



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

5 February 2016

Committee Secretary,
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra
ACT 2600

Via email: economics.csen@aph.gov.au

Dear Ms Dermody

Inquiry into Corporations Amendment (Crowd-sourced Funding) Bill 2015

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee on their Inquiry into *Corporations Amendment (Crowd-sourced Funding) Bill 2015* (the Bill). We have made submissions to Treasury on their earlier consultations in February and August 2015. Our key points are below and Appendix A provides our detailed submission. Appendix B includes more information about Chartered Accountants Australia and New Zealand.

Key points

- We support the rapid introduction of a Crowd Sourced Funding (CSF) framework as a means of increasing Australia's competitiveness and providing an environment where new companies can grow and stay in Australia. We support its application to public companies. It is important that such reforms are implemented quickly as Australia is already significantly behind other similar nations, including New Zealand.
- We are concerned that the CSF framework concessions for public companies may have a negative impact on investor rights and may also not achieve the desired aim of reducing regulatory burden:
 - We recommend the five year AGM exemption be reconsidered, especially in light of the technology which could enable the AGM to be held virtually.
 - We do not see any benefit for CSF companies or their investors in preparing financial reports with no level of assurance. As a more practical measure, we suggest that the \$1m audit threshold is removed and instead CSF companies be given the option to have an annual review (rather than an audit) while they are eligible for Limited Governance Requirements, ie for a maximum of five years.

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- We recommend that the CSF framework for public companies is reviewed after 2 years to identify any changes that might be needed to ensure an appropriate balance between protecting investors and enabling issuers to raise funds is maintained.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact me via email at:

Yours sincerely

Rob Ward AM FCA
Head of Leadership and Advocacy

Appendix A

Overall comments

- We support the rapid introduction of a Crowd Sourced Funding (CSF) framework as a means of increasing Australia's competitiveness and providing an environment where new companies can grow and stay in Australia. We support its application to public companies. It is important that such reforms are implemented quickly as Australia is already significantly behind other similar nations, including New Zealand.
- We consider alignment of the Australian and New Zealand CSF models is important as part of the single economic market and to ensure issuers do not see one country as preferential over the other. However, alignment does not mean they need to be identical. Further, as the regulatory and reporting structures differ between Australia and New Zealand, it would not be possible to use the same model.
- We consider education of investors to be critical to the success of the CSF regime. They need to be provided with adequate information to understand CSF and the risks attached to that form of investment.
- We are concerned about the potential for the CSF framework to be used for Phoenix company activity. We recommend that some of the important checks recommended by CAMAC be included in the Australian CSF framework. For example, disclosure of directors' current and former interest(s) in CSF companies when applying to register a newly incorporated CSF company.
- We recommend that the CSF framework for public companies is reviewed after 2 years to identify any changes that might be needed to ensure an appropriate balance between protecting investors and enabling issuers to raise funds is maintained.

Chapter 2 – Eligibility requirements

- As demonstrated in the Bill, CSF issuers can be incorporated within the existing regulatory and reporting frameworks. We do not support the creation of a new category of exempt public company as originally proposed by CAMAC. This would add unnecessary complexity.
- We note the intention that the funds cannot be used for investing in another entity or scheme. Aside from a requirement to disclose the intended use of the funds raised, there do not appear to be any additional ways to ensure the funds are not used for 'blind pools'.
- We note the eligibility requirement that the majority of directors have to ordinarily reside in Australia. Therefore an entity with equal numbers of Australian and overseas directors would not be eligible. Is this the intended policy outcome or should the wording be revised to make this aspect clearer?
- The term 'test time' under section 738H does not appear to be defined anywhere in the Bill. We note the comments in section 2.25 of the Explanatory Memorandum that the 12-month period for determining consolidated annual revenue is not intended to be prescriptive, however from a practical perspective, we expect that CSF companies would need to draw up financial statements in order to determine compliance with the assets and turnover test. To avoid confusion, we recommend that 'test time' is defined. We also recommend that reference is made to the assets and turnover test being measured in accordance with accounting standards in force at the relevant time.

Chapter 4 – Process for making a CSF offer

- We note that in paragraph 4.10 (Schedule 1, Part 1, item 14, section 738K) that *the information in the offer document must be worded and presented in a clear, concise and effective manner and comply with any other requirements specified in the regulation*. There does not appear to be further guidance as to what is considered ‘clear, concise and effective’ presentation? Will ASIC produce specific guidance for issuers in this regard or should ASIC’s RG 228 *Prospectuses: Effective disclosure for retail investors* be used instead. We note that this guide is for issuers and advisers on how to word and present prospectuses and other documents in a ‘clear, concise and effective’ manner.

Chapter 7 – Corporate Governance Concessions

- We are concerned that the CSF framework concessions for public companies may have a negative impact on investor rights and may also not achieve the desired aim of reducing regulatory burden. We consider it important to strike an appropriate balance between investor protection and compliance requirements. We expect that most CSF companies will be classified as public companies that are non-disclosing entities. As a non-disclosing entity, the company would be exempt from continuous disclosure, interim reporting and remuneration disclosures.

- **Concession 1 – relief from holding an AGM**

In our previous submission we noted that the AGM requirement was an important process to protect retail investors and provide them with the ability to communicate with the issuer. Holding an AGM would be considered reasonable given the number of shareholders involved. An AGM is also important to give CSF investors a voice.

We recommend the 5 year AGM exemption be reconsidered, especially in light of the technology which could enable the AGM to be held virtually. This would reduce the cost, but still provide retail investors with access to the company management.

Auditors are appointed at an AGM. It is not clear from the Bill how the auditor (or reviewer as per our comments below) would be appointed for entities eligible for concession 1 but not eligible for concession 2. Whilst directors can appoint auditors to fill a casual vacancy prior to formal appointment at the next AGM, to enable CSF companies to retain the benefit of no AGM for five years, the provision would need to be amended to extend the time between appointment by directors and time to hold first AGM (ie at the end of five years, if all other eligibility criteria still met).

- **Concession 2 – relief from preparing audited annual financial reports**

We do not see any benefit for CSF companies or their investors in preparing financial reports with no level of assurance, as would be the case if a CSF company was eligible for audit relief. Without assurance, financial reports have little meaning. Financial accountability is important but we believe it should be duly balanced against the cost of any compliance burden. As a more practical measure, we suggest that the \$1m audit threshold is removed and instead CSF companies be given the option to have an annual review (rather than an audit) while they are eligible for Limited Governance Requirements, ie for a maximum of five years. This is similar to the concessions currently available to public companies limited by guarantee, although with higher financial thresholds. We note that a

review doesn't provide the same level of assurance as an audit but it does provide some comfort and should cost less than an audit.

- **Concession 3 – annual reports only to be provided online**

We support the concession for eligible CSF companies to provide reports via a website and not needing to notify shareholders of alternative ways of receiving reports. However, if this is the case, there is arguably little or no benefit to a CSF company having the option of preparing a concise financial report. It would be an added cost. We therefore recommend that the option of preparing a concise financial report is removed for simplification.

We also note some inconsistencies in the drafting of related amendments to subsection 314 with regard to audit relief. For example, subsection 314(1)(a)(iii) would not apply if the CSF company's financial statements are not audited and conversely, subsection 314(2A)(a) would not apply if the CSF company's financial reports are audited. Subject to our comments above on annual reviews, we recommend that these amendments be redrafted to reflect any audit relief provisions.

Appendix B

Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 115,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international capital markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.