

10 points ...

on crowd-sourced equity funding reforms in Australia

This KWM BriefSheet sets out 10 points on proposed CSF reforms and the way they can transform fundraising in Australia

■ **Crowd-sourced equity funding (or “CSF”) is ...**

A variety of crowdfunding models have emerged as early-stage companies search for innovative fundraising methods. In contrast to reward or donation based models, CSF involves a company raising capital by issuing equity (ordinary shares) to a large pool of investors, typically for small amounts of money. CSF is usually facilitated through an online platform hosted by a third party.

- **CSF is not here for retail investors. Yet.** As part of the Federal Government's efforts to kick-start the 'ideas boom', it introduced the *Corporations Amendment (Crowd-sourced Funding) Bill 2015* in December 2015. The Bill sought to enable eligible companies to raise funding from retail investors through CSF. It is expected the Government will now reintroduce the Bill — but in what form?

- **CSF already exists in Australia ... for some.** Companies can already fundraise through CSF from sophisticated or professional investors, and in very limited circumstances from retail investors (eg, small scale offers of 20 investors or less in a 12 month period raising less than A\$2 million). For example, *ingogo* raised A\$4.2 million from sophisticated investors through Australian-based VentureCrowd in May 2015 (one of the largest CSF raises globally). Legislative reform is needed to allow broader participation by retail investors.

- **CSF is alive and kicking in other jurisdictions.** Australia is not the first country to propose extending CSF to retail investors, in fact, we're a bit behind the game. New Zealand introduced a CSF regime in April 2014, USA's final rules on CSF took effect in May 2016 and other jurisdictions such as the United Kingdom, Italy and Canada also have regulatory regimes that permit retail CSF. However, most regimes set some careful limits on retail participation.

- **Eligibility is a public affair.** Under the Bill, an eligible issuer must be an unlisted public company limited by shares with less than A\$5 million in annual consolidated revenue and A\$5 million in gross assets. The issuer's primary purpose cannot be to reinvest raised amounts in securities of other companies, its principal place of business must be in Australia and a majority of its directors must ordinarily reside in Australia.

- **The Bill raises the roof ...** Under the Bill, an eligible company can raise a maximum of A\$5

million over a rolling 12-month period by issuing ordinary shares (and no other debt, equity or hybrid instrument). These restrictions are generous compared to other jurisdictions. New Zealand's fundraising cap is NZ\$2 million and USA's is US\$1 million. However, many have criticised the inflexibility regarding the types of instruments issuers can use to raise capital.

- **... striking a balance ...** The Bill seeks to strike a balance between protecting retail investors, and opening up new fundraising avenues for start-ups and investment opportunities for 'Mum & Dad' investors. Protections include an unconditional 5-day cooling-off period, retail investors may only invest \$10,000 per issuer over a 12-month period and all offers are accompanied with an offer document setting out certain prescribed information on the offer. Some have suggested this may be overkill, by comparison to the more flexible New Zealand regime, but without question this is a high-risk part of the investment market.

- **... reducing the burden on some ...** To reduce the burden of the requirement to convert or register as a public company, the Bill grants eligible companies certain concessions from obligations imposed on public companies. For example, for a 5-year period after converting or registering as a public company, an eligible company is not required to hold an AGM and they do not need to appoint an auditor where that company raises less than A\$1 million.

- **... but increasing it on others.** The Bill imposes extensive 'gatekeeper' obligations on intermediaries. In effect, CSF intermediaries are required to conduct due diligence on issuers, enforce investor protections such as the investor cap and cooling-off rights and provide communication facilities on their platforms. Intermediaries must hold an AFSL expressly permitting them to provide crowdfunding services and possibly an Australian market licence.

- **What next?** Although the Bill has lapsed, there appears to be bipartisan support for CSF. The start-up sector and the Federal Opposition have suggested the Bill was an opportunity lost. Some suggest that extension to proprietary companies, and less onerous gatekeeper obligations are needed. We expect further debate and possible changes to the proposed regime soon.

We are here to help you



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