

6 June 2017

Manager,

Financial Innovation and Payments Unit

Financial System

The Treasury

Langton Crescent

PARKES ACT 2600

By Email: csef@treasury.gov.au

Dear Sir/Madam

**Submission re the draft legislation extending Crowd-Sourced Equity Funding to Proprietary Companies**

**Summary**

1. Crowd-Sourced Equity Funding (CSEF) has been shown overseas to be an effective and increasingly popular way for small businesses to raise capital. Australia will benefit significantly in learning from offshore experiences and by introducing this as a capital option for small businesses as long as it balances regulatory protection with practicality in the regime.

1. Locally Grown, a new start up looking to operate in this space, is generally supportive of government’s move to extend CSEF to proprietary companies so that there is improved access to finance for start ups and small businesses.
2. While steps have been taken to remove the need to convert to an unlisted public company to take advantage of this capital source, Locally Grown seeks to ensure that the new obligations added to proprietary companies who wish to raise capital in this way do not raise overly burdensome compliance costs on these companies, particularly the micro SMEs.
3. Locally Grown also recognises the importance of protecting investors in these ventures and agree generally with recommendations such as limiting contributions and protecting small shareholding exit options. It does however believe further work is needed to think through the implication of the sale of CSF shares on the 50 shareholder cap.
4. Locally Grown agrees with the regulation of intermediaries however it wishes to ensure that intermediary obligations remain workable and are not overly regulated so that successful deals can be achieved in a cost-effective and practical way for SMEs.

**About Locally Grown**

1. Locally Grown is a start up in the process of building a platform to connect businesses seeking capital to investors and other players in the investment community for the purpose of successfully sharing knowledge and funds to grow local businesses successfully. We aim to:
	1. Help businesses become deal ready
	2. Introduce businesses to investors via online communities
	3. Provide a vehicle for transparent information sharing so businesses, investors and experts involved can communicate without intermediary filtering.
	4. Provide these services in a mostly automated manner, making it affordable for micro and small businesses.
2. Locally Grown’s proposed target market is with start ups and the micro and small business space (which the ABS defines as an actively trading businesses with 0-19 employees).
3. Locally Grown will commence its operations as an online business introduction service operating pursuant to the ASIC Class Order 02/273 using the exemptive relief of s708 of the Corporations Act (Cth).
4. While it will not hold an AFSL in the first instance, Locally Grown will be working with experienced and skilled financiers, lawyers and IT advisers to ensure its processes, procedures and outputs are robust and responsibly support the creation of local growth.
5. Locally Grown has a longer term goal of becoming a crowd-sourcing funding platform and will be designing its broader platform, processes and procedures proactively with ASIC input and with AFSL licencing in mind.

**Locally Grown’s Comments on the Draft Legislation**

**SME Observations**

1. Locally **Grown supports the creation of a simple approval procedure from ASIC to raise capital through a licenced provider and to keep a centralised database** of all private companies who raise capital through the CSEF process. Given SMEs often cannot afford to use accountants on a regular basis, **time for updating databases should be generous to avoid too many additional professional costs**.
2. In the interests of maintaining the CSEF regime as a practical and cost-effective capital raising option for SMEs, Locally Grown asks that **ongoing costs of compliance with the new regime be considered from the point of view of an active micro/small business and/or a start-up company**, in particular:
	1. Costs associated with audits if the amount required is >$1M; and
	2. Costs of finding (in some instances) and adding an additional director (if only 1)
	3. Cost of adjusting shareholder agreements and constitutions
	4. Complexity managing the ongoing transfer of CSF shares particuluarly if once transferred it can impact the maximum of 50 shareholder count

Input from accountants and lawyers around average costs for a few typlical examples would be useful context for us all to consider.

1. While Locally Grown appreciates the process needs to allow Government to have the powers to prescribe other eligibility requirements, **certainty will be important to those that already have gone through the process** and we would suggest that **changes not be applied retrospectively** (to the extent they can)**.**
2. **Consideration could be given to including Debt Crowdfunding provisions and/or Redeemable Preference Shares as a more short-term lending structure as part of this process**. It is our understanding that this is usually more appealable to businesses who only have a short-term cash injection requirement to grow. This avoids complications with shareholder agreements and takes away complexity associated with ordinary share capital while still achieving the same goal.

**Investor Observations**

1. **Exit may become complicated if any incoming investor who acquires a CSF share becomes a normal shareholder under the new regime and therefore contributes to the 50 maximum shareholder count**. Locally Grown would ask that an alternative position of retaining the CSF exemption be considered and the implications of that scenario worked through.
2. It is likely that in many cases a lead investor may be nominated to act on behalf of the class of CSF shareholders. There is an **opportunity through the legislation to create protection for any lead investor role to encourage interested and experienced investors to step up and add an additional level of input and proactivity for minority shareholders** but at the same time be protected from any class action if acting reasonably and honestly to the best of his/her abilities. This also presents a **potential opportunity for the market to develop a model to get around the 50 investor cap**. We would welcome the opportunity to discuss this as a concept further with industry.
3. Locally Grown would suggest **a cooling off period (as is the current case for unlisted public companies) is still unnecessary and is not in the spirit of the crowd-funding process**. For most transactions there are appropriate risk disclaimers, investor terms and agreements in place that would already have highlighted the risks around these types of transactions. Allowing a cooling off period complicates the fundraising process adding unnecessary costs to manage the processing of refunds and replacement of funds gone.
4. **Industry discussion around** **alternative ways to sell crowdfunding shares might help identify some standard exit options to be considered across the board** to both simplify the sale process and also help clarify ASIC licencing requirements around the role of intermediaries (if any).

**Intermediary Obligations**

1. We welcome the requirement to be licensed to offer CSEF fundraising services to the retail market however would ask that in an effort to help Australia catch up with the rest of the global markets in offering this type of capital, that those requirements be quickly ascertained and discussed transparently with a view to **not having them be overly onerous and therefore uneconomic/unworkable**.

We welcome the opportunity to contribute further to industry discussion on any of the areas touched on above and are interested in being kept up to date with progress.

Thank you.

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