fund the development of musical content in the United States (USA) (Kuvaeva et al., 2020: 1053). But in the modern sense the first crowdfunding platform was launched in London under the name of Zopa (Sadzius & Sadzius, 2017: 52).

In fact, just as limited liability emerged in the early 19th century to finance projects that were beneficial for society but states couldn't finance alone, also crowdfunding emerged in the early 21st century to enable enterprise, start-ups and SMEs which create new jobs, accelerate economic growth and thus are beneficial for society but notwithstanding have difficulty to obtain finance by traditional means, to access the financing they need easily. Therefore, it is possible to say that the reason for the emergence of both institutions is similar. Namely, the limited liability principle has emerged to ensure that high risks which an investor wouldn't want to undertake alone are undertaken with the small contribution of a large number of investors. Similarly, crowdfunding emerged in order to ensure that high risks belonging to enterprise, start-ups and SMEs which an investor (bank) wouldn't want to undertake alone, are undertaken with the small contribution of many investors (crowd) (Shneor et al., 2020: 1). Nevertheless, there is an important difference between these two institutions. Limited liability encourages investors to become partners in small and medium-sized companies, making it easier for them to obtain capital in the form of equity capital. On the contrary, limited liability makes it difficult to acquire capital in the form of debt. Looking at the statistics, on the other hand, crowdfunding generally makes it easier for small and medium-sized businesses to obtain debt capital rather than equity. Therefore, it can be said that while limited liability makes it easier to acquire equity capital, crowdfunding generally facilitates to obtain debt capital.

Between 2016 and 2020, while the ratio of total lending-based crowdfunding in the world decreased, especially in 2020, the donation-based crowdfunding ratio increased by approximately 160% compared to the previous year and reached 7 billion USD. The reason for the increase in the donation-based crowdfunding rate is the rise in online aid campaigns during the Covid-19 pandemic. The Covid-19 pandemic has also been effective in reducing the lending-based crowdfunding rate around the world. However, there is another fundamental reason for the decline of lending-based crowdfunding worldwide. This is the legal tightening taking place in China, which had a dominant position in the world lending-based crowdfunding market (Ziegler et al., 2020: 132-134; Ziegler et al., 2021a: 26).

Despite in this article we generally focus on the positive effect of crowdfunding on enterprises, start-ups and SMEs in providing funds, there are also some negative consequences (Worldbank, 2013: 5). The most important of these is fraud (De Buysere et al., 2012: 7; Ramos, 2014: 23). While the flexibility of regulations in China has allowed the crowdfunding market to expand rapidly, it has also led to abuse of this alternative finance model (Huang et al., 2018: 301; China, 2014: 191). Due to abuse especially after 2018, in China regulations regarding crowdfunding have been tightened and it has been difficult for crowdfunding platforms to obtain licenses. The Chinese crowdfunding market, which rose significantly between 2013-2017 thanks to legal flexibility, declined significantly between 2018-2020 after this legal tightening. As a matter of fact, after this tightening, the number of platforms operating in the Chinese alternative financial market, which was 438 in 2018, decreased to 53 in 2020. Moreover, the volume of the alternative finance market in China, which was 358.3 billion USD in 2017, decreased to 215.4 billion USD in 2018, 84.3 billion USD in 2019 and negligible 1.2 billion USD in 2020. The Chinese market, which accounts for about 70% of the global alternative finance system even with the decline experienced in 2018, has a share of only negligible 1.03% in the market by the end of 2020. This dramatic decline in the Chinese market has also caused the total world crowdfunding volume to decrease significantly. However, also despite a significant decrease in the total amount of world crowdfunding due to the decline in the Chinese market, the crowdfunding market in the USA, European and other countries continued to expand in general (Ziegler et al., 2021a: 35-51).

According to 2020 data, the USA is dominant in the alternative finance market, which is mostly composed of crowdfunding. The USA is followed by England, Brazil, Italy, India, France, Germany, Indonesia, North Korea and China respectively (Ziegler et al., 2021a: 191).

3.4. Crowdfunding in the United States Law

In the USA, two main regulations regarding crowdfunding have been enacted in order to increase employment and economic growth by facilitating the access of emerging companies to capital markets. On 05.04.2012, Jumpstart Our Business Start-ups Act (JOBS Act) has entered into force. Crowdfunding is regulated in the third section of this law. On 30.10.2015, a communique was issued in order to determine the implementation principles of crowdfunding (Agrawal et al., 2014: 2; Fink, 2012: 25; Stemler, 2013: 273).

Prior to these regulations, selling stocks in companies through crowdfunding was illegal. These regulations have provided enterprise and small business owners with the opportunity to sell a limited amount of shares in their company to a large number of investors through social networks and various internet platforms (Bradford, 2012b: 197; Stemler, 2013: 273). The most important convenience provided to enterprise with these regulations is that they are exempted from the registration requirement, which requires a fairly high (300,000-500,000 USD) cost (Stemler, 2013: 272).

According to 2020 data, the USA, where a total of 56 platforms operate, ranks the first in the global alternative finance market with a transaction volume of $73,620,196,501.32 (Ziegler et al., 2021a: 192-193).

3.5. Crowdfunding in European Union Law

Although various studies have been carried out in the European Union in order to encourage crowdfunding (Cicchiello, 2019a: 312; Gajda, 2017: 20-21), no general binding regulation on all member states has been made until 10.10.2020, the issue has been left entirely to will of members. Until the middle of 2017, 11 EU member states have made their own national legal regulations on crowdfunding (Aschenbeck-Florange et al., 2013: 32; Sadzius & Sadzius, 2017: 52).

Italy (26.06.2013) is the first country among the EU member states that establish a legal basis for crowdfunding. Italy was respectively followed by England (01.04.2014), France (01.10.2014), Spain (29.04.2015), Germany (10.07.2015), Portugal (24.08.2015), Austria (01.09.2015), Netherlands (01.04.2016) Finland (01.09.2016), Lithuania (01.12.2016) and Belgium (01.02.2017) (Cicchiello, 2019a: 309; Gajda, 2014: 237; Gajda, 2017: 23-679; Kuvaeva et al. 2020: 1054; Sadzius & Sadzius, 2017: 60; Özer, 2022: 39-40). Among these countries, the regulations of England, Germany and France are more flexible to encourage investment, while the regulations of Italy and Spain are more restrictive (Cicchiello, 2019b: 20-25; Cicchiello et al. 2020: 258; Gajda, 2017: 362-379).

The fact that each member state has created its own crowdfunding legislation has caused some conflicts within the EU (Cicchiello, 2019a: 312; Cicchiello, 2019b: 29; Gajda, 2017: 20-22). As a result of this, the European Commission published the “Proposal for a regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business” on 08.03.2018 in order to ensure application uniformity. These draft regulations entered into force on 10.11.2020 under the name of “European Crowdfunding Service Providers (ECSP) for Business, and Amending Regulation”. This Regulation aims to enable crowdfunding intermediaries to operate in all EU member states by establishing a clear legal infrastructure regarding crowdfunding at European-wide (Özer, 2022: 62-64).

According to 2016 data, the largest crowdfunding markets among the European states are respectively England, France, Germany, Netherlands. Although, the market share of England decreased from 81% in 2015 to 73% in 2016, it is the country with the largest share in the alternative finance system in Europe (Ziegler et al., 2018: 16). However, this ranking changes from year by year. The countries with the largest crowdfunding markets in 2017 are respectively, England, France and Germany; in 2018 England, Netherlands and Germany; in 2019 England, Netherlands and İtaly; in 2020 England, İtaly and France (Ziegler et al., 2021b: 71-72).

3.6. Crowdfunding in Turkish Law

Just like in other countries, only reward- and donation-based crowdfunding activities have been carried out until the legal infrastructure was established in Turkey (Özer, 2022: 40-43; Vural, 2019: 167).

In this process, the first platform in the modern sense, which carries out reward-based crowdfunding activities in Turkish law, was established in 2011 under the name of ProjemeFon. This platform changed its name in 2013 and continued its activities under the name of CrowdFON (http://www.crowdfon.com). In addition, in 2013 Fongogo (yatirim.fongogo.com) platform, in 2016 Arıkovanı (http://www.arikovani.com) and Fonbulucu (fonbulucu.com) platforms were established. Buluşum (https://www.bulusum.biz) and Ideanest (ideanest.org) platforms, which were established in 2015, engage in donation-based crowdfunding (Demiray & Burnaz, 2019: 91; Özer, 2022: 41; Vural, 2019: 142).

The legislative infrastructure of crowdfunding in Turkish law was constituted with the amendment made to the Capital Markets Law on 28.11.2017 and the communique on it entered into force on 03.10.2019. After these regulations, as well as reward- and donation-based crowdfunding, equity-based crowdfunding has come into effect. The first brokerage firm to receive permission to engage in equity-based crowdfunding activities in Turkish law is Vakıf Yatırım Menkul Değerler A.Ş. which was authorized on 01.04.2021, and the first platform is Global Kitle Fonlama Platformu A.Ş., which was authorized on 08.04.2021. Later, Halk Yatırım Menkul Değerler A.Ş. on 30.09.2021 and Dijital Kitle Fonlama Platformu AŞ on 14.10.2021 was authorized to engage in equity-based crowdfunding (Demiray & Burnaz, 2019: 90; Özer, 2022: 40-43).

Moreover, lending-based crowdfunding activity has been also allowed with the regulation made in Article 35/A of the Capital Market Law on 20.02.2020. Based on this change, the crowdfunding communique, which regulates both equity- and lending-based crowdfunding, entered into force on 27.10.2021 and the old communique was repealed. In this context, Fongogo Kitle Fonlama Platformu A.Ş. was authorized for the first time on 06.01.2022 to engage in crowdfunding activities based on both equity and lending (Demiray & Burnaz, 2019: 90).

According to 2020 data, Turkey, where eight platforms operate, ranks 58th in the global alternative finance market with a transaction volume of $30.606.167.61 (Ziegler et al., 2021: 77).

4. Conclusion

Today, facilitating access to finance for enterprise, start-ups and SMEs, which contribute positively to the economy, is one of the most important goals. There are two important institutions that facilitate this in today's business life. The first of these is the limited liability principle, which has been legally accepted since the beginning of the 19th century and the second is crowdfunding, whose legal infrastructure has just been formed. The limited liability principle is one of the main components of modern business life. Considering its increasing volume in the world economy, it can be said that crowdfunding is on the same path. Indeed, as can be clearly seen from the statistics, lending and equity based crowdfunding is on its way to becoming an alternative to the traditional financial systems such as banking and capital markets.

Limited liability reduces the risk resistance of investors and facilitates access to capital for enterprise, start-ups and SMEs. Because in limited liability system, investors only risk the capital allocated to the relevant field. Crowdfunding, on the other hand by bringing together enterprise and investors through the internet, allowing enterprises, start-ups and SMEs to reach the capital they need cheaper and faster way.

Just as limited liability emerged in the early 19th century to finance projects that states could not finance alone by bringing together large numbers of small investors, crowdfunding emerged in the early 21st century to enable enterprises, start-ups and SMEs to access the financing they needed by reaching huge crowds. In fact, it can be said that both institutions serve the purpose of acquiring the needed capital by pooling the small contributions of many small investors. However, there is a significant difference between these two institutions in terms of the type of financing. That is, while limited liability facilitates access to capital in the form of equity capital, it makes it difficult to access debt capital. Because the responsibility of the investors is limited to the amount invested, they are more willing to invest. This situation increases access to capital in the form of equity capital. However, in a limited liability system, creditors are generally reluctant to lend, as company assets are their only guarantee. Therefore, access to debt capital is difficult in a limited liability system. In contrast, crowdfunding generally facilitates access to debt capital.

The convenience of limited liability principle and crowdfunding in accessing capital in European Union countries and the USA has been examined in detail. In Turkish law, on the other hand, it is seen that the subject has not been adequately examined. It will be useful to examine the subject with empirical researches.

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