

# Response to Consultation for Facilitating crowd-sourced equity funding and reducing compliance costs for small business

## General items

One of the key issues in relation to small business is the definition of small business which is very broad for the purposes of answering the consultation. You highlight that the majority of proprietary businesses are small, but the papers fails to consider that many of these business are on the very small end of small (i.e. substantially less than the upper limit of \$25 million in revenue).

It would be useful and also easier to respond to the consultation if the definition of small business is clarified.

For example, in answering the question around balancing the limits of non-employee shareholders with the legal requirements around governance, it would be reasonable to argue that the limit of 50 shareholders at a maximum annual contribution of \$10,000 would remain acceptable for a start-up or a micro business (my arbitrary definition is less than \$1000,000 turnover and less than 5 employees). However that limit would be too constraining in the context of a business with a turnover of \$20 million. Conversely, upping the limit would be beneficial for a small business nearing the upper limit, but would raise governance questions in relation to a microbusiness.

I would also suggest that an amendment to the existing laws exclude CSEF and deal with CSEF as an alternate method with appropriate amendment to ensure that there are no conflicts between existing rules and CSEF as it is difficult to harmonise the requirements for both traditional fund raising means and CSEF.

## Consultation Question 1

Refer to example above

## Consultation Question 2

There is no risk in relation to the use of sophisticated investors. The issue arises in relation to crowdsourcing being open to non-sophisticated investors. In this case, there is a need to ensure that any investor has signed an appropriate document which declares their understanding of the conditions pertaining to investing by this means but also ensuring that the owner of the platform that delivers the crowdsourcing have appropriate minimum standards that limit companies from raising funds where they have not met the minimum standards (including the required level of disclosure).

Essentially, the process needs to diffuse the risk that traditionally sat with the company partially onto the provider of the platform and the obligations of the individual investor (in the same way that obligation is left with the manager of a self managed superannuation fund)

### **Consultation Question 3**

I would not say that anything has changed in relation to disclosure of information by small business. Instead, there is a need to ensure that organisations become more transparent through other supporting mechanisms. For example, The current ASIC reporting, does not require a small business to disclose certain information, however, I would argue that it is reasonable to force small companies to report basic information under ASIC should they wish to raise fund by such means. This would enable investors to at least be able to obtain information through ASIC in a regulated manner.

### **Consultation Question 4**

Seems to me that the question may relate to an exception that simply requires transitional arrangements. It is important that this does not become an avenue for a public company to change its structure in order to avoid requirements.

### **Consultation Question 5, 6, 7 & 8**

Under the limits per shareholder contribution and number of shareholders, the numbers don't add up. At \$10,000 limit and 50 shareholders, the maximum amount that can be raised is \$500,000. It seems that this area is not consistent with the purpose of crowd sourced funding.

### **Consultation Question 9**

CSEF is of most use for proprietary small companies who traditionally have limited ability to raise funds in a cost effective manner. Not doing it, means that CSEF is being introduced for a small number of the total pool making it not useful to majority.

### **Consultation Question 10**

The issue of increasing shareholder limit has been addressed in previous questions. The key issue arises when individual investors are contributing minor amounts (e.g. \$1000). Keeping the limits at 50 means that an organisation is forced to provide sufficient information to ensure they attract shareholders who are able to contribute the maximum amount set. Again, it is a question of relativity to size as what would work in a micro business won't be an appropriate limit for a \$20million business.

### **Consultation Questions 11 - 14**

I think you are making it overly complicated and trying to manage this by an outdated governance model. The advantage of CSEF is that the crowd make better decisions than individuals on their own do. For example if you were to remove the restriction on the limit of shareholders, but it was necessary for a business to achieve a certain number of shareholders at a small limit to comply with fund raising, the quality of the information provided becomes self government because the majority would reject the fund raising information if they provide insufficient information, therefore the organisation will not be able to meet the minimum requirements. I think you need to get your head out of the disclosure obligation on the company and consider crowd sourcing value for what it is (people vote for what is good and bad in masses, and you don't need to overly regulated it. What you need to do, is ensure that the responsibility is clearly shared between the company, the crowd making the decisions and the providers of the platform as the facilitators of the interaction.

### **Consultation Questions 15 – 18**

As suggested earlier, it is necessary for an organisation accessing crowd funding to disclose information which they currently are not obliged to disclose. However, this has to be done in an efficient manner and streamlined with existing reporting requirements to either ASIC or ATO. It is simply adding these disclosures and compliance requirements on the existing reports or forms that must be filled as part of the annual process.

The issue of directors obligation is overly emphasised with respect to insolvency, but actually the real issue is that directors are not well trained in their obligations, and this an significant issue in the context of small business where they are not likely to have a paid board position that attracts the calibre and experience necessary. The issue of board governance is a substantial issue that needs to be considered and the focus on insolvency is too high at the expense of the total responsibility of the board.

### **Consultation Questions 19 – 30**

Again overly complicated and outdated thinking. Refer to response on 11 – 14

You need to think of the self regulating nature of crowds and the value of shared responsibility . It is not all about the company burden, but about sharing the burden across the crowd and technology providers who facilitate the connection. For example, managing shareholder registers on an online platform is an obligation on the technology providers to provide that capability. Managing information, is a self managed issue for individual shareholders. Neither is an obligation on the company other than hitting a button to automatically submit that information to the regulator in the same way online accounting software works.

Again you need to think about this from a different frame of mind.