Article Information

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Failure to Launch – Equity Crowd Funding in Australia

Yesterday the Government's long awaited, proposed regulatory framework for equity crowd source funding was introduced into Parliament

Yesterday the Government's long awaited, proposed regulatory framework for equity crowd source funding was introduced into Parliament. The framework has been widely criticised. The draft legislation does not provide a regulatory regime conducive to the development of equity crowd funding market in Australia. It is too unwieldy to open up a source of risk capital for start-up and early stage companies.

***Partner, David Cornwell, Associate, Kimberley Levi** and **Law Clerk, James Lowrey** provide a critical overview of proposed regulatory framework.*

The proposed framework, marks a start point for crowd source funding (**CSF**) in Australia. The legislation will allow unlisted public companies with less than $5 million in assets and less than $5 million in annual turnover to raise up to $5 million in funds in any 12 month period. Whilst investors will be able to invest an unlimited sum in CSF, retail investors will be subject to a cap of $10,000 per issuer per 12-month period. This is said to ensure that "mum and dad" investors are not exposed to excessive risks.

The Regulatory Framework

The legislation introduces a regulatory framework to facilitate CSF by small, unlisted public companies. The regulatory framework includes:

- eligibility requirements for the company wanting to undertake the CSF (**CSF Company**)
- obligations on the entity providing the crowdfunding platform (**CSF Intermediaries**) in facilitating CSF Offers
- the process for making CSF Offers
- rules relating to defective disclosure as part of a CSF Offer
- investor protection provisions.

CSF Company Eligibility Requirements

Only companies that meet the following criteria may undertake CSF under the proposed regulatory framework:

- unlisted public companies limited by shares in Australia, with a principal place of business and majority of directors in Australia
- which satisfy the asset and turnover test, having less than $5 million in gross assets and less than $5 million in consolidated annual revenue.

To assist with meeting these requirements, newly registered or converted public companies will benefit from a corporate governance concession. This provides a holiday of up to five years from some reporting and governance requirements.

The local business and directors requirement is similar of the United States model released in November, where CSF is only available to companies organised and with principal place of business in the United States or Canada. However, the Australian criteria is a significant shift away from New Zealand's framework which provides that where *any* company can access the CSF.

Under this proposed framework, an eligible CSF Company may raise up to $5 million in funds per year. This cap does not apply to sophisticated or professional investors. However it does include small scale Personal Offers. This cap is far greater

than the current New Zealand maximum aggregate of $2 million in any 12-month period, or United States maximum aggregate of $1 million in any 12 month period.

CSF Intermediary Obligations

Various obligations are imposed on CSF Intermediaries facilitating CSF Offers. All CSF Intermediaries must hold an Australian Financial Services Licence issued by ASIC. Some CSF Intermediaries may also be required to hold an Australian Market Licence, if considered to be operating a financial market.

Additional obligations include to:

- not publish certain CSF Offers
- conduct prescribed checks against CSF Companies
- display risk warnings for the benefit of Investors
- provide systems and procedures enabling the retail investor protections below.

Retail Investor Protections

In seeking to balance the interests of retail "mum and dad" investors' access to, and protection from, CSF, each investment by a retail investor:

- is limited to $10,000 per CSF Company, per 12-month period
- has the benefit of a 5 business day cooling off period.

These provisions add little by way of investor protection. A cooling off period creates difficulties for platforms.

The regulatory regime enshrines a costly, regulatory regime which will likely inhibit the market.