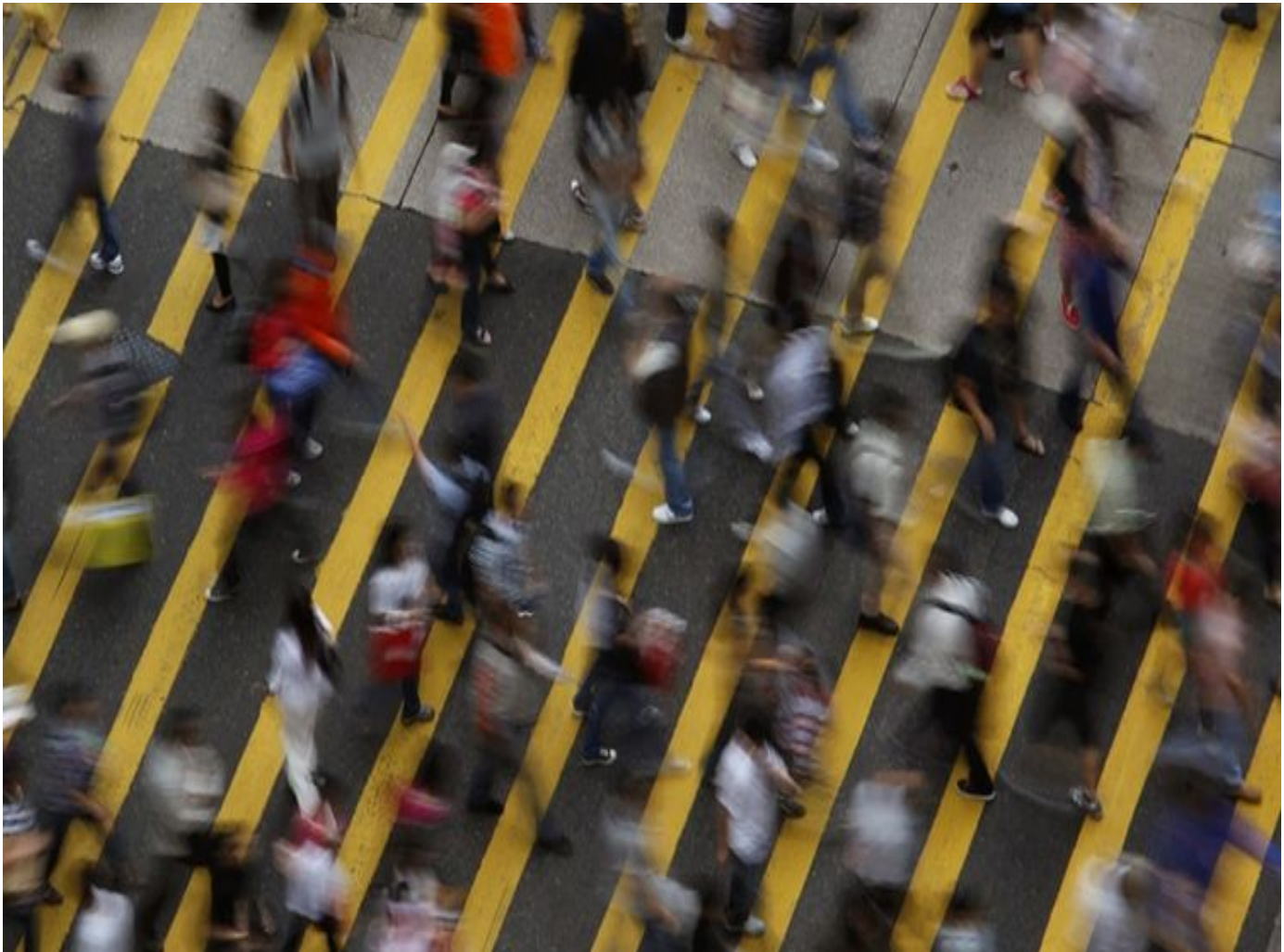


India may exempt crowdfunding from Companies Act



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The government may exempt crowdfunding activities from provisions of the **Companies Act** as it seeks to bring such fund-raising under the regulatory ambit of **Securities and Exchange Board of India (Sebi)**, according to two people with direct knowledge of discussions between the corporate affairs ministry and Securities and Exchange Board of India (Sebi).

Crowdfunding is defined as the use of money collected from a large number of individuals, typically through internet or social media, to finance a new business venture.

The government may invoke Section 462 of the Companies Act (which gives the central government powers to exempt any company or business from the provisions of the Act) to ease the way for start-ups to raise funds through this route, these persons said. Invoking this section of the Companies Act requires Parliament's approval.

One of the key hurdles for crowdfunding is Section 42 of the Companies Act, which says that the number of investors in any private placement cannot be more than 50 at one go and 200 in a year.

The law also requires a private company to compulsorily make a public offer and list the securities on a recognized stock exchange if the number of investors is 200 or more in a year.

Sebi has repeatedly expressed concerns about the number of investors crossing 200 (even if inadvertently) because crowdfunding uses social networks and internet platforms for fundraising.

In the last six months, Sebi had shot off letters to angel funds and crowdfunding firms, seeking details of their businesses, and it asked them to exhibit a disclaimer that these platforms are neither stock exchanges nor authorized by the markets regulator to solicit investments.

Sebi and the ministry of corporate affairs (MCA) did not respond to emails seeking comment.

"MCA is ready to allow crowdfunding the required exemptions from the Companies Act. The ministry is only waiting for Sebi to draft and send the detailed set of regulations it wants to propose for crowdfunding," said one of the two people cited earlier, both of whom spoke on condition of anonymity.

There is still no regulation for crowdfunding despite Sebi putting out a discussion paper on this topic three years ago.

"Keeping the distinction between solicitation number and the actual number of investors putting in money is important. In the second case, 200 is a reasonable number today as start-ups as an asset class are still very high risk and needs to be carefully managed in terms of return and exit expectations," said Shanti Mohan, chief executive of **LetsVenture Online Pte Ltd**, a start-up funding platform.

Mohan said that it will also be important for Sebi to ease the process of foreign money inflows, digitize the existing documentation processes and formulate a fair valuation methodology for doing private placements.

India has at least 3,100 start-ups, and over the past few years, funding activity in the unlisted space has intensified. The Union finance ministry in its last budget had clearly stated the government's intention to support start-up activities.

"The debates surrounding online platforms reiterate the need for certain reforms to the private placement norms in general, i.e., for all types of private placement—offline and online. These include clarifications on what amounts to 'offer' or 'invitation of offer' of securities and rationalization of conditions in relation to valuation, minimum face value, etc.," said T.P. Janani, a lawyer with **Nishith Desai and Associates**.