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SUBMISSION ON FACILITATING CSEF AND REDUCING COMPLIANCE COSTS FOR SMALL BUSINESSES

In response Treasury's invitation and as a stakeholder with an interest in crowd funding, we submit the following responses to the government's consultation paper on Facilitating Crowd Sourced Equity Funding and Reducing Compliance Costs for Small Businesses, released in August 2015.

Question 1 and 2

Increasing the cap on shareholders in small proprietary companies from 50 to 100, for example, is unlikely to further alienate shareholders, or expose them to additional risks. As it is, 50 shareholders probably surpasses the limit at which a company could be considered "closely held". If the cap on small proprietary companies is not to be lowered, it would make little practical difference if the cap was increased to 100.

Question 3

Mail distribution software and private platforms can be used effectively to communicate information and updates to a large group of people almost immediately without the need for circulating information or calling physical meetings.

Businesses and companies are generally more accountable since the advent of social media. Social media demands that business have a strong public profile in order to be competitive and the public now expects ready access to information about the products they buy, consumer, or otherwise.

Question 4

Public companies that are eligible to become proprietary companies should have their governance requirements reduced and be required to remove and desist making public offers from the date they change over.

A previous public offer may have attracted interest from people who would otherwise not have been aware of the offer, but those people would have had access to a disclosure document. The company's other responsibilities as a public company may be phased out gradually.

Question 5

The \$2 million cap for small-scale offerings should be increased. It was imposed in 2001 and was a conservative amount then. From our experience in the industry, the cap can act to restrict small to medium sized businesses in their scope and planning.

For an investment round to substantially grow a business, we submit that \$4 million would be a more appropriate level, averaging \$200,000 per investor.

Question 6

Small proprietary companies would benefit from an increase in the investment cap amount in that they would be able to accelerate their business rapidly at a low cost. It would also give companies more flexibility when negotiating funding.

On the other hand, investors potentially have more to lose if a business fails and introducing large amounts of capital into a business at the beginning could mean that it grows disproportionately to the market.

Question 7

Expanding the other available exceptions to the disclosure requirements is not likely to benefit small proprietary companies. Most of the exceptions relate to specific situations and are not accessible, or are unsuited to capital raising for business growth.

Question 8

Increasing the shareholder limit and/or expanding the small-scale offering may give small proprietary companies slightly more scope when fundraising. However most small proprietary companies are more concerned with the limitations of the actual mechanisms of fundraising available and their dependence on wealthy investors than they are with the limits on the amount they can raise and the number of shareholders.

The main hurdle for small proprietary companies in the Australian economy is ready access to private investors. Crowd Sourced Equity Funding has the potential to give small proprietary companies wide exposure to investors in a modern and accessible market forum.

Question 9

Proprietary companies would benefit greatly from having access to CSEF. The current framework is unsuited to facilitating CSEF for proprietary companies and a new, specially designed regulatory regime should be created to sit alongside the current fundraising framework.

Question 10

Giving small proprietary companies access to CSEF is meaningless if the shareholder limit does not change. As mentioned above, CSEF should have its own legal framework. CSEF companies should have a higher limit on shareholders and in return be required to adhere to higher governance and reporting obligations.

The benefits and risks of this approach have been discussed in detail in the previous CAMAC Report on CSEF. In summary, the benefits are that CSEF will tap into an underexploited market of investors, giving small, otherwise under-resourced companies, the opportunity to access capital and grow.

In respect to the risks involved, the main concern is that lower disclosure and governance requirements will increase the risk of inexperienced investors losing their money by investing in undeveloped, untested or fraudulent companies. However this could be mitigated by higher disclosure requirements, public communication forums for investors and by requiring companies to first reach a certain level of pledges before any money is transferred or shares received. This system has been adopted with success in New Zealand.

The opportunity CSEF presents to develop and modernise the Australian investments market seems to outweigh the risks – all of which can be managed without undue complexity.

A cap of 100 is still too much too low for CSEF to be a genuine alternative fundraising option. CSEF is characterised by large numbers of small investments. The limit would need to be at least 500 - 1000. Appropriate safeguards could be put in place in regards to access to information and limits on contributions.

When it comes to CSEF, it would be more appropriate to limit the amount each shareholder can invest than put a low limit on the number of shareholders.

Question 11

CSEF should be made available to small start up companies. Their need of an alternative, cheaper, more flexible fundraising model is what justifies the lower disclosure and reporting requirements that distinguish CSEF offers from public offers.

Proprietary companies using CSEF should be required to convert to public companies at the earlier of an appropriate time limit, or reaching an appropriate level of turn-over (the recent changes to Division 83A of the Income Tax Assessment Act 1997 could be used as a model).

Question 12

Proprietary companies using CSEF could be subject to lower transparency obligations than those of public companies using CSEF in exchange for a lower cap on annual fundraising (eg. \$2 million) and on the amount each investor can contribute.

Questions 15 – 24:

In our experience, making an annual solvency resolution and keeping a share register are not significant burdens on proprietary companies and serve a useful purpose in turning directors' minds to these important issues.

Question 27:

It is common for directors to be living in different cities and we have often had clients asking if there is a more efficient way of signing documents than getting in the same room together or sending hard copies of the documents around the country. People now expect to be able to conduct business effectively from numerous locations and the proper execution of documents can often be a bottleneck in operations. The law clearly needs to modernise in this respect and split execution would go a long way to resolving the issue.

Yours sincerely,



Joel Cranshaw
Director