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A summary on what's in the Government's consultation paper on Crowd-Sourced Equity Funding (CSEF)?

The Minister for Small Business, Bruce Billson MP, recently released the Government's consultation paper on extending crowd-sourced equity funding (**CSEF**) to proprietary companies.

The paper (available at www.treasury.gov.au.) seeks feedback on:

- extending CSEF to proprietary companies; and
- ways to reduce compliance costs and make capital raising more flexible for small proprietary companies.

Submissions close on 31 August 2015.

Here is a brief overview of the paper:

1 Extending CSEF to proprietary companies

- *CSEF for public companies*

The Government has committed to introducing a CSEF regime for public companies.

The key elements of the CSEF framework for public companies are set out in the paper and the Government intends to release draft legislation for comment later this year. The introduction of legislation to Parliament is expected to follow in the 2015 Spring parliamentary sittings.

- *CSEF for proprietary companies?*

Feedback from the CSEF consultation process indicated that the majority of companies that are likely to consider using CSEF may be proprietary companies.

Current limitations on how proprietary companies can raise funds, however, would make it difficult for these companies to effectively use CSEF to raise funds from a large number of small shareholders. In particular, proprietary companies:

- must not have more than 50 non-employee shareholders; and
- must not, except in limited circumstances, offer shares to the general public or undertake other fundraising activities that would require the issue of a disclosure document to investors.

While raising the shareholder limit would enable proprietary companies to raise funds from a larger base, without additional changes to the law, the types of investors that a proprietary company can raise funds from would remain limited by the requirement to issue disclosure documents to investors.

One exception to the disclosure requirement is the "small scale offerings" exception which provides that personal offers (made to people who are likely to be interested in the offer given previous contact or connection with the company) do not require disclosure to investors if:



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- none of the offers results in the number of people to whom securities have been issued exceeding 20 in any 12 month period (the 20/12 rule); and
- none of the offers results in the amount raised by issuing securities exceeding \$2 million in any 12 month period

The paper seeks feedback on whether increasing the shareholder limit for proprietary companies and/or expanding the “small scale offerings” exception to the disclosure requirements would effectively facilitate fundraising by proprietary companies without the complexity of introducing a specific regime for these companies.

- *A CSEF model for proprietary companies*

In general, the framework is likely to take the same approach as for public companies. This includes obligations for intermediaries and measures to protect investors. The items discussed in the paper are:

<i>Shareholder limit</i>	The paper seeks feedback on: whether the shareholder limit should be changed for all proprietary companies or specifically for proprietary companies using CSEF; whether a cap of 100 non-employee shareholders is appropriate; whether any increase in shareholder limit should be temporary while using CSEF (based on time and size) and what happens when the time limit expires of the size cap is exceeded.
<i>Transparency obligations</i>	The paper seeks feedback on whether proprietary companies using CSEF should be subject to additional transparency obligations when raising funds via CSEF such as annual reporting and audit requirements.
<i>Eligibility</i>	The paper proposes that eligibility criteria for proprietary companies be consistent with the eligibility criteria for public companies using CSEF (being companies with annual turnover and gross assets less than \$5 million). The paper seeks feedback as to whether this criteria is appropriate.
<i>Fundraising</i>	Public companies that undertake CSEF will be required to provide a tailored CSEF disclosure document and the paper suggests that if proprietary companies are able to access CSEF then it would be appropriate for such companies to provide a similar disclosure document. Public companies making a CSEF offer will be limited to raising \$5 million in a 12 month period (inclusive of any raisings under the small scale offerings exception but excluding funds raised under existing prospectus exemptions for wholesale investors). The paper discusses whether the cap for proprietary companies should also be set at \$5 million or whether a lower fundraising cap such as \$1 million should be set in recognition of their lower corporate governance and disclosure obligations. The paper indicates that a lower fundraising cap would also be consistent with the amount of funds a proprietary company could feasibly raise from CSEF if they were subject to both a cap on the number of non-employee shareholders and to the investment cap for retail investors of \$10,000 per issue per 12 months period.



2 Reducing compliance costs for small proprietary companies

The Government has said it would examine the regulatory framework for small proprietary companies under the *Corporations Act 2001* (**Corporations Act**) to identify ways to reduce compliance costs and make capital raising more flexible.

A proprietary company is classified as small if it meets at least 2 of the following criteria for a financial year:

- consolidated revenue less than \$25 million
- consolidated gross assets less than \$12.5 million
- fewer than 50 employees

The paper considers whether it may be possible to simplify the following regulatory requirements imposed on small proprietary companies by the Corporations Act:

<i>Making an annual solvency resolution</i>	The directors of a company are required to pass a solvency resolution each year to certify that the company is able to pay its debts as and when they become due and payable. Given the directors' duty to prevent insolvent trading at all times, the paper seeks feedback on whether the requirement to pass the solvency resolution should be removed or modified.
<i>Maintaining a share register</i>	Companies are required to establish and maintain certain registers so that, among other things, the public is able to examine certain information about the company. The paper seeks feedback on whether the requirement to maintain a share register should be removed for small proprietary companies with up to 20 shareholders given ASIC's records duplicate the information in the share register for such companies.
<i>Facilitating the execution of documents</i>	The paper seeks feedback on whether it is appropriate to amend the Corporations Act: <ul style="list-style-type: none">• so that a company with a sole director but no company secretary can sign a document by only the sole director• to recognise split signing of documents (signing in counterpart)• to deal with signing of deeds by foreign corporations
<i>Completing and lodging forms with ASIC</i>	The paper suggests that the requirement to lodge information with ASIC which is unnecessary or redundant is a source of regulatory burden for small proprietary companies and seeks feedback on whether any prescribed forms should be removed, amended or streamlined.

The paper also seeks feedback on whether there are any other requirements under the Corporations Act which impose unnecessary compliance burdens on small proprietary companies.