

Article Information

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Update on crowd sourced equity funding

Following our Background on Crowd Sourced Equity Funding in October 2014, the Financial System Inquiry released their final report on 7 December 2014. The report recommended that the Government 'graduate fundraising regulation to facilitate crowdfunding for both debt and equity and, over time, other forms of financing.

On 8 December 2014, the Australian Government Treasury (Government) released a discussion paper on Crowd-Sourced Equity Funding (CSEF) and invited submissions from the public from 8 December 2014 to 6 February 2015.

The Government explored three different policy options for regulatory change in their discussion paper:

- A regulatory framework based on the now dissolved Corporations and Markets Advisory Committee Model (CAMAC Model).
- A regulatory framework based on the New Zealand Model (New Zealand Model).
- 'The status quo' (Status Quo).

Each of these frameworks is discussed in further detail below.

CAMAC Model

The CAMAC Model includes several key regulatory changes:

- *New Public Company Category*: CAMAC proposed the creation of a new category - the 'exempt public company' - which would relieve some of the compliance requirements of public companies for a period of three to five years. Exempt companies would be free from several requirements including elements of continuous disclosure, holding an annual general meeting and half-yearly reporting. The status of 'exempt' would automatically expire after three years, subject to certain exceptions that would allow an extension of the status for a period of up to a further two years.
- *Fundraising*: Companies raising money through CSEF (Issuers) would need to be public or exempt public companies offering new, fully paid ordinary shares. They would also need to meet further requirements like compliance with a company cap of A\$2 million in any 12-month period raised through a combination of CSEF or the small scale personal offer exemption.
- *Intermediaries*: In addition to other obligations, CSEF intermediaries (Intermediaries) would be required to hold an Australian Financial Services License (AFSL) and undertake due diligence on Issuers. Further, Intermediaries would not be allowed to have a financial interest in any Issuer undertaking CSEF using their platform. Nor could they be remunerated in Issuer securities or other interests, or base their remuneration on the level of funds raised by an Issuer.
- *Investors*: CAMAC has recommended a CSEF investor cap of A\$2,500 per investor per 12-month period. However, there would be no investor cap for investors that meet the definition of sophisticated investor under the Corporations Act and funds raised by such sophisticated investors would not count towards the proposed company cap of \$2 million per 12-month period.

New Zealand Model

The New Zealand regulatory framework for CSEF came into effect in New Zealand in April 2014. In many ways, it is similar to the CAMAC Model. Like the CAMAC Model, the New Zealand Model features a company cap company cap of A\$2

million in any 12-month period raised through a combination of CSEF and the New Zealand equivalent of the small scale personal offer exemption. It also limits CSEF to one class of ordinary fully paid shares and requires Intermediaries to be licenced and conduct due diligence on Issuers.

Significantly though, the New Zealand model does not create any exemptions for companies wishing to undertake CSEF from the compliance requirements and associated costs of being a public company. Further, the only key restriction on Intermediaries' fees is that fees paid by the Issuer must be disclosed.

Status Quo

'The status quo' response would result in CSEF not being regulated as a specific form of investment. Consequently, there would be no changes to current requirements and this approach would do little to address the problems and barriers that start-ups and other business currently face in obtaining funding.

Criticisms of the proposed regulatory frameworks

The Government noted several criticisms of the proposed frameworks including:

- The added complexity that CAMAC's framework may introduce. The proposal for a new category of public company may add unnecessary confusion to the corporate governance framework or provide incentives for companies to structure themselves as exempt public companies in order to avoid certain compliance requirements and costs.
- The New Zealand framework does not restrict CSEF access to issuers that are small companies. This may encourage large companies that would usually make public equity offers to instead utilise CSEF to raise additional funds and avoid standard disclosure requirements.
- The status quo does not adequately address funding issues currently facing small companies and start-ups in Australia.

In early February 2015, Small Business Minister Bruce Billson hosted a roundtable event with a number of entrepreneurs, start-up funding experts, peak industry bodies, small businesses and researchers as part of the broader Government consultation.

Mr Bilson has indicated that a regulatory regime was still six months away at least and that he hopes to introduce legislation in the Spring Parliament sittings. The Government is currently considering industry feedback as it works through details of its CSEF model. Further consultation will occur after the draft legislation is revealed later in the year.

For further information please contact [Partner, David Cornwell](#).