Submission to the Australian Government

Facilitating Crowd-Sourced Equity Funding and Reducing Compliance costs for Small Businesses

Dr Marina Nehme
Senior Lecturer
UNSW Law Faculty,
UNSW Australia
Email: m.nehme@unsw.edu.au

Introduction

This submission addresses the release of the Consultation Paper on *Facilitating Crowd-Sourced Equity Funding and Reducing Compliance Costs for Small Businesses* (August 2015). The aim of this submission is to provide an informed debate on key issues raised by the consultation paper. The submission further argues the need to conduct a broader and more in-depth review of the different types of companies that exist under the *Corporations Act 2001* (Cth). This review should include consideration of the factors that impact on the adoption of a business structure, any problems proprietary companies face, the cost of running companies and the benefits and disadvantages of existing regulation applicable to the internal governance of a corporation. Further, the protections available to shareholders need to be analysed in the context of public and proprietary companies. Such a review has to be conducted before the occurrence of any change to the concept of 'proprietary company'.

This submission is based on research conducted by the author as part of the Centre of International Finance and Regulation project grant entitled 'Competition Law and Policy in Australian Financial Services Regulation.'

If any of the responses require further explanations, please contact Dr Marina Nehme at the UNSW Australia, Law Faculty at m.nehme@unsw.edu.au.

General Observations

The observations made in this submission can be summarised in the following manner:

- The cap on membership in proprietary companies should remain. These companies should not be allowed to raise capital from the crowd as proprietary companies do not have the necessary checks and balances in place to protect vulnerable retail investors.

- The small scale personal offer exemption should not be changed.

- A cap of $2 million (AUD) in any 12 month period for crowd-sourced equity funding is appropriate.

- Proprietary companies should not be allowed to rely on the crowd to raise capital. Instead, they should be converted to exempt public companies if they wish to access crowd-sourced equity funding.

- The exempt public company proposal may allow proprietary companies to rely on crowd-sourced equity funding as long as they are willing to convert to public companies. This will be beneficial for at least two reasons: 1) it will allow these companies to have the necessary accountability regimes in place to protect their shareholders; and 2) proprietary companies will have to reflect on implication of converting their company into public company. Such considerations will allow them to assess whether crowd-sourced equity funding is really suitable for their needs and hopefully all this will limit abuses to the concept of limited liability.

- The requirement imposed on directors of small proprietary companies to issue a solvency resolution should not be amended or abolished. The solvency resolution is one of the few mechanisms of accountability available in small proprietary companies.

- While share registers are very important and need to be kept by small proprietary company, certain provisions such as s 178A in the *Corporations Act 2001* (Cth) may be abolished to lower the bureaucratic burden attached to the maintenance of the register.

- The law regarding entering into contract only requires minimal change.

- One way to lower the cost of running small proprietary company is for the government to lower or even remove paperwork fees attached to the lodgement of certain documents such as review fees. However, removing or lower standard of accountability in small proprietary company is not acceptable as such a move would harm shareholders and creditors in the long run.

	Consultation questions — appropriateness of the shareholder limit and crowdfunding
1	*Should the law be amended to increase the permitted number of non-employee shareholders in a proprietary company and what would be an appropriate limit?* *Or do companies with more than 50 non-employee shareholders have a sufficiently diverse ownership base with limited access to information or ability to influence the affairs of the company to justify the greater governance requirements currently placed on them?*
2	*What are the benefits and risks? For example, would raising the limit expose risks to shareholder protection?*
3	*Have there been changes to market practice or the broader operating environment such that shareholders and investors now have greater access to management or information about a company's performance? What are the ways by which management now remains accountable to shareholders or shareholders otherwise have access to information about a company?*
4	*If the shareholder limit were increased, how should the law treat public companies which become eligible to be registered as proprietary companies but have issued shares under a disclosure document?*
9	*Should proprietary companies be able to access CSEF? What are the implications for the corporate law framework of permitting proprietary companies to do so?*
10	*If the shareholder limit is not changed for all proprietary companies, should proprietary companies be able to access CSEF?* *If so, should the shareholder limit be changed specifically for proprietary companies using CSEF? What are the benefits and risks of this approach? Would the benefits outweigh the additional complexity of increasing the shareholder limit for a subset of proprietary companies?* *If the shareholder limit were to be increased only for proprietary companies using CSEF, is 100 non-employee shareholders an appropriate cap?*
11	*Should any increase in the shareholder limit solely for proprietary companies using CSEF be temporary, based on time and size limits? What are the benefits and risks of this approach?* *If the increased shareholder limit is temporary, what arrangements should apply when a company is no longer eligible for the higher shareholder limit (owing either to the expiry of the time limit or exceeding the caps on company size)? Should it be required to convert to a public company? Or should it have the option to conform with the general proprietary company obligations, including the non-employee shareholder limit?*
12	*If permitted to access CSEF, should proprietary companies using CSEF be subject to additional transparency obligations when raising funds via CSEF?* *Do you agree with the proposals for annual reporting and audit? Should these be implemented by requiring proprietary companies that have used CSEF to comply with the obligations of large proprietary companies? Should any other obligations apply?* *Given the Government has committed to introducing a CSEF framework for public companies that will include certain reporting exemptions, what are the benefits of permitting proprietary companies to use CSEF when they would be subject to additional transparency obligations?* *Do you agree that these obligations should be permanent?*

14	*Are there any other elements of the CSEF framework for public companies that should be amended if proprietary companies were permitted to use CSEF?*

The next paragraphs respond to the above questions raised by the consultation paper.

Eligibility of companies to raise capital though crowd-sourced equity funding

Crowd-sourced equity funding has been viewed as a form of finance that allows small and medium enterprises to raise capital from the public. This form of finance in Australia may easily apply to public companies through the establishment of a fundraising exemption. However, crowd-sourced equity funding in Australia is difficult if not impossible to apply to proprietary companies:[1] such companies may not have more than 50 non-employee members.[2] The existence of this cap goes against the spirit of crowdfunding which is trying to raise small amounts of money from large numbers of people. Accordingly, the Corporations and Markets Advisory Committee (CAMAC) started by proposing that only public companies would be able to rely on CEF to raise funds from the market. Such a limitation is problematic since it would exclude small businesses, who are most likely to be proprietary companies, from raising capital through this form of finance.

While it can be argued that proprietary companies may convert to public companies and this would allow them to raise funds through CEF, this suggestion does not take into account the reality that, even if a company becomes a public company, it may not have the necessary resources or funds needed to comply with the legislative requirements attached to public companies.[3] However, all this does not mean that the 50 non-employee shareholder cap should be removed from proprietary company.

Alternative to the removal of the 50 non-employee cap

CAMAC actually put forward a proposal for the establishment of a new type of company: the exempt public company. Such a company would be exempt from following the compliance requirements imposed on public companies by the *Corporations Act 2001* (Cth) for a period of up to three to five years.[4] At the end of that period the company would revert to being a public company and would have to comply with the compliance requirements set out in the legislation.

Although this proposal deals with the shareholders limitation imposed on proprietary companies and the regulatory costs faced by a public company, the nature of the exemption is temporary. There is an assumption that at the end of the specified period, a business that attracted crowdfunding as an exempt public company will have the necessary resources to be able to comply with the legislative requirements attached to a public company. However, this may not be the case and, consequently, compulsory conversion to a public company may negatively impact the affairs of the business. Accordingly, it is crucial to estimate correctly the timing of when such a conversion should occur.

---

[1] 98.9% of companies are in fact proprietary companies: Robert Austin and Ian Ramsay, *Ford, Austin and Ramsay's Principles of Corporations Law* (LexisNexis, 2015) 169.

[2] *Corporations Act 2001* (Cth), s 113.

[3] Terence Wong, 'Crowd funding: Regulating the New Phenomenon' (2013) 31 *Company and Securities Law Journal* 89, 98.

[4] Ibid 52-53; Australian Government, Australian Government, *Crowd-Sourced Equity Funding – Discussion Paper* (December 2014), 9, <http://treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2014/Crowd%20Sourced%20Equity%20Funding/Downloads/PDF/CSEF%20Discussion%20Paper.ashx>.

In determining what length of time is appropriate before requiring a business to convert from being an exempt public company to being a public company, it is important to consider a range of factors. Firstly, the life cycle of a business has seven stages: seed stage, start-up stage, growth stage, established stage, expansion stage, mature stage and exit stage.[5] As CEF is aimed at encouraging and promoting innovation as well as providing funding to small businesses, a number of businesses may be testing their ideas through crowdfunding and may still be at a seed stage. The biggest hurdle then is to convert their business idea into a successful commercial venture and this could take years to achieve.[6] Further, if the venture involves the development of a new product, the product development cycle has to be considered, as this involves different stages which include project strategy, development process, organisational and firm characteristics.[7] According to empirical research conducted in this area, newer and more complex projects are associated with longer development times.[8] In the case of crowdfunding, many start-ups may not have the necessary tools, knowledge or infrastructure required to be able to complete their project in a short period of time.[9] As such, a majority of start-ups take longer than expected to produce their product.[10]

Further, research has shown that the average product development cycle for a product is 27 months. However, the development of a product does not ensure its success.[11] Commercialisation of the product is still necessary and is essential for the success of the business.[12] This process would then take an average of 4.5 months in the case of an organised and experienced person.[13] This would mean that a company developing a new product may not start generating profit until at least three years after it had become an exempt public company. As such, it is recommended that the time for conversion should not be less than five years. This is especially the case as by the fifth year more than half of the businesses would have failed. Accordingly, by this time, it is most likely that the exempt public companies remaining are the ones that have a good chance of succeeding in their business. However, as the product development cycle may vary from one case to the next, ASIC should be given the power to allow exempt public companies to apply for an extension of the five

---

[5] Thierry Janssen, 'The Seven Stages of Business Life Cycle' (white paper, Just in Time Management Group, 2013) <http://www.justintimemanagement.com/sites/default/files/WP-The-7-stages-of-business-life-cycle-Thierry-Janssen.pdf>.

[6] Karish Manchanda and Pushkala Muralidharan, 'Crowdfunding: A New Paradigm in Start-Up Financing' (2014) (1) *Global Conference on Business and Finance Proceedings* 369, 369.

[7] Abbie Griffin, 'Modeling and Measuring Product Development Cycle Time Across Industries' (1997) 14(1) *Journal of Engineering and Technology Management* 1.

[8] Abbie Griffin, 'The Effect of Project and Process Characteristics on Product Development Cycle Time' (1997) 34(1) *Journal of Marketing Research* 24, 24-25; Malte Brettel, Rene Mauer, Andreas Engelen and Daniel Kupper, 'Corporate Effectuation: Entrepreneurial Action and Its Impact on R&D Project Performance' (2012) 27 *Journal of Business Venturing* 167, 171.

[9] Sramana Mitra, 'Can Crowdfunding Solve the Startup Capital Gap' *Harvard Business Review* (Online, 24 July 2013) <https://hbr.org/2013/07/can-crowdfunding-solve-the-sta>.

[10] Ethan Mollick, 'The Dynamics of Crowdfunding: An Exploratory Study' (2014) 29 *Journal of Business Venturing* 1, 11-13; Ethan Mollick and Venkat Kuppuswamy, 'After the Campaign: Outcomes of Crowdfunding' (UNC Kenan-Flagler Research Paper No. 2376997, January 2014) 5-6, <http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2376997>.

[11] Abbie Griffin, 'Product Development Cycle Time for Business-to-Business Products' (2002) 31 *Industrial Marketing Management* 291, 296.

[12] Abbie Griffin, 'Modeling and Measuring Product Development Cycle Time Across Industries' (1997) 14(1) *Journal of Engineering and Technology Management* 1, 1.

[13] Abbie Griffin, 'Product Development Cycle Time for Business-to-Business Products' (2002) 31 *Industrial Marketing Management* 291, 296.

year exemption period if needed. This will ensure the flexibility of the system and enhance businesses' chances of success.

Removal of the 50 non-employee members in proprietary company: A problematic approach

The alteration of the 50 non-employee member cap is problematic and not feasible under the current system as the regulation surrounding proprietary companies, especially small proprietary companies,[14] provides very little protection to members. For example, such a company is not required by law to hold an annual general meeting. This is not an issue currently due to the cap on membership and the closely held nature of the majority of proprietary companies. However, a removal of the cap would be mean that the shareholders will not be able to be involved in the deliberation and contestation processes that would usually take place in a public company through members' meeting.[15] Further, calling for an extraordinary general meeting would be difficult for most shareholders involved in crowd-sourced equity funding as they would most likely have a small shareholding in the company (less than the required 5% to call for a meeting).[16]

Additionally, it would be challenging for shareholders to sell their shares in proprietary company as the market is highly illiquid in that area. This is compounded by the fact that, in proprietary companies, s 1072G of the *Corporations Act 2001* (Cth) states that directors may refuse to register a transfer of shares for any reason. This means that shareholders may find themselves trapped in a company and their only recourse to protect themselves would involve court action.[17]

Lastly issues of corporate governance may arise in the way the companies are managed. Proprietary companies, especially small proprietary companies, have weak accountability mechanism and little checks and balances in place to protect shareholders and ensure the good management of the company.

All this demonstrate that there is very little access to management or information about a company's performance especially in instances of small proprietary companies as these companies are not required by law to lodge audited financial reports except in certain instances.[18]

Removing or increasing the cap without ensuring the protection of shareholders is dangerous as it would leave members in a vulnerable position. However, under the current system, this does not mean that the status quo needs to be changed as the proprietary company regulation is tailored toward small shareholding companies and not big ones. Further, adding accountability, disclosure and monitoring requirement to proprietary companies would negatively impact proprietary companies that have no interest in crowdfunding. Their cost of business would increase with very little benefits.

What about public companies if we increase the 50 non-employee cap?

[14] Small proprietary companies are defined under s 45A of the *Corporations Act 2001* (Cth). Such a classification does not take into account the number of members involved in a company.
[15] See for example s 250S of the *Corporations Act 2001* (Cth).
[16] *Corporations Act 2001* (Cth), ss 249D and 249F.
[17] *Corporations Act 2001* (Cth), ss 232, 236 and 1324 .
[18] *Corporations Act 2001* (Cth), ss 293, 294.

Increasing or even removing the 50 non-employee cap will make the distinction between proprietary companies and public companies very artificial and would raise a number of legitimate consideration including the fact that public companies should be able to be converted into proprietary companies if they no longer which to issue securities to the public. They should not be negatively affected by the fact that they have issued a disclosure document in the past.

	Consultation questions — small scale offerings and other exceptions to the disclosure requirements and crowdfunding
5	*Should the law be amended to increase the 20 investor limit and/or the $2 million cap? What would be an appropriate limit? Should the $2 million cap be linked to increase in line with the consumer price index (CPI)?*
6	*What are the benefits and risks of increasing the 20 investor limit and/or the $2 million cap? Who would benefit or bear the risk? Could there be unintended consequences from altering these limits, for example in terms of the definition of a sophisticated investor?*
7	*Could other exceptions to the requirement to issue a disclosure document provide benefits to small proprietary companies if amended?*
8	*Would increasing the shareholder limit for proprietary companies and/or expanding the small scale offerings exception to the disclosure requirements provide small proprietary companies with sufficient additional flexibility to raise capital?*
13	*Do you consider that an annual fundraising cap of $5 million, and eligibility caps of $5 million in annual turnover and gross assets, are appropriate for proprietary companies using CSEF? If not, what do you consider would be appropriate fundraising caps and eligibility criteria?*

The next paragraphs respond to the above questions raised by the consultation paper.

No change is required for the small scale personal offer exemption

Before considering a change to the small scale personal offer exemption, one should consider the motivation behind the introduction of the exemption in the first place. This exemption was introduced in 2000 to allow small businesses to be free to make small scale offering without the constraints of the fundraising regime.[19]

While this is indeed the case, the small scale offering is adopted to 'allow offers to be made to self-designated small business investors (known as 'business angels') who previously stated their interest in the offer even though there had been no previous contact between the person making the offer and the prospective investor.'[20] This exemption is not aimed toward retail investors. Increasing the limit from 20 to a higher number may allow retail investors to be part of the targeted group and as such may allow this exemption to be used for crowd-

[19] Explanatory Memorandum Corporate Law Economic Reform Program Bill 1998, 61.
[20] Ibid 62.

sourced equity funding. While this solution may be appealing, it is not a desirable option for the reasons discussed below.

Cap on investment

A cap of $2 million (AUD) in any 12 month period for crowd-sourced equity funding is appropriate and does not need to be linked to the consumer price index for the following reasons:

- Around the world to date the average amount raised by different types of crowdfunding is less than $2 million (AUD). For example, in 2014, the average amount that a business raised from P2P lending was $103,618 (US). In the case of crowd-sourced equity funding, the average amount varied from region to region, with averages ranging from $175,000 (US) in North America to an average of $342,260 (US) in Asia.[21]

- The $2 million (AUD) cap is consistent with the seed capital requirement that the majority of start-ups may need.[22]

No to raising investors cap in both proprietary companies and small scale offering

The cap on shareholding in a proprietary company should not be raised for the reasons stated above (see paragraph entitled: Removal of the 50 non-employee members in proprietary company: a problematic approach). Further, small proprietary companies may not have the necessary resources to implement the accountability standards required to ensure the protection of shareholders.

Expanding the small scale offering should not be conducted without a serious review of how this offering is being used by companies. Questions that need to be considered are the following:

- How many companies have relied on this type of exemption to raise capital?

- Is there a push to raise the number of investors in the small scale offer exemption? If so, why?

The author contends that the reason why there has been a push to raise the number of investors in the small scale offer exemption is tightly linked to the fact that the Australian legislation does not permit companies to raise capital through crowd-sourced equity funding. As such, the exemption for small scale offering has been used to facilitate a high end form of crowdfunding.

---

[21] Massolution Crowd Power business, *2015CF The Crowdfunding Industry Report* (Massolution, 2015) 15.
[22] Corporations and Markets Advisory Committee (CAMAC), *Crowd Sourced Equity Funding – Report* (May 2014) 58.

Australian Small Scale Offering Board

ASIC has issued exemptions that allowed for the Australian Small Scale Offering Board (ASSOB) to be established.[23] This online platform allows public unlisted companies to issue shares in their companies to the public without the need for a disclosure document.[24] This has been viewed by a range of authors as a form of CEF.[25]

However, such classification may be misleading. ASSOB has been able to go around the fundraising rules through its reliance on the small scale personal offers exception in the *Corporations Act 2001* (Cth).[26] Further, this platform has received an exemption from the advertisement restrictions imposed by fundraising legislation.[27] Accordingly, while raising funds through this platform is targeting the public, investments in the company are limited to 20 investors (the ceiling for small scale personal offers). This has been an issue in the past for SMEs as the amounts invested cannot be characterised as small amounts of money. For instance, if a company sought to raise $1 million through this platform, certain investors would have to invest a minimum of $50,000. In fact, the average investment through ASSOB is $30,000.[28] This would put ASSOB at the high end of the scale for crowdfunding.

Accordingly, even though ASSOB has helped raise over $143,518,923 (AUD) since it has been established,[29] it has been lobbying for the removal of the 20 investors ceiling as the ceiling is considered to be hindering certain businesses from achieving their targets.[30]

Implications

The removal of the 20 investors ceiling may allow crowd-sourced equity funding to take place however this goes against the spirit for which the exemption was introduced in the first place. As such, this exemption should remain and a different regime for crowd-sourced equity funding may need to be introduced to take into account small and medium enterprises. Once again, as noted previously, the exempt public company proposal may provide the answer to allowing crowd-sourced equity funding to be conducted by proprietary company that are willing to convert in the long term to public companies. This will be beneficial for at least two reasons:

- It will allow companies to provide protection to their shareholders;
- It will allow proprietary companies to think of the implication of converting into public company and the implication that would have on their operation. It will allow

[23] Matt Vitins, 'Crowdfunding and Securities Laws: What the Americans Are Doing and the Case for an Australian Crowdfunding Exemption' (2013) 22(2) *Journal of Law, Information and Science* 92, 109-110.
[24] Australian Small Scale Offering Board, 'About ASSOB' <https://www.assob.com.au/about.asp?page=1>.
[25] Ross Weinstein, 'Crowdfunding in the US and Abroad: What to Expect When Expecting' (2013) 46 *Cornell International Law Journal* 427, 448; Gerrit Ahlers, Douglas Cumming, Christina Gunther and Denis Schweizer, 'Signaling in Equity Crowdfunding' (2015) 39 (4) *Entrepreneurship Theory and Practice* 955; Anna Maguire, *Crowdfund It* (Editia, 2014) 47.
[26] *Corporations Act 2001* (Cth), ss 708(2), (3) and (4); ASIC, Class Order 02/0273.
[27] ASIC, Class Order 02/0273.
[28] Australian Small Scale Offering Board, *Crowd Sourced Funding – Submission to the Corporations and Markets Advisory Committee* (2013), 1.
[29] Australian Small Scale Offering Board, 'About ASSOB' <https://www.assob.com.au/about.asp?page=1>.
[30] Ibid.

them to consider then whether crowd-sourced equity funding is really suitable for their needs and hopefully all this will limit abuses of limited liability concept.

	Consultation questions — the solvency resolution
15	*Should the requirement to make a solvency resolution be removed or modified? Is there a more effective way to remind directors of their obligations? For example, would aligning the timing of the resolution with tax or other obligations with fixed timing reduce the regulatory burden?*
16	*What is the extent of the burden imposed on small proprietary companies to make the resolution, in terms of time and/or financial cost?*
17	*What is the value to directors of the annual solvency resolution in reminding them of their ongoing solvency obligations?*
18	*Would removing the requirement to make a solvency resolution be likely to increase rates of insolvency or business failure among small proprietary companies? Would unsecured creditors be exposed to increased risk? Are there other risks associated with removing the requirement?* *Could the risks be mitigated adequately by ASIC reminding directors periodically (say, annually) of their duty to prevent insolvent trading by the company? Are there other ways to mitigate the risks?*

The next paragraphs respond to the above questions raised by the consultation paper.

Yes to a solvency declaration

A solvency declaration in small proprietary company is essential to ensure directors are held accountable to the company, its shareholders and creditors. A solvency declaration may provide indication to shareholders that the company is doing well. Further, it ensures that the directors keep track of the financial position of the company. This declaration in short enhances accountability in small proprietary companies.

Cost

The cost attached to such declaration is low. Further the s 347C of the *Corporations Act 2001* (Cth) notes that a payment of the company's review fee is viewed as a representation by directors that the company is solvent. While the removal of such a requirement may not result in an increase of rates of insolvency as directors' duties require directors to be aware of the financial position of the company (duty of care) and to prevent the company from trading while insolvent (s 588G of the *Corporations Act 2001* (Cth)), it may mean that there are less checks and balances in place to protect investors as well as creditors. Further, the declaration may be viewed as a reminder to directors of their obligation to be aware of the company's financial position. Issuing a solvency declaration imposes a minimal burden on small proprietary company especially in view of the benefits attached to the issue of such a document.

	Consultation questions — the share register
19	*What is the extent of the burden imposed on small proprietary companies to establish and maintain a share register, in terms of time and/or financial cost?*
20	*What is the value to small proprietary companies of maintaining a share register? Would companies need to maintain similar records even if the law did not require them to?*
21	*Should the requirement to maintain a share register be removed for small proprietary companies with up to 20 shareholders, given that ASIC's records duplicate the information in the share register of such companies?*
22	*If the requirement were removed for small proprietary companies with up to 20 shareholders:* • *how could share ownership be transferred? Could transfer take effect via a different mechanism, such as on notification to ASIC or on acknowledgment from the company?* • *how would shareholders be able to ascertain the identity of the other shareholders of a company? Would it be reasonable to require shareholders to obtain the information from ASIC (including paying the required fee)?* *Are there other situations or circumstances where small proprietary companies with up to 20 shareholders need to have an up-to-date share register?*
23	*Alternatively, should the requirement for small proprietary companies to maintain a share register be modified? If so, how? For example, should small proprietary companies with up to 20 shareholders continue to retain a share register but no longer be required to notify ASIC each time shareholder details change?*
24	*Would removing/modifying the requirement to maintain a share register be likely to increase the risk of minority shareholder or property rights disputes for small proprietary companies? Are there other risks associated with removing the requirement?*

The next paragraphs respond to the above questions raised by the consultation paper.

The share register is important as it allows directors as well as shareholders to keep track and be aware of the membership in a company. Further, the share register is prima facie evidence of the information in it.[31]

Keeping a share register is an administrative requirement however its benefits exceed any cost spent on maintaining the register. The benefits relate to accountability and transparency in proprietary companies. Further, the removal of such a register may result in disputes regarding ownership of the shares in the company especially as, in proprietary companies, directors may refuse the transfer of shares without giving a reason. Lastly, the cost attached to keeping a members' record for companies that have less than 20 shareholders is minimal.

While share registers are very important and need to be kept by small proprietary company, the submission argues that there is a bureaucratic burden attached to the share register. It is

[31] *Corporations Act 2001* (Cth), s 176.

recommended that s 178A in the *Corporations Act 2001* (Cth) be abolished as a proprietary company should not be required to notify changes to its members' register. Instead, it is enough for ASIC to have the power to access the register if it believes that such a requirement is needed.

	Consultation questions — execution of documents
25	*Does the current law cause problems and/or increase compliance costs for sole director/no secretary companies and their counterparties in executing documents? What is the extent of the burden imposed on sole director/no secretary small proprietary companies in terms of time and/or financial cost?*
26	*Is it appropriate to amend the law to specify that a company with a sole director and no company secretary may execute a document without using a common seal if the document is signed by the director or with a company seal if the fixing of the seal is witnessed by the director?* *Are there any risks associated with this approach? Are there any alternative approaches?*

The current system is acceptable. Companies with only on director and no company secretary can still enter into contract through agency. The sole director may be considered as an agent of the company with implied authority to sign contracts on behalf of the company.

27	*Is there an issue regarding split execution? What is the extent of the burden imposed on small proprietary companies in terms of time and/or financial cost?* *What are the benefits and risks of specifying in the law that split execution is acceptable?*

Reliance on split execution of document by companies is a good idea and does not raise any issues of burdens to small proprietary companies. Any cost is minimal as the proposal can provide flexibility to the company who can decide whether to choose if it would enter into the contract via split execution or not.

28	*Is there an issue regarding the execution of deeds by foreign companies? What is the extent of the burden imposed on small proprietary companies in terms of time and/or financial cost?* *Should the UK approach be adopted in the Corporations Act? Should a similar approach be taken to other bodies corporate? What are the benefits and risks?*

No comment.

Consultation questions — ASIC forms and other ways to reduce compliance costs	
29	*Could any forms which are used by small proprietary companies and prescribed by the Corporations Act or Corporations Regulations be removed, amended or streamlined to reduce the compliance burden? How much time/money would it save you?*
30	*Are there any other requirements under the Corporations Act which impose unnecessary compliance burdens on small proprietary companies? What is the extent of the burden in terms of time and/or financial cost? How could the burden be reduced?*

The next paragraph deals with the above questions raised by the consultation paper.

There are no other requirements under the *Corporations Act 2001* (Cth) which impose unnecessary compliance burdens on small proprietary companies. The only recommendation in that regard is for the government to lower if not remove paperwork fees attached to the lodgement of certain documents such as review fees. Further, the liquidation of small proprietary companies may be streamlined to make it easier to deregister these companies. However, removing or lower standard of accountability in small proprietary company is not acceptable as it would be harmful for shareholders and creditors in the long run. A review of the way proprietary companies function may be beneficial as it would provide a better understanding of the cost attached to the operation of these companies.

Dr Marina Nehme

31 August 2015