



## **Corporations Amendment (Crowd-sourced Funding) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 June 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Scott Morrison  
Treasurer

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## 1 Name

This instrument is the *Corporations Amendment (Crowd-sourced Funding) Regulations 2017*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the time Schedule 1 to the <i>Corporations Amendment (Crowd-sourced Funding) Act 2017</i> commences; and (b) the start of the day after this instrument is registered.	28 September 2017 (paragraph (a) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Corporations Regulations 2001*

#### 1 After Part 6D.2

Insert:

### Part 6D.3A—Crowd-sourced funding

#### 6D.3A.01 Offers that are eligible to be made under Part 6D.3A of the Act

##### *Class of securities*

- (1) For the purposes of paragraph 738G(1)(c) of the Act, this subregulation specifies fully-paid ordinary shares as a class of securities.

Note: Paragraph 738G(1)(c) of the Act requires securities to be of a class specified in the regulations for an offer for the issue of the securities to be eligible to be made under Part 6D.3A of the Act.

##### *Other requirements*

- (2) For the purposes of paragraph 738G(1)(f) of the Act, this subregulation specifies the requirement that the funds sought to be raised by the offer are not intended by the company to be used, to any extent, by:
  - (a) the company to issue a credit facility (within the meaning of regulation 7.1.06) to a related party of the company; or
  - (b) a related party of the company to issue a credit facility (within the meaning of regulation 7.1.06) to the company or to another related party of the company.

#### 6D.3A.02 Contents of CSF offer document—general

- (1) For the purposes of subsection 738J(2) of the Act, this regulation, and regulations 6D.3A.03, 6D.3A.04, 6D.3A.05 and 6D.3A.06, specify the information that must be contained in a CSF offer document for a CSF offer of securities (the *securities on offer*) made by a company (the *offering company*).
- (2) Subregulation (1) does not prevent a CSF offer document from containing other information.
- (3) The offer document must contain a table of contents and sections dealing with the following matters:
  - (a) Section 1: Risk warnings;
  - (b) Section 2: Information about the offering company;
  - (c) Section 3: Information about the offer;
  - (d) Section 4: Information about investor rights.

#### 6D.3A.03 Contents of CSF offer document—Section 1: Risk warnings

The following statement must be set out in section 1 of the offer document:

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“Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

#### **6D.3A.04 Contents of CSF offer document—Section 2: Information about the offering company**

- (1) The following information must be contained in section 2 of the offer document:
  - (a) the name, ACN and type of the offering company;
  - (b) the address of the registered office of the offering company;
  - (c) the address of the principal place of business of the offering company;
  - (d) the names of each of the following persons, as well as his or her skills and experience relevant to the management of the offering company:
    - (i) each director of the offering company, and any person proposed by the offering company to be a director of the offering company;
    - (ii) each senior manager of the offering company, and any person proposed by the offering company to be a senior manager of the offering company;
  - (e) a description of the offering company’s business and its organisational structure;
  - (f) a description of the capital structure of the offering company (relating to both equity and debt in the offering company), including the classes (if any) of securities in the offering company, and the rights associated with the securities in the offering company;
  - (g) a description of the main risks facing the offering company’s business.

Note: For paragraph (a), the offering company will be one of the types set out in subsection 112(1) of the Act.

- (2) Section 2 of the offer document must also contain a copy of:
  - (a) if the offering company was registered before the financial year in which the CSF offer is to be made—the financial statements, that comply with the accounting standards, for the company for the most recently completed financial year; or

- (b) if the offering company was registered during the financial year in which the CSF offer is to be made—the financial statements for the company for at least so much of that financial year as ends 1 month before the CSF offer is to be made.
- (3) Section 2 of the offer document must also contain the following information:
- (a) if the offering company, or any person referred to in paragraph (1)(d), has been convicted of an offence against the Act—details of the offence, including a description of the circumstances giving rise to it;
  - (b) if a civil penalty under the Act has been imposed on the offering company, or any person referred to in paragraph (1)(d)—details of the penalty, including a description of the circumstances giving rise to it;
  - (c) if a person referred to in paragraph (1)(d) is or has been disqualified from managing corporations under Part 2D.6 of the Act—details of the disqualification, including a description of the circumstances giving rise to it;
  - (d) if a person referred to in paragraph (1)(d) is or has been subject to a banning order under section 920A of the Act—details of the order, including a description of the circumstances giving rise to it;
  - (e) if a person referred to in paragraph (1)(d) is or has been subject to a court order under paragraph 921A(2)(a) of the Act—details of the order, including a description of the circumstances giving rise to it;
  - (f) if a person referred to in paragraph (1)(d) is or has been a director, secretary or senior manager of a corporation when it became insolvent—details of the insolvency, including a description of the circumstances giving rise to it;
  - (g) if ASIC has accepted under subsection 93AA(1) of the ASIC Act an undertaking given by the offering company, or by any person referred to in paragraph (1)(d) in relation to the offering company—details of the undertaking, including a description of the circumstances giving rise to it;
  - (h) if, during the 10-year period before the CSF offer is to be made, the offering company has:
    - (i) been convicted of any offence other than one against the Act; or
    - (ii) had imposed on it any penalty under any law other than the Act;details of the offence or penalty, including a description of the circumstances giving rise to it;
  - (i) if, during the 10-year period before the CSF offer is to be made, any person referred to in paragraph (1)(d) has, in any of the capacities referred to in that paragraph with any company:
    - (i) been convicted of any offence other than one against the Act; or
    - (ii) had imposed on him or her a penalty under any law other than the Act;details of the offence or penalty, including a description of the circumstances giving rise to it.

#### **6D.3A.05 Contents of CSF offer document—Section 3: Information about the offer**

- (1) The following information must be contained in section 3 of the offer document:
- (a) a description of the securities on offer, including a description of the rights associated with those securities;



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- (b) the minimum subscription amount for the offer (see subsection 738L(8) of the Act);
  - (c) the maximum subscription amount for the offer (see subsection 738L(7) of the Act);
  - (d) the period that the offering company expects the offer to remain open;
  - (e) a description of how the offering company intends to use the proceeds from the offer (including a description of how the company intends to use any proceeds of the offer in excess of the minimum subscription amount for the offer).
- (2) If any of the proceeds of the offer will be paid, directly or indirectly, to any of the following persons, section 3 of the offer document must also contain a description of the payment:
- (a) a person referred to in paragraph 6D.3A.04(1)(d);
  - (b) the CSF intermediary that will publish the offer, or any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of that CSF intermediary;
  - (c) a person promoting or marketing the offer;
  - (d) a person that holds securities entitling the person to exercise more than 20% of the rights to vote at a general meeting of the offering company;
  - (e) a person that controls the offering company;
  - (f) any other person that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.
- (3) Without limiting subregulation (2), proceeds of the offer will be paid indirectly to a person if those proceeds will be paid for the benefit of the person by an intermediary entity such as a nominee, trust or partnership.
- (4) Section 3 of the offer document must also contain a description of each previous CSF offer (if any) of securities by the following entities:
- (a) the offering company;
  - (b) for each person referred to in paragraph 6D.3A.04(1)(d) for the offering company—any other company that had, at the time of a previous CSF offer by that other company, the person as a director or senior manager;
  - (c) for each person that controls the offering company—any other company that the person controlled at the time of a previous CSF offer by that other company;
  - (d) any other company that is a related party (within the meaning of subsection 738G(3) of the Act) of the offering company.
- (5) The description of a previous CSF offer referred to in subregulation (4) must include a description of the outcome of the offer.

#### **6D.3A.06 Contents of CSF offer document—Section 4: Information about investor rights**

- (1) The following information must be contained in section 4 of the offer document:
- (a) a description of the cooling off rights contained in section 738ZD of the Act;
  - (b) a description of the effect of subsection 738ZA(5) of the Act (responsible intermediary for CSF offer to provide communication facility).

- (2) To the extent that any of the following provisions apply to the offering company, section 4 of the offer document must also contain a description of the effect of those provisions:
- (a) subsection 301(5) of the Act (about financial accounts not required to be audited for up to 5 years);
  - (b) subsections 250N(5) and (6) of the Act (about company not required to hold an AGM for up to 5 years);
  - (c) subsections 314(1AF) and (2A) of the Act (about reduced requirements for publication of annual financial report, directors' report and auditor's report for up to 5 years).

#### **6D.3A.07 Obligation of CSF intermediary relating to their platforms—applicant risk acknowledgement**

- (1) For the purposes of paragraph 738ZA(3)(b) of the Act, this regulation sets out the requirements for an acknowledgement by a person making an application pursuant to a CSF offer.
- (2) The following statement must be set out in the acknowledgement:

“I have read the CSF offer document. I understand this document is not a prospectus and contains less information than a prospectus.

I have read the risk warning and I understand that it contains some of the important information for making a decision about investing. However:

- (a) I understand that crowd-sourced funding is risky and that I may lose my entire investment; and
- (b) I confirm that I could bear that loss without suffering undue hardship; and
- (c) I understand that I may never be able to sell my shares and the value of my investment may be diluted over time.

I am aware that I can use the communication facility to ask questions and that there is a 5 business day cooling off period in relation to this investment.”

#### **6D.3A.08 Gatekeeper obligation of CSF intermediary—checks**

- (1) For the purposes of subsection 738Q(1) of the Act, this regulation prescribes the checks that a CSF intermediary needs to conduct before publishing any of the following documents (the *offer document*) on a platform of the intermediary:
- (a) a CSF offer document (or a document purporting to be a CSF offer document);
  - (b) a supplementary CSF offer document (or a document purporting to be a supplementary CSF offer document);
  - (c) a replacement CSF offer document (or a document purporting to be a replacement CSF offer document);
- for a CSF offer of securities made by a company (the *offering company*).

*Identity of offering company*

- (2) The CSF intermediary must check the following information:
- (a) the name, ACN and type of the offering company;
  - (b) the address of the registered office of the offering company;
  - (c) the address of the principal place of business of the offering company.

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*Eligibility to crowd fund*

- (3) The CSF intermediary must check whether:
  - (a) the company satisfies the requirements in paragraphs 738H(1)(a), (b), (c), (d), (e) and (f) of the Act; and
  - (b) the offer document satisfies the requirements in subsection 738J(2) and section 738K of the Act.

*Information on directors etc.*

- (4) The CSF intermediary must check the following:
  - (a) the names and addresses of each person referred to in paragraph 6D.3A.04(1)(d);
  - (b) whether the offer document contains the information required by subregulation 6D.3A.04(3).

**6D.3A.09 Gatekeeper obligation of CSF intermediary—reasonable standard of checks**

- (1) For the purposes of subsection 738Q(2) of the Act, this regulation prescribes what constitutes a reasonable standard in relation to all the checks referred to in regulation 6D.3A.08.
- (2) To the extent that information to be checked is of a kind that is included in a register kept by ASIC under the Act, or on ASIC's website, a reasonable standard is to check:
  - (a) whether the information is included in that register or on that website; and
  - (b) if the information is so included—whether the information is contrary to any other information that the CSF intermediary has.
- (3) Subject to subregulation (4), for all other kinds of information or matters to be checked, a reasonable standard is to:
  - (a) explain in writing to the offering company what information or matters are required, including the level of detail required for such information and matters; and
  - (b) require the offering company to provide such information and matters to the CSF intermediary in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.
- (4) A reasonable standard for checking whether the offer document (see subregulation 6D.3A.08(1)) satisfies the requirements in section 738K of the Act is to check the offer document in accordance with a reasonable process that the CSF intermediary has developed, documented and implemented for this purpose.

**6D.3A.10 Obligation of CSF intermediary relating to their platforms—general CSF risk warning**

- (1) For the purposes of subsection 738ZA(2) of the Act, this regulation specifies the terms of a general CSF risk warning.
- (2) Those terms are as follows:

“Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.

You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.

Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.

Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.

Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.

There are rules for handling your money. However, if your money is handled inappropriately or the person operating this platform becomes insolvent, you may have difficulty recovering your money.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.”.

## 2 After subregulation 7.1.08(3)

Insert:

- (3A) For the purposes of paragraph (b) of the definition of *exempt document or statement* in subsection 766B(9) of the Act, the following documents and statements are prescribed (and so included in the definition):
- (a) a CSF offer document that does not contain personal advice;
  - (b) a document or statement to the extent that it contains or draws information from a CSF offer document and attributes that information to the CSF offer document, if:
    - (i) the information is published on the platform on which the CSF offer document is published, and does not contain personal advice; or
    - (ii) the information is a statement made on the communication facility for the CSF offer, and does not contain personal advice;
  - (c) an advertisement or publication to the extent that the advertisement or publication:
    - (i) contains or draws information from a CSF offer document and attributes that information to the CSF offer document; and
    - (ii) does not contravene subsection 738ZG(1) of the Act; and
    - (iii) does not contain personal advice.