

11 January 2017

Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir//Madam

The Australian Institute of Company Directors (AICD) welcomes the opportunity to make a submission on the Corporations Amendment (Crowd-sourced Funding) Bill 2016 (the Bill).

The Australian Institute of Company Directors is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 39,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD endorses regulatory improvements to facilitate the growth of crowd-sourced equity funding (CSEF) in Australia. Australia is lagging behind comparable capital markets in providing a clear legal framework for CSEF, and this is an impediment to innovative and start-up businesses seeking to grow using CSEF.

On this basis, the AICD supports the Bill and encourages its prompt passage. While recognising that the Bill will not provide a comprehensive solution for CSEF for all small companies it will provide a good starting point for innovative Australian businesses to access CSEF options, and for the development of the CSEF market domestically.

The AICD recognises that an effective CSEF framework must include sound investor protection measures. This is particularly important given that CSEF proposals will target potentially unsophisticated retail investors. In this context, adequate disclosure, assurance and promotional standards for CSEF issuers and the third-party platforms that will facilitate CSEF raisings will be critical to developing and maintaining market confidence in CSEF. At the same time, for CSEF to develop successfully in Australia a less complex regulatory regime is required with lower compliance costs and a faster route to market.

On balance, the AICD considers that the framework for *public companies* proposed in the Bill offers a sound balancing of these competing considerations.

Recognising that a regime for CSEF by proprietary limited companies requires more consultation, we encourage passage of the Bill while this work continues.

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In relation to the proposed transitional arrangements included in the Bill for *proprietary limited companies* converting to public company status to access CSEF, we offer some suggestions for improvement to the Bill for the Committee's consideration:

- First, we are aware of (and participating in) Treasury's consultations on a dedicated CSEF regulatory path for proprietary limited companies that would aim to not require conversion to public company status. Once finalised, it would be beneficial to review the transition concessions for proprietary limited companies converting to public company status to ensure general policy consistency (or, if appropriate, repeal of transition arrangements);
- Secondly, the Bill's proposed concessions to proprietary limited companies converting to public company status are quite generous to issuers and may benefit from some additions. For example, the proposed five-year exemption from audits of financial reports for proprietary limited companies converting to public company status to access CSEF (subject to an annual cap of \$1 million raised via CSEF) would leave investors with no assurance on the financial reports. A requirement for an annual review or a shorter audit exemption period for transitioning proprietary limited companies would provide CSEF investors with greater assurance on financial reports; and
- Thirdly, the AICD would also support a clear authority for ASIC to have the power to require a company to have an audit during the transition period, similar to s294 of the *Corporations Act 2001* for small proprietary companies.

A review of the legislation after three years of operation could also be beneficial, given this is a new area for Australian business and investors and it will be important to ensure it is operating as intended.

Separately, the AICD encourages ASIC to develop appropriate licensing requirements for third-party platforms and providers who will connect investors with CSEF opportunities, including disclosure, marketing and assurance. This may prove to be a more effective mechanism for strengthening investor protection over increasing regulatory burdens on CSEF issuers.

We hope that our comments will be of assistance to you.

Yours sincerely

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