**SUBmission to Corporations Amendment (Crowd sourced Funding for Proprietary Companies) Bill 2017**

**6 June 2017**

Manager
Financial Innovation and Payments Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Manager

We refer to the Corporations Amendment (Crowd sourced Funding for Proprietary Companies) Bill 2017, there is no doubt this is a step in the right direction. However, this is not nearly enough to make CSF viable for the majority of Australian businesses. We refer to our original submission on the 29th Jaunary 2016 and add the following:

The commentary paragraph 3 of the webpage, it states the very first sentence:.

*“The draft legislation will amend the Corporations Act 2001 to extend the CSEF regime to proprietary companies, improving access to finance for start ups and innovative small businesses. “*

Whilst the provision of equity capital to a business is some form of capital, it is categorically not what the majority of businesses would consider finance, being the provision of credit in some form.

From our observation, to date, the majority of Australian businesses that require capital, have obtained finance by way of debt unsecured or secured by property collateral or debt convertible to equity and the implementation of the following legislation is unlikely to alter this state of affairs due to:

1. The complexity of issuing equity to third parties
2. The difficulty in determining valuation of business in start-up periods
3. The adverse effect of diluting the company equity to obtain finance
4. The cost of equity is usually higher than obtaining debt finance.

From our perspective, we can see that the only winners are likely to be, arrangers and third-party advisers charging companies for advisory services to meet the requirements of the legislation,

From an international perspective, we recommend that the Australian government have another look at the US framework for crowd funding. In an environment where companies can raise funds using crowdfunding the most popular type of funding arrangement is a convertible note or KISS note. Furthermore, the concept of crowdfunding is not restricted to equity but all forms of funding including debt funding.

As a platform providing businesses access to investors for debt funding of their businesses we are testament to the fact that there is a clearly a need for both the investor and business. Aspects like amending the requirement for prospectus issue to enable businesses that are proprietary limited companies to be able to issue a 2-part corporate bond prospectus, as set out s709 of the Corporations Law.

Debt funding or convertible note issues to raise capital have significant advantages including:

**For investors**

* **Improved security positing vs pure equity** - a quality security converting to an equity an appointed time.
* **Protection for investors** - protection on dilution, and liquidity events,
* **Fixed return regardless of equity position** - a return on their investment (usually an interest rate is set on the convertible note) and

**For businesses:**

* **Uninterrupted operations** - It can continue to operate through the transition phase between the one to 3 years where capital becomes scarce without further diluting its value; and
* **Clear understanding of equity investors** - Conditions of the capital are clearly enunciated so the business knows what it needs to meet for its finance requirements.

Clearly these do not fall within the ambit of the present legislation and leave businesses in a quandary when raising capital.

There is no doubt that there is an opportunity for the government to be innovative and offer the ability for investors to participate in investment with a company, informs other than just equity but also a hybrid of equity and debt or debt.

At the present moment the alternatives open to businesses under the present legislation are either to obtain funding at a higher cost from finance company lenders on a short-term basis or provide property collateral to finance their company.

There is a gap in business finance. The gap is that there are many providers of short-term moneylending to businesses for small amounts at high cost or collateral property lending.

From our observations, there are only several business lenders who offer finance without property collateral for terms greater than 12months and for amounts in excess of A$150,000 and on interest only basis. which clearly a more preferred taxable solution for corporates.

We submit that the present legislation does not deal with an ongoing issue for the majority of bsuienss which is the lack of competitively priced debt finance o.

This is something that can be offered in a crowd funding environment and presently being offered by Marketlend and some other competitors. However, the innovative marketplace lenders are more likely to look to wholesale investors to cater for due to the difficult legislative regime to deal with retails investors as a result of the repeal of the class order 02/273 and also the requirement by ASIC to view such solutions as being management investment schemes or requiring management investment scheme structures to protect retail investors.

CSF platforms and fails to offer investors the opportunity to invest in the majority of innovative start-up companies, because often those companies will be proprietary companies.

On a CSF platform, a company can only raise equity if investors believe that their investment will be profitable, either by capital gain, return on capital or both. It is our submission that the market will dictate itself as to what are the most suitable companies to invest in and their structure.

The inclusion of a proprietary company in the legislation is a must, but certain thresholds can be placed up those proprietary companies who want to use CSF. They can include financial reporting or other compliance measures.

Understandably, investors are sufficiently aware of the strength in difference corporate structures and there could be additional disclosure requirements placed on proprietary companies to ensure that investors are well aware of the risks that are unique to that structure.

**Amendments to Section 738C**

**It is our submission that if a financial services licensee regulatory environment has made provision for authorised representatives of the financial services licensee, then that should be included in the legislation. Also that if a financial services licensee has a licence to:**

1. **arrange for a person to deal in a financial product,**
2. **issue apply for, acquire, vary or dispose a financial product, on behalf of another or itself,**

**further authorisation is not necessary.**

**By adding the present amendments, the risk is that further authorisation is needed. Consequently it may be that a well-established regulatory environment for obtaining Australian Financial Services licences will need to be amended to deal with it.**

**By considering this amendment, a quick solution for CSF platforms is available, as established licensees would be able to immediately operate CSF platforms.**

**CSF Intermediary roles**

The amendment also introduces new regulations regarding the roles and obligations of a CSF intermediary. Firstly, it requires the CSF intermediary to hold an AFSL. It requires CSF intermediaries to also have gatekeeper obligations with regards to publishing the offer document of an issuer company on its platform; the obligation to provide a communication facility within the platform; the obligation to display the risk warning and to appropriately disclose fees regarding the issuer company. As a company that fills all of these requirements of a crowd-sourced lending platform, Marketlend believes that these gatekeeper obligations are extremely important for the future of CSF. Without proper regulation on CSF intermediaries, the possibility for market failure or mismanagement exists and can threaten the many benefits of CSF.

If you want to discuss or need more information relating to this submission please contact Marketlend on 02 80064649 or administrator@marketlend.com.au

Kind regards,

Marketlend