A further step towards crowdsourced equity funding for proprietary companies

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Last week, the Federal Government released draft regulations to accompany the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017* (Cth) (**CSF Bill**). The CSF Bill was introduced into Parliament on 14 September 2017 and once passed, will extend the crowdsourced equity funding (**CSF**) regime to proprietary companies. In this article, we outline the Government's proposed regulations for proprietary companies participating in CSF in Australia.

The CSF Bill

We outlined the key provisions of the CSF Bill in our previous article. In short, the CSF Bill aims to extend the CSF regime, which currently allows unlisted public companies to access crowdsourced equity funding, to proprietary companies. The accompanying draft regulations provide insight in to how the CSF Bill is likely to operate in practice. The key regulations are set out below.

Takeovers

Under the CSF Bill, proprietary companies with one or more CSF shareholders are exempt from the takeover rules of the Corporations Act, subject to the conditions of the regulations being satisfied. The regulations prescribe that the exemption will apply only to companies that remain eligible CSF companies. Companies will remain eligible CSF companies if:

- they have annual consolidated assets and turnover of under $25 million;
- they have a principal place of business in Australia with a majority of directors residing in Australia; and
- the company and any related parties do not have a principal purpose of investing in securities or interests in other entities or schemes.

This concession from the takeover provisions was introduced to reduce compliance costs and to avoid the takeover provisions being triggered by smaller proprietary companies even where it is not appropriate (i.e. where they are attempting to adjust their capital structure). These regulations will ensure that larger proprietary companies are not continually exempt from the takeover provisions where they have outgrown the CSF framework.

Unsolicited offer provisions

The unsolicited offer provisions of the Corporations Act impose prescriptive requirements on a person seeking to buy shares off market on an unsolicited basis. As the takeover provisions will not apply to a proprietary company that remains an eligible CSF company, offers to buy out shareholders of those companies are likely to be captured by the unsolicited offer provisions.

The regulations modify the unsolicited offer provisions of the Corporations Act to make them more workable in this context by reducing the amount of time an offer must be open for from one month to 14 days. In doing so, offers are able to be made promptly while still providing adequate time for shareholders to consider an offer and seek advice.

The regulations also allow variations to be made to the terms of an unsolicited offer. Allowing variations to the terms of offers provides for additional commercial flexibility and provides exit opportunities to CSF shareholders. Variations that can be made include changes to the price or extension of the offer.

Additional disclosure requirements

The CSF regulations require that proprietary companies accessing the CSF regime must describe, in the offer document, the impact of the concessions that they are subject to and any investor protection measures that apply to them. For example, proprietary companies will be obliged to explain to shareholders why they are exempt from the takeover rules of the Corporations Act, the significance of this exemption and the application of the related party requirements under Chapter 2E of the Corporations Act.

Content and structure requirements of CSF offer documents

The regulations alter the content and structure requirements of CSF offer documents to provide flexibility and simplicity, as well as eliminate overlap within offer documents. The regulations allow information to be presented in a summary format within relevant sections and for details to be included in any of the other required sections or an appendix (to avoid duplication in various sections of the offer document and to make the offer document more succinct).

When will we see these changes come into effect?

As the CSF Bill was not considered before Parliament commenced its extended summer break, the legislation won't be tabled until Parliament resumes sitting in early February 2018, which would mean it will not be in force until August 2018 at the earliest.

The Federal Government is currently seeking public consultation on the CSF regulations, with submissions closing on 2 February 2018. We expect that the CSF regulations will be considered in conjunction with, or after the adoption of, the CSF Bill in the New Year.

If you would like to discuss the draft regulations or how crowdsourced equity funding could benefit you or your company, please contact the author or the Corporate Advisory and Governance Team.

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