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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Corporations Amendment
(Crowd-sourced Funding for Proprietary
Companies) Bill 2017**

No. , 2017

(Treasury)

**A Bill for an Act to amend the law relating to
corporations, and for related purposes**

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A Bill for an Act to amend the law relating to corporations, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2017*.

2 Commencement

- (1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Corporations Act 2001

1 Section 9

Insert:

CSF audit threshold means:

- (a) unless paragraph (b) applies—\$3 million; or
- (b) any amount prescribed by the regulations for the purposes of this paragraph.

CSF shareholder, of a proprietary company, means an entity that holds one or more securities of the company due to being issued with the securities pursuant to a CSF offer by the company.

2 Subsection 45A(1) (note 2)

Repeal the note, substitute:

Note 2: A proprietary company needs to be limited by shares or be an unlimited company with a share capital (see subsection 112(1)).

Note 3: A proprietary company needs to:

- (a) have no more than 50 shareholders, although employee shareholders and shareholders connected with CSF offers do not count for this purpose; and
- (b) not do anything to require disclosure to investors under Chapter 6D (except in limited circumstances);

(see section 113).

3 Paragraph 2.1 of the small business guide in Part 1.5

After “not counting employee shareholders”, insert “, CSF shareholders, or holders of shares issued pursuant to CSF offers that have yet to be traded in certain ways”.

4 Paragraph 8 of the small business guide in Part 1.5

After “own employees or shareholders”, insert “or under a CSF offer”.

5 Paragraph 10.3 of the small business guide in Part 1.5

Omit:

- ASIC directs it to do so.
substitute:
- ASIC directs it to do so; or
- it has one or more CSF shareholders at any time during the financial year.

6 At the end of subsection 113(2)

Add:

- ; and (c) do not count as a shareholder any CSF shareholder of the company; and
- (d) do not count as a shareholder an entity, in relation to a security of the company held by the entity, if:
 - (i) that security was originally issued to another entity pursuant to a CSF offer by the company; and
 - (ii) unless the circumstances (if any) prescribed by the regulations for the purposes of this subparagraph exist—no securities of the company have been traded on a financial market (whether in Australia or elsewhere); and
 - (iii) all the other requirements (if any) prescribed by the regulations for the purposes of this subparagraph are met.

7 Subsection 113(3)

Repeal the subsection, substitute:

- (3) A proprietary company must not engage in any activity that would require disclosure to investors under Chapter 6D, except for:
 - (a) an offer of its shares to:
 - (i) existing shareholders of the company; or
 - (ii) employees of the company or of a subsidiary of the company; or
 - (b) a CSF offer.

8 Paragraph 117(2)(mc)

Repeal the paragraph.

9 Subparagraphs 163(2)(d)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) a copy of each document (including an agreement or consent) or resolution that is necessary to ascertain the rights attached to issued or unissued shares of the company.

10 After subsection 169(6)

Insert:

Proprietary companies that have made CSF offers

(6AA) The register of a proprietary company that has made one or more CSF offers must also show:

- (a) the date on which every issue of shares in the company pursuant to each CSF offer takes place; and
- (b) the number of shares issued pursuant to each CSF offer; and
- (c) the shares issued to each member pursuant to each CSF offer; and
- (d) the date on which an entity ceases to be a CSF shareholder of the company for a particular share in the company;

during any period in which the company has one or more CSF shareholders.

11 At the end of paragraph 178A(1)(b)

Add:

- ; (ix) subsection 169(6AA) (shares issued as a result of CSF offers).

12 At the end of subsection 178C(1)

Add:

- ; (d) that the company has started to have one or more CSF shareholders;
- (e) that the company has ceased to have any CSF shareholders.

13 After subsection 201A(1)

Insert:

(1A) However, a proprietary company must have at least 2 directors while the company has one or more CSF shareholders. Of those directors:

- (a) if there are only 2 of them—at least one of them must ordinarily reside in Australia; or
- (b) otherwise—a majority of them must ordinarily reside in Australia.

Note: The company must also have at least 2 directors when making the CSF offer (see paragraph 738H(1)(a)).

14 At the end of subsection 254X(1) (before the notes)

Add:

- ; and (f) if the company is a proprietary company and the shares are issued pursuant to a CSF offer—that the company has one or more CSF shareholders as a result of the issuing of the shares.

15 At the end of subsection 254Y(1) (before the note)

Add:

- ; and (e) if the company is a proprietary company that has made one or more CSF offers—whether the cancellation has resulted in the company ceasing to have any CSF shareholders.

16 Subsection 285(1) (table item 3, column headed “comments”)

Before “A small proprietary company”, insert “A small proprietary company preparing a financial report because it has CSF shareholders only has to have an audit if it has raised a total equal to or exceeding the CSF audit threshold from CSF offers.”.

17 Subsection 285(1) (table item 3, column headed “comments”)

Omit “under s. 293 only”, substitute “under section 293 usually only”.

18 After paragraph 292(2)(b)

Insert:

; or (c) it has one or more CSF shareholders at any time during the financial year.

19 At the end of subsection 296(1A)

Add:

; and (c) paragraph 292(2)(c) (about having CSF shareholders) does not apply to the company for the financial year.

20 Subsection 298(1AC)

Repeal the subsection, substitute:

(1AC) This subsection covers a company if the company has not had its financial report for the relevant financial year audited because subsection 301(2) or (5) exempts it from the requirement to do so under subsection 301(1).

21 At the end of subsection 298(3)

Add:

; and (c) paragraph 292(2)(c) (about having CSF shareholders) does not apply to the company for the financial year.

22 Subsection 301(2)

Repeal the subsection, substitute:

Small proprietary companies

(2) A small proprietary company's financial report for a financial year does not have to be audited if:

(a) the report is required only because of:

(i) paragraph 292(2)(c) (about having CSF shareholders);
or

(ii) a direction under section 293; or

(iii) both paragraph 292(2)(c) and a direction under section 293; and

(b) in a case where subparagraph (a)(i) or (iii) applies—as at the end of the financial year, the company has raised a total less

than the CSF audit threshold from all the CSF offers it has ever made; and

- (c) in a case where subparagraph (a)(ii) or (iii) applies—the direction did not ask for the financial report to be audited.

23 Paragraph 314(1)(a)

After “reports”, insert “(that are required to be prepared)”.

24 Subsection 314(1AF)

Repeal the subsection, substitute:

(1AF) If a company:

- (a) is a public company that is covered under section 738ZI at the end of the financial year mentioned in subsection (1); or
- (b) is a small proprietary company that has one or more CSF shareholders at any time during the financial year mentioned in subsection (1);

it may provide the reports, or the concise report, for that financial year by making a copy of the reports, or the concise report, readily accessible on a website. The company also need not comply with subsection (1AB).

25 Subsection 314(2A)

Repeal the subsection, substitute:

(2A) If paragraph (1AF)(a) or (b) applies to the company for the financial year mentioned in subsection (1), apply subsection (2) to the company in relation to that financial year with the following modifications:

- (a) insert the words “if the company’s financial report for the year is required to be audited—” at the start of each of paragraphs (2)(c) and (d);
- (b) omit the words “and that the full financial report and auditor’s report will be sent to the member free of charge if the member asks for them” in paragraph (2)(e).

26 Paragraph 319(2)(a)

Repeal the paragraph, substitute:

- (a) a small proprietary company that prepares a report in response to:
 - (i) a shareholder direction under section 293; or
 - (ii) an ASIC direction under section 294;if paragraph 292(2)(c) (about having CSF shareholders) does not also apply to the company for the financial year; and

27 Subsection 324CH(1) (table items 1 to 9)

Omit “the audited body is a small proprietary company”, substitute “subsection (3A) (about small proprietary companies) applies to the audited body”.

28 After subsection 324CH(3)

Insert:

Small proprietary companies

- (3A) This subsection applies to an audited body for a financial year if the body:
 - (a) is a small proprietary company for the financial year; and
 - (b) either:
 - (i) does not have any CSF shareholders at any time during the financial year; or
 - (ii) has, as at the end of the financial year, raised a total less than the CSF audit threshold from all the CSF offers it has ever made.

29 Paragraphs 324CI(e), 324CJ(e) and 324CK(e)

Repeal the paragraphs, substitute:

- (e) subsection 324CH(3A) (about small proprietary companies) does not apply to the audited body for the most recently ended financial year.

30 Section 325

Before “The”, insert “(1)”.

31 At the end of section 325

Add:

- (2) The directors of a proprietary company must ensure that there is an auditor for the company at all times during the period:
- (a) starting 1 month after:
 - (i) the time the company first raises a total equal to or exceeding the CSF audit threshold from all the CSF offers it has ever made; or
 - (ii) if the period starting because of subparagraph (i), or because of an earlier operation of this subparagraph, has ended—the time the company makes a later CSF offer; and
 - (b) when the company ceases to have any CSF shareholders at a later time in a particular financial year—ending when the company’s financial report for that financial year has been audited.
- (3) However, subsection (2) does not apply for any period of 1 month or less starting when a vacancy occurs in the office of auditor of the company (however that vacancy is caused).
- (4) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (2).

32 Section 327E (heading)

Repeal the heading, substitute:

327E ASIC may appoint a company auditor if auditor removed but not replaced

33 Subsection 327E(1)

Repeal the subsection, substitute:

- (1) This section applies if:
- (a) the directors of a proprietary company fail to appoint an auditor under subsection 325(2); or
 - (b) a public company fails to appoint an auditor under subsection 327D(2) or (3).

The failure is referred to as the *auditor replacement failure*.

34 Subsection 327E(6)

Repeal the subsection, substitute:

- (6) Subject to this Part, an auditor appointed under this section holds office until:
 - (a) for a proprietary company—the company’s next general meeting; or
 - (b) for a public company—the company’s next AGM.

35 Section 327F (heading)

Repeal the heading, substitute:

327F ASIC’s general power to appoint a company auditor

36 Subsection 327F(1)

After “public company”, insert “, or of a proprietary company that has one or more CSF shareholders.”.

37 Paragraph 327F(1)(a)

Repeal the paragraph, substitute:

- (a) the company or its directors fail to appoint an auditor when required by this Act to do so; and

38 Subsection 327F(2)

Repeal the subsection, substitute:

- (2) Subject to this Part, an auditor appointed under this section holds office until:
 - (a) for a proprietary company—the company’s next general meeting; or
 - (b) for a public company—the company’s next AGM.

39 Section 327G (heading)

Repeal the heading, substitute:

327G Restrictions on ASIC's powers to appoint a company auditor

40 Section 611 (after table item 19)

Insert:

Proprietary companies that have CSF shareholders

- 19A An acquisition of a relevant interest in issued voting shares in a proprietary company if:
- (a) the company has one or more CSF shareholders; and
 - (b) all the other requirements (if any) prescribed by the regulations for the purposes of this paragraph are met.

41 Paragraph 738H(1)(a)

Repeal the paragraph, substitute:

- (a) the company is a public company limited by shares, or the company is a proprietary company that:
 - (i) has at least 2 directors; and
 - (ii) meets all the other requirements (if any) prescribed by the regulations for the purposes of this subparagraph;

42 Section 738ZI

Before "A company", insert "(1)".

43 Paragraph 738ZI(a)

Repeal the paragraph, substitute:

- (a) the company:
 - (i) was registered as a public company limited by shares under Part 2A.2 in response to an application lodged under section 117 before the eligibility end day; or
 - (ii) was converted from a proprietary company to a public company limited by shares under Part 2B.7 in response to an application lodged under section 163 before the eligibility end day; and

44 At the end of section 738ZI

Add:

- (2) In this section:

eligibility end day means the day Part 1 of Schedule 1 to the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2017* commences.

45 At the end of Division 7 of Part 6D.3A

Add:

738ZK Related party transactions—proprietary companies that have one or more CSF shareholders

Chapter 2E applies to a proprietary company that has one or more CSF shareholders as if references to a public company were instead references to such a proprietary company.

46 Schedule 3 (after table item 116KB)

Insert:

116KM	Subsection 325(4)	25 penalty units or imprisonment for 6 months, or both.
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Part 2—Other amendments

Corporations Act 2001

47 Paragraph 301(5)(b)

Omit “\$1 million”, substitute “\$3 million”.

48 Section 328D (heading)

Repeal the heading, substitute:

328D Public company auditor (appointment of auditor when \$3 million raised using crowd-sourced funding)

49 Subsection 328D(1)

Omit “\$1 million”, substitute “\$3 million”.

50 Paragraph 738H(1)(e)

Repeal the paragraph, substitute:

- (e) neither the company, nor any related party of the company, is:
 - (i) a listed corporation; or
 - (ii) included in an official list of a financial market operated outside this jurisdiction;

51 Subsections 738X(7) and (9)

Omit “one month”, substitute “14 days”.

52 In the appropriate position in Chapter 10

Insert:

**Part 10.31—Transitional provisions relating to the
Corporations Amendment (Crowd-sourced
Funding for Proprietary Companies) Act
2017**

1643 Application of amendments

The amendments made by items 50 and 51 of Schedule 1 to the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2017* apply in relation to CSF offers made at or after the commencement of those items.