

10 January 2017



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Senate Standing Committees on Economics
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By email: economics.sen@aph.gov.au

Dear Sir/ Madam

Subject: Inquiry into the Corporations Amendment (Crowd-sourced Funding) Bill 2016

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. Against this background and in the public interest, we provide this submission in response to the Committee's inquiry into the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

General comments

The introduction of laws to make crowd-sourced equity funding (CSEF) easier is an important initiative – one that will support development of a more innovative and entrepreneurial business culture Australia by expanding the sources from which such businesses can access funding.

Allowing easier access to funding from the crowd may assist some innovative companies and younger business owners' access to funding that they may otherwise find difficult to source.

It should be noted that a number of competing jurisdictions, including New Zealand and Malaysia, have stolen the march on Australia in implementing regulatory frameworks to make equity crowd funding a reality.

The introduction of a CSEF regulatory regime, which strikes an appropriate balance between investor protections and the funding needs of small businesses, cannot come soon enough.

Specific comments

Should proprietary companies be allowed to raise equity funding from the crowd?

In supporting the passage of the Bill as it stands, we acknowledge that there are differing views on whether proprietary companies should be allowed to access CSEF.

Given the potentially high risk nature of investing through crowd-funding, we believe that the Bill by-and-large strikes an appropriate balance between the funding needs of business and sound economic policy, the conduct of corporate regulation and appropriate shareholder/ investor protection.

Regardless of the approach that finally becomes law, the introduction of CSEF will invariably require a large departure from the existing corporate law framework. This is particularly so if proprietary companies are permitted to raise funds from the public via the crowd.

For example, as pointed out in Ford's Principles of Corporation Law "A *proprietary company* is a private company designed for a relatively small group of persons who do not wish the company to be able to invite the public to subscribe for its share capital or to lend money to it."

Therefore to allow proprietary companies to raise funds from the crowd is contrary to the stream of existing statutory development and strikes at the very basis of the reasons for Australia's corporate law distinction between public and proprietary companies. Further, it risks creating classes of shareholders with uncertain and potentially conflicting rights.

The proposed legislation seeks to introduce a new category of public company to raise funds via CSEF. Another possible option would be to introduce a new type of corporate entity that is neither a public nor a proprietary company under the current law.

The introduction of a new type of entity would have a number of benefits – for example a totally new type of corporate structure would give Australia a clean slate and the relevant sections of the law could be made applicable or modified to the new company type as seen fit. This would address some of the concerns about complexity. Such an entity could also be subject to new rules such as giving it a limited life of say five years unless shareholders agree to extend its life, say for another five years, or agree to change to a different type of company structure (on the condition that it meets the tests for that structure).

In relation to changing company type, Part 2B.7 of the Corporations Act 2001 (s 162 etc.) is fairly permissive about change of company type and could with amendment accommodate the idea of allowing the CSEF entity to change form.

CPA Australia is of the view that if proprietary companies are permitted to access CSEF, it would be appropriate that they be subject to additional transparency obligations that would be comparable to public companies accessing CSEF. This is necessary to provide an appropriate balance between the financing needs of business and investor protections. Unfortunately, this would inevitably have regulatory burden consequences.

We encourage the Committee to recommend to Government that it conduct a post-implementation review of the CSEF law within its first three years of operation. Such a review should include revisiting whether proprietary companies should be permitted to raise funds via equity crowd-funding and if so, what would be the most appropriate regulatory regime to support that.

The post-implementation review should also consider whether the changes to disclosure, governance and audit requirements for eligible companies under the Bill are effective in protecting and informing investors and have supported the creation of secondary markets where investors can dispose of their investment.

ASICs investor protection role

ASIC must play an active role in educating the public on CSEF and the significant risks associated with such an investment. For example, it needs to ensure that the public is well informed that CSEF investments may be largely illiquid, and as such, investors may have significant difficulty disposing of their investment.

Notwithstanding the above comments we support the passage of the Bill.

Yours faithfully

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