

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017

No. , 2017

(Treasury)

**A Bill for an Act to amend the law relating to
corporations, and for related purposes**

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2 **A Bill for an Act to amend the law relating to** 3 **corporations, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Corporations Amendment (Crowd-sourced Funding*
7 *for Proprietary Companies) Act 2017.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	

14 Note: This table relates only to the provisions of this Act as originally
15 enacted. It will not be amended to deal with any later amendments of
16 this Act.

17 (2) Any information in column 3 of the table is not part of this Act.
18 Information may be inserted in this column, or information in it
19 may be edited, in any published version of this Act.

20 **3 Schedules**

21 Legislation that is specified in a Schedule to this Act is amended or
22 repealed as set out in the applicable items in the Schedule

No. , 2017 *Corporations Amendment (Crowd-sourced Funding for Proprietary*
Companies) Bill 2017 1

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1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

2 *Corporations Amendment (Crowd-sourced Funding for Proprietary
Companies) Bill 2017* No. , 2017

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Schedule 1—Amendments

Corporations Act 2001

1 Section 9

Insert:

appropriate CSF exit arrangements, for a proprietary company, are arrangements that provide that:

- (a) an acquisition of a relevant interest in issued voting shares in the company triggers the arrangements for a person if:
 - (i) the acquisition increases the person’s voting power in the company; and
 - (ii) after that increase, the person’s voting power in the company is more than 40%; and
- (b) the person complies with the arrangements if the person ensures that offers to acquire relevant interests in issued voting shares in the company are:
 - (i) made at the same price, and on the same terms, as for the acquisition referred to in paragraph (a); and
 - (ii) made before the end of the 30th day after that acquisition; and
 - (iii) made to sufficient persons so that, if those offers were accepted, the person’s voting power in the company would be 100%.

CSF shareholder, of a proprietary company, means an entity that holds one or more securities of the company as the result of being issued with the securities pursuant to a CSF offer by the company.

2 Paragraph 2.1 of the small business guide in Part 1.5

After “not counting employee shareholders”, insert “or CSF shareholders”.

3 Paragraph 8 of the small business guide in Part 1.5

After “own employees or shareholders”, insert “or under a CSF offer”.

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Schedule 1 Amendments

1 **4 Paragraph 10.3 of the small business guide in Part 1.5**

2 Omit:

3 • ASIC directs it to do so.

4 substitute:

5 • ASIC directs it to do so; or

6 • it has one or more CSF shareholders at any time during the financial
7 year.

8 **5 Subsection 113(1)**

9 Omit “50 non—employee shareholders”, substitute “50 shareholders,
10 other than employee shareholders or CSF shareholders,”.

11 **6 Subsection 113(3)**

12 Repeal the subsection, substitute:

13 (3) A proprietary company must not engage in any activity that would
14 require disclosure to investors under Chapter 6D, except for:

15 (a) an offer of its shares to:

16 (i) existing shareholders of the company; or

17 (ii) employees of the company or of a subsidiary of the
18 company; or

19 (b) a CSF offer.

20 **7 Subsection 117(3)**

21 Repeal the subsection, substitute:

22 (3) If the company:

23 (a) is to be a public company and, on registration, is to have a
24 constitution; or

25 (b) is to be a proprietary company and, on registration, is to have
26 a constitution that contains appropriate CSF exit
27 arrangements;

28 a copy of the constitution must be lodged with the application.

1 **8 Subsection 136(5)**

2 Omit the third sentence.

3 **9 After subsection 136(5)**

4 Insert:

5 (5A) Subsection (5) also applies to:

6 (a) a proprietary company that has applied under Part 2B.7 to
7 change to a public company, while its application has not yet
8 been determined; or

9 (b) a proprietary company, if its constitution contains appropriate
10 CSF exit arrangements immediately before or after the time
11 the special resolution takes effect.

12 **10 At the end of section 140**

13 Add:

14 (3) For a proprietary company, subsection (2) does not apply to a
15 modification relating to appropriate CSF exit arrangements.

16 **11 After subsection 169(6)**

17 Insert:

18 *Proprietary companies that have made CSF offers*

19 (6AA) The register of a proprietary company that has made one or more
20 CSF offers must also show:

21 (a) the date on which every issue of shares in the company
22 pursuant to each CSF offer takes place; and

23 (b) the number of shares issued pursuant to each CSF offer; and

24 (c) the shares issued to each member pursuant to each CSF offer;
25 and

26 (d) the date on which an entity ceases to be a CSF shareholder of
27 the company for a particular share in the company;

28 during any period in which the company has one or more CSF
29 shareholders.

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Schedule 1 Amendments

1 **12 At the end of paragraph 178A(1)(b)**

2 Add:

3 ; (ix) subsection 169(6AA) (shares issued as a result of CSF
4 offers).

5 **13 At the end of subsection 178C(1)**

6 Add:

7 ; (d) that the company has started to have one or more CSF
8 shareholders;

9 (e) that the company has ceased to have any CSF shareholders.

10 **14 After subsection 201A(1)**

11 Insert:

12 (1A) However, a proprietary company must have at least 2 directors
13 while the company has one or more CSF shareholders. A majority
14 of those directors must ordinarily reside in Australia.

15 Note: The company must also have at least 2 directors when making the
16 CSF offer (see paragraph 738H(1)(a)).

17 **15 At the end of subsection 254X(1) (before the notes)**

18 Add:

19 ; and (f) if the company is a proprietary company and the shares are
20 issued pursuant to a CSF offer—that the company has one or
21 more CSF shareholders as a result of the issuing of the
22 shares.

23 **16 At the end of subsection 254Y(1) (before the note)**

24 Add:

25 ; and (e) if the company is a proprietary company that has made one or
26 more CSF offers—whether the cancellation has resulted in
27 the company ceasing to have any CSF shareholders.

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Amendments Schedule 1

1 **17 Subsection 285(1) (table item 3, column headed**
2 **“comments”)**

3 Before “A small proprietary company”, insert “A small proprietary
4 company preparing a financial report because it has CSF shareholders
5 usually only has to have an audit if it has raised \$1 million or more from
6 CSF offers.”.

7 **18 Subsection 285(1) (table item 3, column headed**
8 **“comments”)**

9 Omit “under s. 293 only”, substitute “under section 293 usually only”.

10 **19 After paragraph 292(2)(b)**

11 Insert:

12 ; or (c) it has one or more CSF shareholders at any time during the
13 financial year.

14 **20 At the end of subsection 296(1A)**

15 Add:

16 ; and (c) paragraph 292(2)(c) (about having CSF shareholders) does
17 not apply to the company for the financial year.

18 **21 At the end of subsection 298(3)**

19 Add:

20 ; and (c) paragraph 292(2)(c) (about having CSF shareholders) does
21 not apply to the company for the financial year.

22 **22 Subsection 301(2)**

23 Repeal the subsection, substitute:

24 *Small proprietary companies*

25 (2) A small proprietary company’s financial report for a financial year
26 does not have to be audited if:

27 (a) the report is required only because of:

28 (i) paragraph 292(2)(c) (about having CSF shareholders);
29 or

30 (ii) a direction under section 293; or

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Schedule 1 Amendments

- 1 (iii) both paragraph 292(2)(c) and a direction under
2 section 293; and
- 3 (b) in a case where subparagraph (a)(i) or (iii) applies—as at the
4 end of the financial year, the company has raised a total of
5 less than \$1 million from all the CSF offers it has ever made;
6 and
- 7 (c) in a case where subparagraph (a)(ii) or (iii) applies—the
8 direction did not ask for the financial report to be audited.

23 Paragraph 319(2)(a)

9 Repeal the paragraph, substitute:

- 10 (a) a small proprietary company that prepares a report in
11 response to:
12 (i) a shareholder direction under section 293; or
13 (ii) an ASIC direction under section 294;
14 if paragraph 292(2)(c) (about having CSF shareholders) does
15 not also apply to the company for the financial year; and
16

24 Subsection 324CH(1) (table items 1 to 9)

17 Omit “the audited body is a small proprietary company”, substitute
18 “subsection (3A) (about small proprietary companies) applies to the
19 audited body”.
20

25 After subsection 324CH(3)

21 Insert:

22 *Small proprietary companies*

- 23 (3A) This subsection applies to an audited body for a financial year if
24 the body:
25 (a) is a small proprietary company for the financial year; and
26 (b) either:
27 (i) does not have any CSF shareholders at any time during
28 the financial year; or
29 (ii) has, as at the end of the financial year, raised a total of
30 less than \$1 million from all the CSF offers it has ever
31 made.
32

1 **26 Paragraphs 324CI(e), 324CJ(e) and 324CK(e)**

2 Repeal the paragraphs, substitute:

- 3 (e) subsection 324CH(3A) (about small proprietary companies)
4 does not apply to the audited body for the most recently
5 ended financial year.

6 **27 Section 325**

7 Before “The”, insert “(1)”.

8 **28 At the end of section 325**

9 Add:

- 10 (2) The directors of a proprietary company must ensure that there is an
11 auditor for the company at all times during the period:

12 (a) starting 1 month after:

- 13 (i) the time the company raises a total of \$1 million from
14 all the CSF offers it has ever made; or
15 (ii) if the period starting because of subparagraph (i), or
16 because of an earlier operation of this subparagraph, has
17 ended—the time the company makes a later CSF offer;
18 and

19 (b) when the company ceases to have any CSF shareholders at a
20 later time in a particular financial year—ending when the
21 company’s financial report for that financial year has been
22 audited.

- 23 (3) However, subsection (2) does not apply for any period of 1 month
24 or less starting when a vacancy occurs in the office of auditor of
25 the company (however that vacancy is caused).

- 26 (4) A director of a company must take all reasonable steps to comply
27 with, or to secure compliance with, subsection (2).

28 **29 Section 327E (heading)**

29 Repeal the heading, substitute:

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Schedule 1 Amendments

1 **327E ASIC may appoint a company auditor if auditor removed but**
2 **not replaced**

3 **30 Subsection 327E(1)**

4 Repeal the subsection, substitute:

5 (1) This section applies if:

6 (a) the directors of a proprietary company fail to appoint an
7 auditor under subsection 325(2); or

8 (b) a public company fails to appoint an auditor under
9 subsection 327D(2) or (3).

10 The failure is referred to as the *auditor replacement failure*.

11 **31 Subsection 327E(6)**

12 Repeal the subsection, substitute:

13 (6) Subject to this Part, an auditor appointed under this section holds
14 office until:

15 (a) for a proprietary company—the company’s next general
16 meeting; or

17 (b) for a public company—the company’s next AGM.

18 **32 Section 327F (heading)**

19 Repeal the heading, substitute:

20 **327F ASIC’s general power to appoint a company auditor**

21 **33 Subsection 327F(1)**

22 After “public company”, insert “, or of a proprietary company that has
23 one or more CSF shareholders,”.

24 **34 Paragraph 327F(1)(a)**

25 Repeal the paragraph, substitute:

26 (a) the company or its directors fail to appoint an auditor when
27 required by this Act to do so; and

1 **35 Subsection 327F(2)**

2 Repeal the subsection, substitute:

3 (2) Subject to this Part, an auditor appointed under this section holds
4 office until:

5 (a) for a proprietary company—the company’s next general
6 meeting; or

7 (b) for a public company—the company’s next AGM.

8 **36 Section 327G (heading)**

9 Repeal the heading, substitute:

10 **327G Restrictions on ASIC’s powers to appoint a company auditor**

11 **37 After subsection 609(8)**

12 Insert:

13 *Appropriate CSF exit arrangements*

14 (8A) A member of a proprietary company that has one or more CSF
15 shareholders does not have a relevant interest in issued voting
16 shares in the company merely because the company’s constitution
17 contains appropriate CSF exit arrangements.

18 (8B) A person does not have a relevant interest in securities merely
19 because of an agreement if the agreement is conditional on a
20 person complying with appropriate CSF exit arrangements.

21 (8C) If:

22 (a) the condition referred to in subsection (8B), and any other
23 conditions for the agreement, are satisfied; and

24 (b) the relevant interest is in issued voting shares in a proprietary
25 company that has one or more CSF shareholders;

26 the person acquires the relevant interest when the last of those
27 conditions is satisfied.

28 **38 Section 611 (after table item 19)**

29 Insert:

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Schedule 1 Amendments

Proprietary companies that have CSF shareholders

- 19A An acquisition of a relevant interest in issued voting shares in a proprietary company that has one or more CSF shareholders if:
- (a) the acquisition happens while the company's constitution contains appropriate CSF exit arrangements; and
 - (b) in a case where the acquisition triggers those arrangements for a person, the person has complied with those arrangements.

39 Paragraph 738H(1)(a)

Repeal the paragraph, substitute:

- (a) the company is a public company limited by shares, or the company is a proprietary company that:
 - (i) has at least 2 directors; and
 - (ii) meets all the other requirements (if any) prescribed for the purposes of this subparagraph;

40 Section 738ZI

Before "A company", insert "(1)".

41 Paragraph 738ZI(a)

Repeal the paragraph, substitute:

- (a) the company:
 - (i) was registered as a public company limited by shares under Part 2A.2 in response to an application lodged under section 117 before the eligibility end day; or
 - (ii) was converted from a proprietary company to a public company limited by shares under Part 2B.7 in response to an application lodged under section 163 before the eligibility end day; and

42 At the end of section 738ZI

Add:

- (2) In this Act:

eligibility end day means the day the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2017* commences.

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Amendments **Schedule 1**

1 **43 At the end of Division 7 of Part 6D.3A**

2 Add:

3 **738ZK Related party transactions—proprietary companies that**
4 **have one or more CSF shareholders**

5 Chapter 2E applies to a proprietary company that has one or more
6 CSF shareholders as if references to a public company were instead
7 references to such a proprietary company.

8 **44 Schedule 3 (after table item 116KB)**

9 Insert:

116KM	Subsection 325(4)	25 penalty units or imprisonment for 6 months, or both.
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10