

# Crowd-sourced Equity Funding Bill: A gift to a few, a lump of coal to others

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Start-ups and small businesses around Australia have been waiting with baited breath for the Federal Government to release the draft legislation for crowd-sourced equity funding. On Thursday 3 December they got their wish. While the draft legislation is largely in line with the Government's previously announced policy, and in our view will still open up another avenue for funding for start-ups and small businesses in Australia, there are many who believe the Federal Government delivered a lump of coal rather than the regulatory framework on their Christmas wish lists.

The *Corporations Amendment (Crowd-sourced Funding) 2015 Bill* (**Bill**) has now been introduced into Federal Parliament. The Bill and accompanying explanatory memorandum details how crowd-sourced equity funding (**CSF**) will be regulated in Australia. Here we discuss the new Bill.

## Eligibility Criteria

The Bill sets out the following key eligibility criteria for use of CSF within Australia:

- the company must be a small Australian unlisted public company and must also satisfy asset (\$5 million) and annual turnover (\$5 million) tests before they are able to access CSF. It is notable that the regime has not been extended to private companies;
- any CSF must occur through a CSF intermediary platform, which holds an Australian Financial Services License (AFSL);
- a raising cap of \$5 million under CSF and other small scale personal offers within a 12-month period will apply;
- a \$10,000 investor cap for retail investors per company will apply.

## Making a CSF Offer

The Bill further outlines the process that is to be followed to undertake a CSF offer. This process includes:

- a CSF offer document (**Offer Document**) must be used and contain all information specified in the regulations;
- the Offer Document must only be published on the platform of a single intermediary;
- all applications and application monies are to be handled by the intermediary; and
- all offers must be closed within three months (if not stated to close earlier).

The Bill contains provisions with respect to defective CSF Offer Documents that align with existing provisions in Chapter 6D of the *Corporations Act 2001* (Cth). The provisions include both civil and criminal liability where there is a statement, omission or new circumstance, which leads to the document being defective, which is materially adverse from the point of view of the investor. The existence of a defective Offer Document will enliven various obligations imposed upon the intermediary and may subject the intermediary to liability as well as other entities or persons responsible for the Offer Document.

## Intermediaries

The Bill imposes a number of obligations upon CSF intermediaries who seek to offer a platform on which CSF can occur. These obligations include 'gatekeeper' obligations requiring suspension or closure of offers in response to various circumstances including defective offer statements. Further, any intermediary must:

- ensure that a CSF risk warning appears prominently on the platform at all times;
- provide and regulate an application facility;
- provide a communication facility; and
- disclose any fees that the company will pay to the intermediary and any interest held by the intermediary in the company.

## Investor Protection

There are a number of investor protections built into the proposed CSF regime, including the investor cap detailed above. Further, investor protections include:

- unconditional cooling-off rights for a period of five business days of making an application;
- prohibitions on the provision of financial assistance for investment in a CSF offer by either the company making the offer or its related parties and the CSF intermediary hosting the offer and any of its associates;
- requirements to accept a risk acknowledgement prior to submission of a CSF application; and
- limitations on advertisements in relation to a CSF offer.

## Ongoing Obligations

One of the critical differences between a public company and a private company is the additional ongoing compliance obligations that apply to public companies. The Bill recognises this and provides corporate governance concessions for a company that registers or converts to a public company after the commencement of the CSF regime and indicates upon its application for registration that the company intends to make a CSF offer after registration. The company must then complete a CSF offer within 12 months of registration. The relevant concessions include:

- an exemption from holding an annual general meeting;
- an option to only provide financial reports to shareholders online; and
- the company not being required to appoint an auditor or have audited financial reports until more than \$1 million has been raised from CSF offers.

Eligible companies may utilise the annual general meeting and online financial report concessions for as long as it satisfies the eligibility criteria for corporate governance concessions. An eligible company may only utilise the audit concession for the lesser of five years from the date of registration as, or conversion to, a public company or when the company has raised more than \$1 million from CSF offers or other offers requiring disclosure at any time.

If you would like to discuss how crowd-sourced equity funding could benefit you and your company either as an issuer or an intermediary, contact HopgoodGanim Lawyers' [Corporate Advisory and Governance](#) team.

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