The return of equity crowdfunding: A small step in the right direction

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On 24 November 2016, the Corporations Amendment (Crowd-sourced Funding) Bill 2016 (**CSF Bill**) was introduced into Parliament. The CSF Bill seeks to establish a regulatory framework to facilitate crowd-sourced equity funding by small, unlisted public companies. This alert outlines the features of the CSF Bill.

What is crowd-sourced equity funding?

Crowd-sourced equity funding (**CSF**) is a type of fundraising, typically online, that allows a large number of investors to make a small financial contribution towards a company in exchange for equity in the company. CSF is becoming increasingly popular worldwide as a means to allow entrepreneurs and small businesses to fund their ventures.

However, there are currently a number of regulatory obstacles to raising funds through CSF in Australia, including:

- for proprietary companies, a limit of 50 non-employee shareholders and prohibitions on making public offers of securities mean such companies are unable to tap into the large number of investors required for a CSF raising;
- for public companies, high corporate governance and reporting obligations that restrict the viability of CSF for small businesses. Additionally, public companies making an equity offer must use a disclosure document; and
- the Australian Financial Service Licence (**AFSL**) requirements for operators of CSF websites.

The proposed CSF framework

The CSF Bill aims to remove the regulatory barriers to CSF by seeking to establish a framework to facilitate CSF in Australia. 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;
- 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 48 hours of making an application; and
- a number of corporate governance and reporting concessions are available to newly registered or converted public companies that are eligible and intend to crowd fund at the time they are registered. These concessions include an exemption from the need to hold an annual general meeting, the option to only provide financial reports to shareholders online and the company not being required to appoint an auditor.

The long road to CSF in Australia

The CSF Bill is the second attempt to remove the regulatory barriers to CSF in Australia. On 3 December 2015, the *Corporations Amendment (Crowd-sourced Funding) Bill 2015* was introduced into Parliament. The bill faced heavy criticism from stakeholders for being overly restrictive, and in particular for limiting CSF to public companies and those entities with consolidated gross assets and consolidated annual revenue of less than $5 million each. The bill eventually lapsed on 9 May 2016.

The CSF Bill has addressed some of the concerns with the previous bill by allowing entities to have up to $25 million in consolidated gross assets and consolidated revenue, reducing the cooling-off period to 48 hours and extending the corporate governance and reporting concessions to converted public companies. Although these changes intend to make CSF more accessible for small businesses, the framework is still unavailable to private companies, a restriction that was a fundamental reason stakeholders opposed the previous bill. The Government has stated that it is continuing to consult with a view to extending this form of funding to private companies, however how this is proposed to be done remains to be seen.

It is not yet clear whether the revised CSF Bill will satisfy stakeholders and gain the support needed to pass through Parliament. However, we welcome the CSF Bill as the first step in the introduction of a regime which facilitates the growth of CSF in Australia.

For more information, please contact our Corporate Advisory and Governance team in Brisbane or Perth.

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