



CROWD-SOURCED EQUITY FUNDING

2018

For small to medium businesses in conducting capital raises including Crowdfunding.

▶ | INTRODUCTION

Ramsden Lawyers has quickly established itself as the pre-eminent Gold Coast Crowd-Sourced Equity Funding ('**Crowdfunding**') law firm following recent changes to the Corporations Act 2001 (Cth). As a result of our firm's existing networks with both established M&A players and emerging start-up entrepreneurs, we are well-placed to provide you with the legal expertise and industry connections necessary to utilise Crowdfunding as part of your business strategy.



1 | WHAT IS CROWDFUNDING ?

On 29 September 2017, the Corporations Amendment (Crowd-Sourced Funding) Act 2017 (Cth) became effective ('**CSF Act**'). It provides companies with an alternative means to raise equity capital through an online platform operated by a service provider that holds a CSF AFSL ('**Intermediary**').

The CSF Act provides various exemptions and modifications to the usual disclosure and compliance requirements of capital raising with a view to making investment from retail investors more easily accessible for smaller companies and start-ups. CSF works by allowing unlisted public companies with less than \$25 million in assets and annual revenue to make offers of ordinary shares to retail clients through an Intermediary.

2 | WHAT ARE THE RESTRICTIONS ON OFFERS ?

The following restrictions apply to Crowdfunding offers:

(A)	Retail investors must receive a five-day 'cooling-off period' during which they may withdraw from the offer and must sign a risk acknowledgement;
(B)	A maximum of \$5 million can be raised in any rolling 12-month period using the CSF regime and certain other prior offers (' Issuer Cap '); and
(C)	A maximum of \$10,000 can be raised per retail investor (' Retail Cap ').

The Issuer Cap does not restrict the Company from later conducting additional capital raises should the Board consider it to be in the Company's best interests to do so (eg through small scale personal offers or pursuant to an AFSL).

3 | WHO CAN UNDERTAKE CROWDFUNDING ?

In order to undertake CSF an Issuer must (among other things):

- a. be registered or converted to an unlisted public company limited by shares;
- b. have gross assets and annual revenue each less than \$25 million at the time of offer;
- c. have a principal place of business and majority of directors ordinarily residing in Australia;
- d. not have a substantial purpose of investing in securities/interests in other entities;
- e. limit the funds it directly or indirectly raises to the Issuer Cap and abide by the Retail Cap;
- f. engage an Intermediary to operate and host a platform through which to publicise your offer; and
- g. expressly state in your offer document that the offer is made pursuant to the CSF regime and is for the issue of new fully paid ordinary shares.

The process outlined above is however subject to pending legislative changes that may allow private companies to engage in CSF without converting to a public company, should they agree to certain additional obligations. These changes have now received royal assent and will become operational later in 2018.

4 | HOW CAN AN OFFER BE MADE ?

An offer must be made through a disclosure document called an 'offer document' that contains important information and a prescribed risk warning. Offers on the Intermediary's platform close at the earlier of:

- a. three months after being made;
- b. in accordance with the offer document;
- c. when the offer is fully subscribed;
- d. when the offer is withdrawn; or
- e. when an Intermediary's obligations require that it be removed.

While an offer document must be comprehensive (eg by including important details of the company, its business and associated risks), it does not require the same level of detail as a prospectus.



5 | ASSISTING CROWDFUNDING ?

Ramsden Lawyers can provide comprehensive restructuring advice and ongoing corporate advisory services to both businesses looking to conduct Crowdfunding and Intermediary's seeking to uphold their general AFSL and specific Intermediary obligations.

For Crowdfunding businesses, Ramsden Lawyers are experts at:

- a. outlining the various benefits and risks of Crowdfunding and providing an overview of the process and requirements;
- b. identifying the most optimal target market for your offer;
- c. developing a funding strategy that blends Crowdfunding with other available alternatives (such as small-scale offerings, debt facilities, and so on);
- d. assisting you to establish important details such as terms of the offer;
- e. ensuring your internal policies and governance satisfy legislative requirements and are sufficiently robust to take on additional shareholders; and
- f. providing ongoing corporate advisory services both during and after the Crowdfunding raise.

6 | ASSISTING INTERMEDIARIES ?

We can assist prospective Intermediaries to conduct the necessary AFSL application required to become licensed. For existing Intermediaries, we can assist you in meeting obligations specific to your Intermediary status (as well as your general AFSL obligations). In broad terms, these requirements are designed to ensure market integrity and investor confidence.

As an Intermediary you will be responsible for (among other things):

- a. conducting active due diligence on Crowdfunding campaigns and companies;
- b. providing market warnings;
- c. publishing offer documents;
- d. issuing warnings;
- e. holding monies on trust pending offer completion; and
- f. likely contracting with a share registry or similar third party to give effect to transfers.

From a regulatory perspective, ASIC is particularly concerned with ensuring market integrity by requiring that Intermediaries prevent investors being misled and maintain robust conflict of interest mechanisms due to the dependence of Intermediaries' remuneration on hosting successful capital raises on their platform.

Ramsden Lawyers can assist Intermediaries by explaining in detail your obligations to monitor offers on your platform to ensure they are not misleading or deceptive, meeting compliance obligations and ensuring the appropriate legal and risk disclaimers are made.

Ramsden Lawyers are also experts in conducting due diligence on businesses seeking to Crowdfund on your platform and can provide these services on an ongoing basis. We can also assist Intermediaries to establish 'nominee' entities that group together new investors into a special purpose vehicle to reduce administrative burdens.



Ramsden Lawyers regularly assists small to medium businesses in conducting capital raises including Crowdfunding. We can also assist Intermediaries in AFSL applications/ variations and achieving general compliance. Should you require our assistance please do not hesitate to contact us via our [online enquiry system](#) or alternatively on (07) 5592 1921.





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