

Crowdfunding finally takes off in Australia

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Yesterday the Australian Senate passed the much-anticipated *Corporations Amendment (Crowd-sourced Funding) Bill 2016 (CSF Bill)*. This is big news for the startup community and equity funding platforms in Australia. It will allow retail investors the opportunity to share in a piece of the action in the Australian startup community.

Following a number of years of consultation, Australia will now finally join the likes of other countries which support crowd-sourced equity funding (**CSF**) such as the UK, Canada, USA and New Zealand.

What happened in Parliament yesterday?

Yesterday the CSF Bill was passed with one amendment: the cooling-off period has been pushed back out to five business days. This means that an investor may apply for a maximum of \$10,000 per offer within a 12-month period and has an unconditional right to withdraw from a CSF offer within five business days of making an application (the CSF Bill had previously set a 48 hour cooling-off period).

The longer five business day cooling-off period had previously been criticised because it may create uncertainty for issuers and intermediaries about the amount raised via a CSF offer. We will need to wait and see whether the cooling-off period does in fact create unmanageable levels of uncertainty for issuers and intermediaries.

Not unexpectedly, there was one final push to expand the CSF regime by omitting the requirement for eligible CSF companies to be public companies. The ability for public companies only to access CSF has been a source of significant discontent during the journey of CSF in Australia. This amendment was not passed.

For a comprehensive overview of the CSF Bill see our previous alert [here](#). The key features of the CSF Bill are also set out below.

What should we expect next?

The new CSF laws will commence on a date to be fixed by Proclamation and regardless, from September.

Considering the CSF regime is open to retail investors, we expect that ASIC will provide clear regulatory and compliance guidance. We expect ASIC will release their guidance notes in the coming months in preparation for CSF to roll out across Australia.

CSF intermediaries

Of particular interest is the fact that under the CSF regime, all CSF offers must be made through a 'CSF intermediary' [1]. A 'CSF intermediary' is a financial services licensee whose licence expressly authorises the licensee to provide a crowd funding service'[2]. CSF intermediaries will need an Australian Financial Services Licence (**AFSL**) to operate a CSF platform.

The new laws set out other obligations and requirements for CSF intermediaries such as:

- gatekeeper obligations; [3]

- maintaining open communication channels about the offer while the offer is open or suspended; and
 - disclosure requirements as to the financial interest (including fees charged) the CSF intermediary (or any associate of the CSF intermediary) has or expects to acquire in the issuer.
- [4]

We look forward to the specific guidance ASIC releases for CSF intermediaries.

Recap of key features of CSF Bill

The main features of the CSF Bill are as follows:

- the CSF framework will be available to unlisted Australian public companies with consolidated gross assets and consolidated annual revenue of less than \$25 million each;
- there will be an 'issuer cap' allowing an entity to raise up to \$5 million in any 12-month period;
- a CSF offer must be made via the 'platform' of a CSF intermediary. A CSF intermediary must hold an AFSL under which it is expressly authorised to provide a crowd funding service;
- in order to make a CSF offer, an entity must publish a tailored CSF offer document on the platform of a single CSF intermediary and all applications and application monies are to be handled by the intermediary;
- all offers must be closed within three months (if not stated to close earlier);
- a retail investor may apply for a maximum of \$10,000 per offer within a 12-month period and has an unconditional right to withdraw from a CSF offer within five business days of making an application;
- there are a number of additional investor protections built into the CSF Bill including prohibitions on the provision of financial assistance for investment in a CSF offer by either the issuer 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;
- the CSF Bill contains provisions regarding defective CSF offer documents which subject the intermediary, the issuer and other entities or persons responsible for the offer document to civil and criminal liability; and
- a number of corporate governance and reporting concessions are available to eligible companies for a maximum of five years from registration as, or conversion to, a public company that intends to utilise CSF at the time they are registered. These concessions include an exemption from the annual general meeting requirement and the option to provide only online financial reports to shareholders. Additionally the company is not required to appoint an auditor for the five year period or until the company has raised more than \$1 million from CSF offers or other offers requiring disclosure at any time.

We are excited for the next chapter in CSF in Australia and look forward to it being utilised in the startup marketplace in Australia.

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

[1] Section 738L of the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

[2] Section 738C of the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

[3] See section 738Q of the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

[4] See section 738ZA(9) of the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

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