

Legislation and Regulation of Individual Help-Seeking Online Crowdfunding Platforms

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Abstract

The booming development of online crowdfunding has given rise to individual help-seeking online crowdfunding platforms, which have both profit-making and charitable functions and are not regulated by existing laws. The current legislation does not specify the obligation to review the information of the platforms, the responsibility to supervise the finance, and the obligation to supervise the remaining money of the platforms. The legislation should regulate individual help-seeking online crowdfunding platforms by setting the information review obligations of the platforms, stipulating the supervisory responsibilities of the platforms for the funds raised, and clarifying the supervisory obligations of the platforms for the remaining funds, which can promote the standardized development of individual help-seeking online crowdfunding and facilitate the progress of China's charitable cause.

Keywords: individual help-seeking, crowdfunding platforms, legislation

1. Introduction

With the rapid development of Internet, many Individual Help-Seeking Internet Crowdfunding have emerged, such as Shui Di Chou, Fun In Funding, Tencent Foundation and so on. However, in recent years, there have been a lot of fraudulent money-raising cases, which have triggered a crisis of trust in Internet Crowdfunding Platforms. Take the case of Wu Hechen as an example. The comedian Wu Hechen had a cerebral hemorrhage. His wife launched a Crowdfunding target of 1 million CNY on Shui Di Chou, which was generously filled by netizens. However, later it was discovered that his family had two sets of apartments and a car in Beijing, which made netizens indignant and triggered extensive discussions. Individual Help-Seeking is not under the regulation of Charity Law of the People's Republic of China, and there is no special legislation at the national level to regulate Individual Help-Seeking Crowdfunding Platforms. In this background, it is especially necessary to legislate on Individual Help-Seeking Online Crowdfunding Platforms.

1.1 Analysis of the Functional Positioning of Individual Help-Seeking Online Crowdfunding Platforms

At present, not many scholars in China have studied Individual Help-Seeking Online Crowdfunding Platforms, and there is a lack of relevant laws and regulations to unify regulations, resulting in the unclear definition of Individual Help-Seeking Online Crowdfunding Platforms. The functions of Individual Help-Seeking Online Crowdfunding Platforms are unclear, and it is easy to blur the functions of Individual Help-Seeking Online Crowdfunding Platforms and other Internet platforms such as Internet fundraising information platform. It is necessary to clarify the function of Individual Help-Seeking Online Crowdfunding Platforms, so as to improve the legal regulation on Individual Help-Seeking Online Crowdfunding Platforms.

1.2 Individual Help-Seeking Online Crowdfunding Platforms Possess Profit-Making Function

From the analysis of the legal person system, Individual Help-Seeking Online Crowdfunding Platforms are profit-making legal persons, possessing profit-making purposes and functions. Taking the currently flourishing Shui Di Chou as an example. Shui Di Chou belongs to Beijing Zong Qing Xiang Qian Technology Co. (hereafter

Shui Di Co.) The legal representative of the company is Shen Peng. The company's main businesses include "Shui Di Chou", "Shui Di Insurance", "Shui Drip Mutual Aid" and "Shui Drip Public Welfare". The overall business of Shui Di Co. is divided into a profitable business segment and a social responsibility segment, with the profitable business segment being "Shui DI Insurance" and the social responsibility segment consisting of "Shui Di Chou" and "Shui Di Public Welfare". Among them, "Shui Di Chou" is the Individual Help-Seeking Online Crowdfunding Platforms. Shui Di Chou is an Internet public fundraising information platform designated by the Ministry of Civil Affairs. There are three sources of profit in the Shui Di Chou business: First, the platform can make profits by taking advantage of the time gap in the fundraising cycle of Shui Di Chou and investing the money raised; second, it earns advertising fees and cooperation fees by forwarding Crowdfunding links to obtain a large amount of traffic; third, it directs donors to buy commercial insurance from the Shui Di Chou platform through pop-up notifications. The rest of the Individual Help-Seeking Online Crowdfunding Platforms resemble to Shui Di Co.'s Shui Di Chou business model.

1.3 Individual Help-Seeking Online Crowdfunding Platforms Possess Charitable Function

According to traditional Chinese culture and the Xinhua Dictionary, "慈" means love, and "善" means kindness, friendship and mutual help among people.(Note 1) "Charity" refers to the act of mutual help and assistance between people. Chapter 4 of the Charity Law stipulates that a donor may make a voluntary, gratuitous gift of property directly to a beneficiary for charitable purposes, which is the same nature as a donor's gift of property to a help-seeking person through a platform, both of which are voluntary, gratuitous gifts of property. It can be seen that Individual Help-Seeking initiated using the Internet is a way of donation in a new charitable context. Compared to traditional charitable donation, it only changes the way of raising money for charity, and does not change its nature of still being a charitable donation.

Although Individual Help-Seeking Online Crowdfunding Platforms is not a charitable organization, its fundraising behavior possesses the charitable purpose of helping others, and in essence, it has done so. The platform, with the technical power of the Internet, breaks through the geographical restrictions of traditional charity, spreading the help-seeking information all over the country, and donors can participate in charity by just moving their fingers, making the cost of participating in charity activities lower and full exerts to the charity function of the platform.

2. Legislation on Individual Help-Seeking Online Crowdfunding Platforms Is in Deficiency

The Charity Law excludes Individual Help-Seeking Online Crowdfunding from charitable fundraising and does not regulate it. Since the platform is an online information service provider, it is regulated by The Cybersecurity Law of the People's Republic of China and the Measures for the Administration of Public Donation Platform Services. In Individual Help-Seeking Online Crowdfunding, the information provided by the help-seeking party to Crowdfunding Platforms is large, and in order to avoid the leakage of the personal information of the help-seeking party, Crowdfunding Platforms' behavior is regulated by the Cybersecurity Law. In addition, regarding the authenticity of the information provided by help-seeking people, Article 10 of the Measures outlines that the authenticity of help-seeking information is the responsibility of the help-seeking initiator. For Individual Help-Seeking Online, there is no direct regulation. It can be seen that the regulation of Individual Help-Seeking Online Crowdfunding Platforms in China's legislation is insufficient, which is reflected in the unclear rights and obligations of Individual Help-Seeking Online Crowdfunding Platforms. For example, whether Individual Help-Seeking Online Crowdfunding Platforms have the obligation to substantially review the authenticity of help-seeking information of help-seekers, such as :whether they should establish a platform for public disclosure of those with inaccurate information; whether the platform have any responsibility for fraudulent donations; what is the legitimacy of the platform's right to supervise the use of donations; should the remaining donations be handled by the platform or the help-seeker. These are the problems that exist in the actual operation. The platform relies on the platform agreement to position itself as an information service provider, and then issues a statement to clear the relationship and shift the responsibility when notorious events occur, resulting in many problems that make the platform less credible.

2.1 The Platforms' Help-Seeking Information Review Obligation Is Not Specified

Article 10 of the Measures (Note 2) waives the obligation of online service providers to review information and becomes a "shield" for Individual Help-Seeking Online Crowdfunding Platforms to evade their review obligations in the event of fraudulent donations. For example, Article 1 of the "User Agreement" of the "Shui Di Chou" platform: "Shui Di Chou provides an Internet platform for patients' individual help-seeking information dissemination. The authenticity of the information is the sole responsibility of the initiator and help-seeker." Based on the legality analysis, this provision of "Shui Di Chou" is fully in line with Article 10 of the Measures. However, the positioning of Individual Help-Seeking Online Crowdfunding Platforms is not just an ordinary online service

provider, but a special professional platform with both profit-making legal person and charitable nature, which cannot be compared with the "online service provider" in the article by ignoring the charitable function of the platform. This provision lists the network service provider with radio, newspaper and television, indicating that its concept is similar to that of radio and television, and its function is the same as that of radio and television, meaning it is simply a traditional media platform for publishing Individual Help-Seeking messages without any obligation to review information and using help-seeking information to "attract traffic" to make profit. The difference between Individual Help-Seeking Online Crowdfunding Platforms and ordinary online platforms is that Crowdfunding Platforms have a strong professional service and commercial nature in their own field, as well as charitable attributes. It should not be a "network service provider".

2.2 The Existing Regulations Do Not Provide Guidance on the Supervision of Donation

Until the Individual Help-Seeking Crowdfunding project has successfully raised enough donation, the funds raised are held by Crowdfunding Platforms. A huge amount of property is deposited on the platform. The responsibility of supervising the money of Individual Help-Seeking Online Crowdfunding Platforms is blank, which leads the platform to take a laissez-faire attitude towards the misuse of the funds raised by help-seekers and let help-seekers misuse the funds raised. The loose vetting of Individual Help-Seeking Online Crowdfunding Platforms has led many netizens to think of "making a fortune" by taking advantage of the opportunity. For example, in the first case of crowdfunding for serious illness in the Primary People's Court of Chaoyang District of Beijing Municipality, the defendant Mo launched crowdfunding with the fictitious fact that his son was suffering from a serious illness. However, the money raised was diverted to other uses, and was eventually reported by his wife to the Shui Di Chou platform. (Note 3) At present, help-seekers will fill in some information at the request of the platform after help-seeking, including medical information, real estate, vehicles, and credit card information. After which they can withdraw the raised funds from WeChat within 24 hours at once. As for the use of the crowdfunding funds, the disclosure is based on the voluntary principle of the help-seeking people. There is no mandatory rule.

From the help-seeking agreement signed between Individual Help-Seeking Online Crowdfunding Platforms and help-seekers, the platform presents itself as a technology platform providing information service technology, (Note 4) with the aim of reducing its regulatory responsibility for the use of the funds raised according to the Crowdfunding purpose, resulting in the difficulty in curbing funds misappropriation. However, relying only on the supervision of netizens, friends and relatives to solve the problem of misuse of crowdfunding funds simply cannot prevent the misappropriation, so the legislation must strengthen platforms' regulatory responsibility for the use of the funds raised.

2.3 Lack of Obligation of the Platform to Supervise the Remaining Money

In Individual Help-Seeking Online Crowdfunding, there may be cases where the help-seeking person is already out of trouble or recovered from an illness and there is still money left over from the fundraising. The purpose of Individual Help-Seeking Online Crowdfunding is to help people in distress and the remaining funds should be used appropriately, such as returned to the donor or donated to others for a similar purpose. It should not be misused by the help-seeking person. Therefore, the platform should bear the obligation to supervise the remaining money to avoid the misuse of the remaining money. However, the legislation does not stipulate the platform's obligation to supervise the remaining money, and the help-seekers can handle the remaining money themselves, resulting in the misuse of the remaining money. For example, in the 2015 case of "Couple Crowdfunding to Save Daughter After Traveling Abroad", a couple in Foshan, Guangdong launched a fundraising campaign for their seriously ill daughter at Fun In Funding, and their daughter later died after to medical treatment. The parents used the 60,000 CNY left to travel to Tibet. This incident has triggered a controversy about how to use the remaining money after Crowdfunding. It can be seen that the legislation should be set up for the platform to regulate the obligation of the remaining money.

3. The Improvement of Individual Help-Seeking Online Crowdfunding Platforms

The regulation of Individual Help-Seeking Online Crowdfunding Platforms will regulate the orderly and healthy development of Individual Help-Seeking Online Crowdfunding industry. In view of the current situation that China's legislation is insufficient to regulate Individual Help-Seeking Online Crowdfunding Platforms, it is necessary to improve the laws and regulations of Individual Help-Seeking Online Crowdfunding Platforms to provide legal basis for the compliance operation of the platform and the effective supervision of the government. The lack of clarity in the responsibilities and obligations of the platform is the result for the lack of regulation. The way to achieve this in legislation is to clarify the legal rights, obligations and responsibilities of Individual Help-Seeking Online Crowdfunding Platforms.

3.1 Set the Platform's Information Review Obligations

Legislation should create an information review obligation for Individual Help-Seeking Online Crowdfunding Platforms. Internet platforms operating Individual Help-Seeking Online Crowdfunding programs should review the authenticity of help-seeking information of help-seeking parties, the authenticity of help-seeking programs, and whether help-seeking programs are illegal. The platform should possess right to require the sponsor to disclose the (1) reason for Crowdfunding (help-seeking information); (2) the expenditure of the Crowdfunding (help-seeking); (3) the expected use of the money; (4) the basic economic situation of the family (information on income, real estate, valuable movable assets, etc.); (5) the basic social security reimbursement; and (6) the existence of the family in a timely, true and accurate manner. The platform should review the above information. When Crowdfunding Platforms conducts the substantive review of the above information, the relevant government departments should actively cooperate. It should be especially noted that it is difficult to conduct substantive review of information such as the basic economic situation of the family. In the substantive review of the proof of ownership, Crowdfunding Platforms can ascertain the authenticity of ownership proof unless the ownership information is different from the intellectual property database that can be searched by the network service provider, there are traces of forgery in the proof, and the ownership has expired.

The legislation should establish the principle of full disclosure of some information of the help-seeking party. The scope of information disclosure of the help-seeking party is clarified, which can be divided into necessary disclosure and voluntary disclosure. The former mainly includes basic information about the help-seeking party (the help-seeker's name, identity information, the reason for the help-seeking and the cost, a brief description of the family's financial situation, low income insurance, social security, commercial insurance, etc.), which is the basis for the donor's judgment on whether to donate; the latter includes a specific description of the family's financial situation, etc., because it involves privacy. Help-seeking party can choose to voluntarily disclose, and the disclosure content should comply with laws and regulations on state secrets, commercial secrets and personal privacy of the relevant provisions.

3.2 Legislation on the Responsibility of the Platform for the Supervision of Donation

The legislation should consider stipulating the platform's responsibility for supervising the money, and Crowdfunding Platforms should supervise the money raised to avoid misuse of the money raised by help-seekers. It is reasonable to set a cap of 500,000 yuan for a single help-seeking according to the development of Individual Help-Seeking Online Crowdfunding. The existing industry self-regulatory code already mentions that the "single help-seeking amount" should not exceed RMB 500,000 in principle, and if it exceeds that, the initiator can express it in the help-seeking information. At the same time, because the financial needs and urgency of help-seeking matters vary greatly, platforms can establish their own databases and set a help-seeking amount range for different help-seeking projects in order to avoid surplus donation.

Crowdfunding Platforms should monitor the funds raised. The premise is that Crowdfunding Platforms should establish long-term contact with the Crowdfunding funds used by the relevant institutions. For example, in crowdfunding for major diseases, Crowdfunding Platforms should be connected with medical institutions; in crowdfunding for tuition fees for poor college students, Crowdfunding Platforms should be connected with universities. Also, the establishment of docking system between Crowdfunding Platforms and relevant institutions is necessary. On the one hand, it could facilitate the verification of the authenticity of the Crowdfunding matter (help-seeking information). On the other hand, it could facilitate the supervision of the reasonable use of Crowdfunding funds. With the connection, all Crowdfunding funds can be directly paid to the public account of the relevant institutions to ensure that the Crowdfunding funds are used for Crowdfunding purposes, which greatly reduces the risk of misuse of Crowdfunding funds and fraudulent crowdfunding.

3.3 Clarify the Platform's Obligation to Supervise the Remaining Money

The legislation should clarify the platform's obligation to supervise the remaining money. The platform should supervise the use of the remaining money to avoid misuse of the remaining money. After the disappearance of the help-seek reason, if there is any money left in the private account, then the Platform has the right to request the help-seeking party to return the remaining money to the Platform.

In the legislation, Crowdfunding Platforms should handle residuals based on the principle of balancing interests and respecting the wishes of the help-seeking party. Whether the residuals are returned to the donor on a pro rata basis should be measured by the amount of residuals. If the residual amount is small, the proportional return to the donor is not meaningful, and the cost of return is easily greater than or equal to the amount of return. Therefore, the legislation can set a minimum amount of return, such as the remaining amount of less than or equal to 50,000 CNY. In this case, the principle of proximity is helpful. Based on this principle the money left will be hand over to other

foundations that to help other needy groups with similar distress. If the remaining amount is higher than 50,000 CNY, Crowdfunding Platforms will respect the wishes of the help-seeking party if the help-seeking party specifically requests that the remaining amount be returned to the donor on a pro rata basis. If the help-seeking party does not specifically request it, Crowdfunding Platforms may still handle the remaining funds by reference to other foundations based on the aforementioned principle.

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Notes

Note 1. Xu Lin. Study on the Development of Philanthropy in China [M]. China Society Press, 2005.

Note 2. Article 10 of the Measures for the Administration of Public Donation Platform Services Article 10: Individuals in order to solve their own or family difficulties, through the radio, television, newspapers and magazines, as well as network service providers and telecommunications operators to release help-seeking information, radio, television, newspapers and magazines, as well as network service providers and telecommunications operators should post risk notification in a prominent position to the public, inform the public of the information is not public fund-raising information, and the authenticity of the information guaranteed by the initiators.

Note 3. Case: First national case of online personal help-seeking fundraising for major illnesses returned in full. China social organization dynamics. <https://baijiahao.baidu.com/s?id=1649616985953707044&wfr=spider&for=pc> Latest Access: December 25, 2021.

Note 4. Article 1 of the Agreement: Shui Di Chou provides an Internet platform for patients in distress to publish information about their personal major illnesses and help-seeking information. The authenticity of the information is the sole responsibility of the initiator and help-seeker.

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