

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Small Business and Assistant Treasurer**

#### *Corporations Act 2001*

#### *Corporations Amendment (Crowd-Sourced Funding) Regulation 2015*

Section 1364(1) of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Corporations Amendment (Crowd-Sourced Funding) Regulation 2015 (the Regulation) complements the Corporations Amendment (Crowd-sourced Funding) Bill 2015 (the Bill) which implements a regulatory framework to facilitate crowd-sourced funding (CSF) in Australia.

This Regulation prescribes:

- the class of securities that may be offered under CSF;
- the minimum content requirements for the CSF offer document that must be prepared for each CSF offer;
- the content requirements of the general CSF risk warning and retail investor risk acknowledgement;
- the checks that a CSF intermediary must conduct in relation to each CSF offer and what constitutes a reasonable standard in relation to checks; and
- when conduct of a company or CSF intermediary relating to a CSF offer will not constitute providing financial product advice.

The regulatory costs associated with this Regulation were included in the Regulation Impact Statement in the Explanatory Memorandum to the Bill.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 – Amendments

**Which securities are eligible for crowd funding**

Regulation 6D.3A.01 prescribes that fully-paid ordinary shares are eligible for crowd-funding.

**Minimum content requirements for a CSF offer document**

Regulation 6D.3A.01 prescribes the minimum content requirements of a CSF offer document, broken up into four sections.

*Section 1: Risk warning*

The regulation prescribes the wording of the risk warning that must be included the CSF offer document.

*Section 2: Information on company making the offer*

The offer document must contain specified information about the company making the offer, including its key personnel.

Information identifying the company

The CSF offer document must set out the offering company's name, Australian Company Number, registered office address and the address of its principal place of business.

Information on key individuals

The following information about the existing and proposed directors, other officers and managers of the offering company must be included:

- names;
- skills and experience relevant to the management of the company;
- whether the individual has been convicted of a criminal offence or has been the subject of a civil penalty under the Act;
- whether the individual has been disqualified from managing a corporation under Part 2D.6 of the Act or been subject to a banning order under section 920A of the Act; and
- whether the person is or has previously been insolvent.

Where any of the last three factors apply, the offer document must include a description of relevant circumstances giving rise to the offence, penalty, disqualification or insolvency.

### Information on the company's business and financial records

The offer document must include a description of:

- the company's business and organisational structure;
- details of the company's debt and equity capital structure, including of all classes of issued securities and associated rights; and
- the most recent consolidated statement of financial position of the offering company, prepared in accordance with the relevant accounting principles.

### *Section 3: Information about the CSF offer*

The CSF offer document must describe what securities are being offered for issue, and the rights attaching to those securities.

The company must specify the maximum expected duration of the offer, although the offer may be open for less than the time specified (if, for example, the maximum subscription amount is reached).

The company must specify the minimum and maximum amount of funds sought under the offer, and describe how the funds raised are intended to be used.

The CSF offer document must also indicate if any of the funds being raised as part of the CSF offer will be paid (whether directly or via an interposed entity) to:

- a current or proposed director, other officer, or manager;
- the CSF intermediary that will publish the offer;
- anyone promoting or marketing the offer;
- anyone who holds securities giving them more than 20 per cent of voting rights; and
- any related parties (as defined in the Bill) of the company.

The CSF offer document must include information on previous CSF offers undertaken by the company, key personnel of the company or related parties of the company, including outcomes of the offer (for example, whether the offer was successful).

### *Section 4: Information about investor rights*

The offer document must set out the 5 day cooling off right available to retail clients. If the company is eligible for the public company concessions (contained in Schedule 2 of the Bill), the offer document must set out the effects of those concessions.

### **Risk acknowledgment**

New regulation 6D.3A.10 prescribes the wording of the risk acknowledgement that a retail investor must complete before their application for CSF securities can be accepted by the CSF intermediary (refer to paragraph 738ZA(3)(b) of the Bill).

## **Prescribed checks relating to gate-keeper obligations**

Under the CSF regime, the CSF intermediary must conduct certain prescribed checks to a reasonable standard. This requirement is relevant to its gatekeeper obligations (which detail when a CSF intermediary cannot publish or continue to publish a CSF offer document, replacement or supplementary offer document (refer to section 738Q of the Bill)).

The prescribed checks are set out in Regulation 6D.3A.11 and discussed in further detail below.

### *Check identity of company*

The intermediary must check the company's Australian Company Number, its registered office and address of its principal place of business.

### *Check eligibility of company to crowd fund*

The intermediary must check that the company making the offer:

- is a public company limited by shares;
- has its principal place of business in Australia;
- a majority of directors who are ordinarily resident in Australia;
- has less than five million in gross assets, consolidated with its related parties;
- has less than five million in annual revenue, consolidated with its related parties;
- is not a listed corporation and none of its related parties is a listed corporation; and
- does not have a substantial purpose of investing in securities or interests in other entities or schemes, and none of its related parties have such a purpose.

### *Check offer document satisfies content requirements*

The CSF intermediary must check the CSF offer document to ensure it contains the minimum content requirements specified in the new regulations 6D.3A.02, 6D.3A.03, 6D.3A.04, 6D.3A.05 and 6D.3A.06. However, the CSF intermediary is not required to verify the accuracy of the information.

The CSF intermediary must also check that the information presented in the CSF offer document is worded in a clear, concise and effective manner (refer to section 738K of the Bill).

### *Check information relating to key personnel*

The intermediary must check the names and addresses of the current and proposed directors, other officers and managers of the company and whether the offer document contains the information required by subregulation 6D.3A.03(3) (criminal offences, civil penalties, disqualifications etc).

## **Meaning of reasonable standard**

Regulation 6D.3A.12 explains what constitutes a ‘reasonable standard’ in relation to the prescribed checks.

A CSF intermediary will be taken to conduct a check to a reasonable standard where it bases the check on reliable and independent documentation (which can include electronic data) relevant to the check. To be independent, the information must not be sourced from an entity associated with the company making the CSF offer, the intermediary or any of their related parties.

Subregulation 6D.3A.12(5) prescribes the criteria an intermediary must take into account in determining whether documentation is reliable and independent. Documentation maintained by ASIC is deemed to be reliable and independent (subregulation 6D.3A.12(6)).

Where an intermediary is unable to base its check on independent and reliable documentation, the intermediary will be taken to conduct the check to a reasonable standard where it bases the check on information provided by the company (subregulation 6D.3A.12(2)(b)).

In conducting a check of any criminal convictions, the check will only be conducted to a reasonable standard where it is based on information provided by the Australian Federal Police or the police force of a State or Territory (subregulation 6D.3A.12(9)).

## **General risk warning**

Regulation 6D.3A.13 prescribes the wording of the risk warning that an intermediary must display prominently on its offer platform (refer to subsection 738ZA(2) of the Bill).

## **Documents not constituting financial product advice**

Subregulation 7.1.08(3A) prescribes that CSF offer documents, information about a CSF offer on a CSF intermediary’s platform, advertisements of CSF offers and information posted on a communications facility run by a CSF intermediary do not constitute the provision of financial product advice, as long as it does not contain personal advice.