



# ESS SMALL BUSINESS

## CROWD-SOURCED FUNDING EQUITY RAISING PACKAGE

A new opportunity for small/medium enterprises, inventors and entrepreneurs has emerged with the passing by the Australian Senate of the Australian government's Crowd Sourced Funding Amendments to the Corporations Act on 29th September 2017.

SMEs and others now have three distinct opportunities where they can raise capital from the public without producing a prospectus. These opportunities for capital raising are:

- Crowd Sourced Funding
- Early-Stage Innovation Company
- Section 708 of the Corporations Act "Capital Raising"

The opportunity to raise capital utilising Crowd Sourced Funding has been a dream for many SMEs, inventors and entrepreneurs over recent years. Whilst there has been some criticism of certain aspects of the legislation thousands of small/medium enterprises, inventors and entrepreneurs are expected to avail themselves of the opportunity to raise capital in this unique fashion.

Most of the entities seeking to raise capital using the Crowd Sourced Funding process are expected to be small/medium sized businesses.

The government has decided that only unlisted public companies will be able to raise capital from the "crowd" utilising the crowdfunding methodology. This will mean that many proprietary limited companies will be interested in converting their current companies into an unlisted public company.

An eligible unlisted public company, which is able to raise capital utilising crowd-sourced funding, will have a turnover under \$25 million and gross assets valued at under \$25 million. If a company passes these tests it will then be able to raise up to \$5 million every 12 months from the "crowd".

The legislation has introduced a series of exemptions from the more onerous requirements for a public company which will apply for up to 5 years from the date that a proprietary limited company has converted to an unlisted public company.

These exemptions relate to:

- Holding annual general meetings.
- Audit of accounts.
- Providing "paper" annual reports.

The audit exemption will expire if the company raises more than \$1 million in capital.

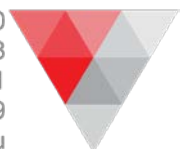
12 Eclipse Street, ROWES BAY QLD 4810

Phone: 07 4724 1118 or 1800 232 088

Fax: 07 4724 2911 Mobile: 0418 190 181

ABN: 67 078 451 439

Website: [www.esssmallbusiness.com.au](http://www.esssmallbusiness.com.au)



The legislation introduces some new titles to corporate law relating to the “gatekeepers” who are referred to as CSF Intermediaries. The Intermediaries are businesses with financial services licenses which are expressly authorised by a further license to provide a crowd funding service. In this role the Intermediary will check the CSF Offer Document and the other documentation required to be produced and will then list the company's Offer Document onto the Intermediary's website where it can remain for up to 3 months or such lesser time that has been stipulated in the Offer Document.

The first listing of companies can be made on Intermediaries' platforms (website) from 29th September 2017.

The legislation includes a restriction on the amount of money that a retail investor can invest in a company raising capital by Crowd-Sourced Funding to \$10,000 every 12 months. The legislation does not identify any minimum investment amount.

There is no restriction on the amount of investment from a sophisticated investor.

Companies will be able to raise capital by utilising a mixture of crowdfunding and raising capital utilising section 708 of the Corporations Act, if they wish.

Obviously the benefit from this legislation for small/medium enterprises, entrepreneurs and inventors is that there is an opportunity to raise money for business expansion without having to utilise extensive personal funds, second mortgages on houses, credit cards or borrowings from relatives etc.

However companies will need to be able to produce adequate documents which will form part of the CSF Offer Document to convince firstly the CSF Intermediary and the “crowd” that the company is in an “investment ready state” and that the company's directors and management team understand modern corporate practice and the immense responsibility of using other people's money in their business activities. Some of these companies will grow into very large corporations which will have significant benefits for their founders and investors.

However this “fairy tale” ending will not be achieved unless there has been strong discipline shown in the preparation of the documentation that is going to be required to be submitted to the “gatekeeper”.

Companies aspiring to raise capital from Crowd-Sourced Funding will require:

- Market Research – which identifies the potential for the company's products or services and at what price.
- Marketing Plan – which will identify the marketing activities that are proposed to be undertaken together with cost estimates for each marketing activity.
- Management Plan – which will identify key management positions within the organisation including job descriptions. If some persons have already been appointed a CV for the appointees should be prepared so that it can be incorporated within the documents.
- Team Plan – a summary of the team members including job descriptions/summary of responsibilities should be prepared.
- Corporate Chart – an overview of the management and team structure proposed for the company.
- Intellectual Property Summary – identifying the ownership of intellectual property and details of any patents, trademarks, confidentiality agreements and licenses held by the company.
- Research and Development Strategy – a summary of the processes that have been implemented for the control of research and development being undertaken within the company.
- Business Plan – incorporating the earlier documentation and identifying the directors' vision for the company for at least the next three years.



- Budgets and Cashflow Forecasts – financial projections on the vision for the company outlined in the business plan and the other supporting documents for the next three years highlighting projected capital to be raised and identifying how the capital raised will be spent by the company.
- Information Memorandum – the information memorandum is a “précis” of the business plan document including information required to be produced by the Corporations Act.
- Corporate Governance Advice – many of the Company Directors will not have experience in the operations of an unlisted public company and will require mentoring on their roles as directors by experienced accountants/advisers.

In the 2017/18 Federal Budget the Federal government indicated that there will be further consideration given to enabling proprietary limited companies to be eligible to raise capital utilising Crowd Funding. The government has now released an "exposure draft" relative to this proposed amendment. If the legislation is tabled in Parliament and subsequently passed, any amendment would probably not become operational until March/April 2018.

If you wish to proceed prior to then, you can do so by converting to an Unlisted Public Company. ASIC (Australian Securities and Investments Commission) has not yet announced the process or the cost of conversion (although the Treasurer said the cost would be low).

In the meantime, now is the time to get prepared. Why not talk to an accountant/adviser who is interested in Crowd-Sourced Funding? You can find accountants/advisers at "[Find An Accountant/Adviser](#)" and then enter your postcode.

You will be advised details of accountants/advisers in or near your postcode who have an interest in advising clients on Crowd-Sourced Funding.

If you have any further questions, please send us an email - [peter@essbiztools.com.au](mailto:peter@essbiztools.com.au).

12 Eclipse Street, ROWES BAY QLD 4810

**Phone:** 07 4724 1118 or 1800 232 088

**Fax:** 07 4724 2911 **Mobile:** 0418 190 181

**ABN:** 67 078 451 439

**Website:** [www.esssmallbusiness.com.au](http://www.esssmallbusiness.com.au)

