



**Australian Government
The Treasury**

**Facilitating crowd sourced equity funding and reducing
compliance costs for small businesses
August 2015**



Introduction

CrowdReady appreciates the opportunity to provide our comments on the Australian Government's facilitating crowd sourced equity funding and reducing compliance costs for small businesses of August 2015. We are pleased that the Australian Government is moving forward on facilitating the crowd sourced equity funding framework.

CrowdReady aids the development of crowd sourced equity funding (CSEF) in Australia. By providing independent analysis and comment, we assist entrepreneurs, investors and crowdfunding platforms to build a sustainable and trusted eco-system.

Through a client, we provided a submission to CAMAC's CSEF Review in September 2013, and made [our own submission](#) to the CSEF Public Consultation Process in February 2015. We also continue to provide updates on Australia's crowd sourced equity funding development to interested subscribers via our website, www.crowdready.com.au.

CrowdReady would like to see a more streamlined and clear process for Issuers to raise equity crowdfunding money via licenced intermediaries that does not differentiate substantially between public and proprietary companies. Our proposed disclosure requirements would be similar for proprietary and public companies with the main differentiation being a maximum of \$2m raised under the proprietary company regime (equal to current limits on small scale offerings (SSO)) and that auditing is not required until a \$5m threshold is met.

Whilst there needs to be a balance between Investor protection, Intermediary responsibilities and Issuer disclosure and compliance, the framework should also facilitate equity crowdfunding for start up businesses (especially proprietary companies) without the upfront and ongoing compliance costs associated with public company disclosure requirements.

We have noted the discussions regarding small scale offerings and extending the proprietary company shareholder limit and provide our infographic on the 1st year of equity crowdfunding in New Zealand as a useful guide to assess how equity crowdfunding may work in Australia, especially with regard to the number of investors and investment size.



Responses

In terms of the structure of a response, we have addressed only the crowd sourced equity funding queries (questions 9-13) and many of our comments emanate from data obtained from the first year of equity crowdfunding in New Zealand. CrowdReady also offers its time and resources to the Australian Government should there be any further questions or discussions surrounding crowd sourced equity funding in Australia.

We have maintained the definitions of Investors, Intermediaries and Issuers as per the CAMAC CSEF Report of September 2013 and May 2014 (CAMAC Report) and the Crowd-Sourced Equity Funding Discussion Paper of December 2014 (CSEF Discussion Paper) for consistency and clarity.

9. CSEF Access for Proprietary Companies

As noted, 99% of all registered Australian companies are proprietary companies. In addition, crowd sourced equity funding is fundamentally aimed at small proprietary startup companies that either currently have difficulty in raising money through traditional channels or are impeded by legislation that does not permit the raising of small amounts of money from a large number of investors ('the crowd').

Given the Government's openness to facilitate crowd sourced equity funding for public companies with reliefs, a similar approach could be utilised for proprietary companies that raise money via licenced equity crowdfunding platforms. Namely, instead of reliefs, additional disclosure requirements should be required (see Table 1 below), to align between the two types of Australian companies raising money via equity crowdfunding.

We understand that the proposed reliefs under the public company equity crowdfunding method will not require major legislative changes to the Corporations Act and believe additional upfront and ongoing disclosure for proprietary companies utilising equity crowdfunding would similarly negate necessity of changes to the Corporations Act.

10. Shareholder Limits for Proprietary Companies

A 100 non-employee shareholder limit would be an inappropriate cap given international experience with equity crowdfunding. Notably, in the first year of equity crowdfunding in New Zealand, which allows proprietary companies, the **average** number of investors was 152 per Issuer (see attached Infographic). In fact, 12 of the 21 successful campaigns had more than 100 investors. Notably, all of the unsuccessful campaigns had fewer than 100 investors committing capital. Given a maximum of 439 investors in one campaign and the first equity crowdfunding capital raise in New Zealand, Renaissance Brewing, attracting 301 investors in raising only \$700,000, evidence suggests a shareholder cap would be an impediment.

CrowdReady believes the 100 non-employee shareholder cap would actually be detrimental to crowd sourced equity funding in Australia for proprietary companies. We re-iterate our response in question 9 and our previous Treasury submission regarding additional disclosures for proprietary companies seeking funding via licenced equity crowdfunding platforms, with allowances for high numbers of individual shareholders. It is thus our position that under a \$2m maximum for proprietary company equity crowdfunding raises, there should be no limit to the number of shareholders (although, for consistency purposes with the outlined public company CSEF, individual investment caps would still apply to each non-accredited investor in the offer).

11. Temporary Shareholder Limits for Proprietary Companies

A 5 year time limited exemption on shareholder limits for proprietary companies would be a reasonable approach. Upon expiry of the time limit, or meeting gross assets or turnover limits, a conversion into a proprietary company, assuming a consolidation of the shareholder base, should be acceptable with shareholder approval and sufficient Issuer disclosure. Otherwise, conversion to a public company after 5 years based on thresholds outlined by Treasury is reasonable.

CrowdReady believes that Issuers should provide annual financial reports to shareholders, whether as a proprietary or public company, but the level of disclosure should reflect the type of company structure.

12. Additional Transparency for Proprietary Companies

As per our last submission, CrowdReady is of the belief that disclosures for public and proprietary companies should be similar for companies accessing equity through crowdfunding. This is to provide consistency and simplicity to the process and thus deliver a model that balances Investor protection, Intermediary responsibilities and Issuer disclosure and compliance.

We also believe the Government should consider takeover provisions and how they apply to companies that raise capital via equity crowdfunding, especially for proprietary companies. This will facilitate, rather than impede foreign investors and venture capitalists, from investing in the next stage of growth in the Issuer.

In addition, we see the requirement of financial audits as an expensive exercise, with the proposed \$1 million as too low, and do not meet a reasonable cost/benefit analysis in the early stages. An audit would require the auditors to review the three previous years' financials and would obviously be a costly exercise. We also note the recent Proposed Industry Funding Model for the Australian Securities and Investments Commission of 28 August 2015 and the "user pay" model. Under this proposed system, there is likely to be higher costs both for Intermediaries and public company Issuers, and an efficient crowd sourced equity funding model should also consider the expected costs borne on both these entities, especially in regards to the likelihood that registered auditor fees likely to be passed on.

Table 1 – Public Company and recommended Proprietary company obligations utilising a licenced crowd sourced equity funding platform proposal:

Obligation	Corporations Act reference	Public Companies using CSEF	Proprietary Companies using CSEF
Continuous disclosure (being a disclosing entity)	ss 111AC(1), 111AF, Chapter 6CA	No	No
Application for registration	s 117	Yes	Yes
Display company name	s 144	No	No
Mandatory office opening hours	s 145	No	No
Information on how to contact the company	s 146A	Yes	Yes
Duties to act with due care and diligence and in good faith	ss 180, 181	Yes	Yes
Controls on termination benefits	Part 2D.2 Div 2	Yes	Yes

Minimum number of directors	s 201A(2)	Yes	Yes - 3
Rules for resolutions for appointment of public company directors	s 201E	No	No
Shareholders' right to obtain information about directors' remuneration	s 202B	Yes	Yes
Related party transactions	Part 2E.1	Yes	Yes
Statutory procedures for shareholder meetings (other than AGM)	Part 2G.2	Yes	Yes
Hold AGM	s 250N	No	No
Two-strikes rule	s 250R(2), (3), Part 2G.2 Div 9	No	No
Keep financial records	s 286	Yes	Yes
Financial report	s 292	Yes (to shareholders only)	Yes - private company (to shareholders only)
Directors' report	ss 292, 298, 299	Yes (unlisted company obligations only)	Yes (unlisted company obligations only)
Remuneration reporting requirements	s 300A	No	No
Shareholder entitlement to report	s 314	Modified: online only	Modified: online only
CSEF capital raising limits in 12 month period		\$5 million	\$2 million (or equal to adjusted SSO)
Appoint an independent auditor	s 327A	No (unless certain thresholds met)	No (unless certain thresholds met)
Have financial report audited	s 301	No (unless certain thresholds met)	No (unless certain thresholds met)
Half-year financial report	Part 2M.3 Div 2	No	No
Takeover provisions	Chapter 6	Yes	No

13. CSEF \$5m fundraising and eligibility caps

We propose a lower capital raising maximum of \$2m (or equivalent to the SSO), with an unlimited number of investors in line with the tested and functioning New Zealand model. The eligibility caps of \$5 million in annual turnover and gross assets are reasonable.

A liberalised equity crowdfunding model that includes proprietary companies will maximise efficiency and realise the potential of the equity crowdfunding model to liberalise capital flow and facilitate growth across all sectors.

It should be noted that the current small scale offerings would generally not include the level of upfront or ongoing disclosure levels as would an equity crowdfunding campaign – including business plan, financials, due diligence checks and an open forum for potential shareholders to raise queries relating to the offer.



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Attachments:

CrowdReady's NZ Equity Crowdfunding Infographic: 1st Year in Review