

11 March 2020

Lyn Beverley
Committee Secretary
Select Committee on Financial Technology and Regulatory Technology
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Parliament House
Canberra ACT 2600
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Dear Lyn

Select Committee on Financial Technology and Regulatory Technology Hearing 19 February 2020: Questions on Notice

During our appearance before the Committee Hearings on 19 February 2020, we received two questions on notice. This letter provides our responses to those questions.

Question: EVSLP – What is the legal driver of the divestment?

Response:

We have been advised that AusIndustry requested that an investor, a VCLP fund, divest from Xinja once its predominant activity is banking other than technology development.

As a purely digital bank, technology development is at the heart of our value proposition and everything we do. Further, the development of technology for use by Xinja bank is the necessary proof point for our intentions to licence Xinja's bank grade technology and the unique technology stack that it has built for digital banking.

We find this arbitrary classification of being either a tech company or a bank directly discourages of innovation in technology in the banking sector.

Our investors felt they had to take steps to divest once we were granted a full banking licence, concerned that AusIndustry would see this as signifying a change from technology development to offering banking services, where in fact Xinja's primary activities will continue to be technology development for a number of years as it continues to innovate and bring new personalised, data driven digital experiences to the market.

Question:

I want to ask you about the public takeover provisions. As I understand it, if you're an unlisted public company - so you're a company and you've got more than 50 shareholders-then that triggers the application of the takeover provisions. That has caused some issues for you. Could you extrapolate on that please.

Response:

The crowdfunding rules are there to make it easier for people to raise funds and for smaller investors to be exposed to these opportunities. So if it's being frustrated it would be good to have some information on that. The takeover prohibitions in s606 of the Corporations Act make it an offence for an unlisted company with more than 50 members to make an offer of shares to a person where that offer would result in that

person's voting power increasing to more than 20%, unless there is a relevant exception under s611.

Before crowdfunding, Xinja was an unlisted proprietary company with less than 50 members. To be an early adopter of crowdfunding and to be eligible to crowdfund in 2018, Xinja became an unlisted public company (this was a requirement under crowdfunding legislation at the time). After crowdfunding, due to the 1000+ investors who participated in the crowdfund, Xinja became a public unlisted company with more than 50 members.

S611 (19A) allows for an exception for companies that have one or more crowdsourced funding (CSF) shareholders, but only if they are proprietary companies. There is no such exception for public companies. Therefore this CSF exception is not available to Xinja because it was forced to become a public unlisted company in 2018 in order to be eligible to crowdfund. Further, the crowdfunding legislation later changed to allow proprietary companies to crowdfund. For Xinja to now take advantage of this exception, Xinja would need to go through the process of converting back from a public unlisted company to a proprietary company, which it already was before the 2018 crowdfunding requirements.

This means the only pathway remaining for Xinja to be able to secure large investments (of over 20%) is by way of exception under s611(7) – the acquisition must be approved by a resolution passed at a general meeting, having given members all the information material to the decision on how to vote at the resolution.

These additional requirements for shareholder votes create unnecessary hurdles for Xinja to secure major investors, forcing Xinja to absorb disproportionate complexity, uncertainty and costs to raise funds, that other proprietary startups would not have to, delaying the fundraising process.

Xinja proposes that the exception in s611 (19A) be extended to apply to any company with CSF shareholders.

Regards,

Van Le
Co-Founder

Eric Wilson
Founder & CEO

Submitted via email to fintech.sen@aph.gov.au