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

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Date introduced: 14 September 2017
House: House of Representatives
Portfolio: Treasury
Commencement: If passed, the Bill would commence the day after Royal Assent. The main provisions of the Bill would commence six months after the date of Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at February 2018.
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Purpose of the Bill
The Bill would extend the existing crowd-sourced funding (CSF) regime to proprietary companies.

Background
The Corporations Amendment (Crowd-sourced Funding) Act 2017 amended the Corporations Act 2001 to allow unlisted public companies to raise monies via the mechanism known as ‘crowd sourcing’. That Act received royal assent on 28 March 2017, and the amendments commenced on 28 September 2017.1

The main features of the current CSF regime are explained in the ASIC Regulatory Guide 261 Crowd-sourced funding: Guide for public companies.2 That guide sets out the main features of the current CSF regime as follows:3

• unlisted public companies (excluding investment companies) with less than $25 million in consolidated assets and annual revenue that have their principal place of business and a majority of directors in Australia are eligible to participate in the CSF regime

• eligible companies can raise up to $5 million in any 12-month period (the ‘issuer cap’)

• retail investors have an investment cap of $10,000 per company in any 12-month period (the ‘investor cap’) and a cooling-off period allowing them to withdraw from a CSF offer up to five days after making an application. A prescribed general risk warning statement must be provided in the CSF offer document and on the CSF intermediary’s platform. Retail investors must acknowledge that they have read and understood the warning before applying for shares. Advertising of CSF offers is permitted, subject to certain rules designed to direct investors to the general risk warning and CSF offer document for the offer

• CSF offers can only be made via a licensed CSF intermediary’s platform

• companies making CSF offers must prepare a CSF offer document that includes prescribed minimum information. There are consequences if the disclosure is defective

• the CSF intermediary:
  – must hold an Australian financial services (AFS) licence with an authorisation to provide a crowd-funding service
  – performs checks on the offering company, its directors and the CSF offer document
  – performs checks on investors, including assessing whether an investor is a retail client, and holds investor money on trust
  – operates a platform for CSF offers and
  – has an obligation to suspend or close a CSF offer in certain circumstances (e.g. where the CSF offer document is defective).

• companies making CSF offers that also meet certain eligibility criteria do not have to comply with certain reporting, audit and AGM obligations that would usually apply to public companies, for up to five years. The concessions cease to apply where a company no longer meets the eligibility requirements or does not complete a successful CSF offer within a 12-month period. The audit concession ceases in the above circumstances or when a company raises over $1 million through CSF offers.

At the time the Bill for the Corporations Amendment (Crowd-sourced Funding) Act 2017 was debated in the Parliament, the Treasurer advised the House that he had ‘instructed Treasury to continue developing a framework for proprietary companies as a priority’ and that he expected to expand the CFS regime to proprietary companies in the ‘near future’.4

This Bill would provide for the extension of the CSF regime to proprietary companies as foreshadowed by the Treasurer.

1. Corporations Amendment (Crowd-sourced Funding) Act 2017, s. 2.
3. Ibid., p. 6.
Committee consideration
At the time of writing, the Bill had not been referred to a Committee.

Senate Standing Committee for the Scrutiny of Bills
The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.⁵

Policy position of non-government parties/independents
There has been little public commentary on the Bill, and non-government parties and independents have not expressed a view of the Bill. However, in the debate on the earlier Corporations Amendment (Crowd-sourced Funding) Bill 2016, several parties expressed support for extending the CSF regime to proprietary companies. For example:

• Shadow Minister for Small Business and Financial Services, Senator Gallagher (ALP), stated:
  
  We believe a crowdsourcing funding resume needs to be easily accessible, fair and backed up with reasonable investor protection. Businesses should not be forced to change to public companies to access equity crowdfunding — simple as that. The decision to make a company publicly listed should be made by businesses when they are good and ready and not by the government. Why should smaller businesses spend a lot a money just to raise some money?⁶

• Senator Xenophon (NXT) spoke in support of extending the CSF regime to proprietary companies.⁷

However, Senator Whish-Wilson (Greens) expressed some concerns about extending the CSF regime to proprietary companies:

  There are a number of extra risks associated with the proprietary limited structure versus the publicly listed structure. I still have some concerns about publicly listed structures in this overall debate and how easily they may be manipulated by unscrupulous promoters—but at least they have reporting requirements. ... I welcome the government continuing to work on the issue of giving broader access to proprietary limited companies, but at this point in time I think that is even risker than the proposal that we have in front of us.⁸

Position of major interest groups
A draft of the Bill was released for public consultation on 10 May 2017.⁹ Submissions closed on 6 June 2017 and 21 public submissions were received.¹⁰

The submissions were all supportive of the extension of the CSF regime to proprietary companies. However, the submission raised several issues with the draft legislation.

50 non-employee member limit
The draft legislation would have included any CSF shareholders within the 50 non-employee shareholder limit applying to proprietary companies generally, which would have forced any proprietary company that began to have more than 50 non-employee shareholders because of a CSF offer to convert to a public company—effectively removing any benefit from expending the CSF regime to proprietary companies. Moreover, under the draft legislation, shares acquired otherwise than via an initial CSF offer would have not been CSF shares for the purpose of the CSF regime, and therefore would have then counted towards the 50 non-employee shareholder limit. CSF shares affected might have included CSF shares that were inherited, or that were purchased in a secondary market.

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⁹. The Treasury, "Extending Crowd-sourced Equity Funding (CSEF) to proprietary companies", The Treasury website, 10 May 2017.
¹⁰. Ibid.
Several submissions called for changes to the Bill that would have prevented these anomalous or undesirable consequences. The Bill as introduced has addressed these issues by carving out CSF shareholders from the 50 non-employee shareholder limit.

**Debate about auditing threshold**

The draft legislation proposed a $1 million CSF capital threshold under which proprietary companies would not be required to be audited.

The Australian Institute of Company Directors proposed removing the audit threshold altogether, or reducing it substantially:

> The AICD is concerned about the proposed exemption from any audit or annual review requirement for proprietary companies until they raise more than $1 million from CSEF [crowd-sourced equity funding] offers. Investors in these companies would be left to rely on the financial reports and directors’ reports. While these reports must be prepared in accordance with accounting standards, investors would be without independent assurance that the financial reports have been properly prepared. Given that CSEF will attract a wide range of investors, including relatively unsophisticated retail investors, the AICD believes it is important that adequate protections are in place to ensure that financial reporting is rigorous, and subject to appropriate independent scrutiny.

However, other submitters suggested that the proposed $1 million audit threshold would be too restrictive. For example, Georgia Parletta stated:

> The Draft Bill and the Amendment Act fail to accommodate the vastly different needs of CSEF companies of varying sizes. ... The regulatory requirements imposed on issuers must therefore be proportionate to their fundraising targets, which can best be accommodated through an adaptation of the United States’ tiered approach. Imposing audit requirements on issuers that raise over $1 million is also considered disproportionate to the amount such companies are seeking to raise. ... It is therefore recommended that the fundraising amount requiring auditing be increased.

Likewise, First Planet submitted:

> The requirement for onerous annual financial director’s reports, and audited financial statements for raises exceeding $1M, does not protect investors. To the contrary, it puts a significant, and unnecessary financial and time-to-execute burdens on these emerging businesses that can actually increase the risk to investors. All the frothing hysteria around protecting investor risk by forcing start-ups to pay for financial services, fails to see the evidence, that Crowd Sourced due-diligence amongst investor networks is a far more powerful approach to keeping people honest. Founders make themselves and their companies available for public scrutiny, and are still subject to laws related to fraud and so forth.

Ultimately, the Bill introduced by the Government proposes to include in primary legislation a $3 million audit threshold, but also include a regulation making power that would allow that threshold to be altered in the future.

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11. Arnold-Bloch-Leibler, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, June 2017; Chartered Accountants ANZ, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017; Small Business and Family Enterprise Ombudsman, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017; Institute of Public Accountants, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017; Marque Lawyers, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 9 June 2017.

12. Proposed paragraphs 113(2)(c), (d).

13. Australian Institute of Company Directors, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017; see also, Fat Hen, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017.

14. G Parletta, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017.

15. First Planet, Submission to Treasury, Consultation into: extending crowd-sourced equity funding (CSEF) to proprietary companies.

16. Proposed paragraph 301(5)(b), items 48 and 49.
Post implementation review

Two submissions called for a requirement for a post implementation review into the whole CSF regime.\textsuperscript{17} The Bill as introduced does not propose any statutory requirement to conduct such a review.

Financial implications

The Explanatory Memorandum to the Bill indicates the Bill would have the following financial impact on the fiscal balance of the Commonwealth:

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The Explanatory Memorandum indicates that the financial impact will mostly arise because of timing mismatches related to the recovery of supervisory costs from regulated entities.\textsuperscript{18}

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill does not engage any applicable rights or freedoms.\textsuperscript{19}

The Parliamentary Joint Committee on Human Rights agreed with the Government’s assessment.\textsuperscript{20}

Key issues and provisions

The Corporations Act 2001 provides for two different types of companies limited by shares: public companies and proprietary companies. There were about 28,900 public companies in Australia in November 2017; but the vast majority of companies in Australia were proprietary companies—about 1.445 million.\textsuperscript{21}

Currently, companies are eligible to be registered as proprietary companies, if—amongst other things—they have fewer than 50 non-employee members (shareholders).\textsuperscript{22} The Corporations Act 2001 imposes different rules and obligations on proprietary companies; reflecting their smaller number of members and the lower risk to members’ funds that arises from small, ‘closely held,’ companies where members are likely to have greater knowledge of the operations of that company. Currently, proprietary companies are unable to raise funds from the public.

The Corporations Amendment (Crowd-sourced Funding) Act 2017 established a regime that allowed unlisted public companies to raise funds from the public via CSF offers. The main provisions of that Act commenced six (6) months after Royal Assent of the Bill, which was 28 March 2017. The CSF regime for public companies has only been operating, therefore, since 28 September 2017; meaning that there is very little evidence of how the existing CSF regime is operating. The ASIC website provides an overview of the existing CSF regime.\textsuperscript{23}

That Act established concessional governance rules that allowed proprietary companies to transition to a public company structure so as to be able to access the CSF regime, however, the cost and administrative burden of doing so was recognised at the time the Bill for that Act was debated. The Treasurer, Scott Morrison, therefore, indicated that the Government wanted to extend the CSF regime to proprietary companies:

Under the framework, public companies will be eligible to use crowd-sourced equity funding. Following a consultation paper on proprietary company funding options released in 2015, the government is continuing to consult on extending the regime to proprietary companies, which are generally prohibited from offering shares to the general public. I have instructed Treasury to continue developing a framework for proprietary companies as a

\textsuperscript{17} Australian Institute of Company Directors, Submission to Treasury, Consultation on extending crowd-sourced equity funding (CSEF) to proprietary companies, 6 June 2017; CPA Australia, Submission to Treasury, Consultation on extending crowd-sourced equity funding (CSEF) to proprietary companies, 4 June 2017.

\textsuperscript{18} Explanatory memorandum, Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017, p. 3.

\textsuperscript{19} The Statement of Compatibility with Human Rights can be found at pp. 53–4 of the Explanatory Memorandum to the Bill.

\textsuperscript{20} Parliamentary Joint Committee on Human Rights, Human rights scrutiny report, 11, 17 October 2017, p. 60.

\textsuperscript{21} Data obtained from Australian Business Register website, data is available from Parliamentary Library upon request.

\textsuperscript{22} Corporations Act 2001, s 113.

\textsuperscript{23} ASIC, Crowd-sourced funding op. cit.
This Bill would extend the CSF regime to proprietary companies, subject to certain enhanced governance and reporting requirements. The main aspects of the enhanced governance and reporting requirements are as follows:

- proprietary companies with CSF shareholders would be required to have at least two (2) directors, the majority of which must reside in Australia\(^{25}\)
- small proprietary companies with CSF shareholders would be required to publish financial reports and directors’ reports\(^{26}\)
- proprietary companies would be required to have their financial reports audited when they have more than $3 million (or another amount set by regulation) in CSF capital\(^{27}\) and
- proprietary companies with CSF capital would be subject to the related party transaction rules.\(^{28}\)

The Bill would also make minor changes to the CFS regime that would apply to both public and proprietary companies.

**Formal clauses and the schedule of amendments**

**Clauses 1 to 3** of the Bill are technical in nature, and deal with the name of the proposed Act, the proposed Act’s commencement, and the application of the amendments set out in the schedules to the primary Act: namely the Corporations Act.

**Part 1 of Schedule 1** of the Bill sets out the main amendments proposed to the Corporations Act, which will commence six months after the date of royal assent. **Part 2 of Schedule 1** sets out other amendments the CSF regime that will commence the day after royal assent.

**Main rules for proprietary companies in the CSF regime**

The Bill would amend the Corporations Act to create special rules that would need to be met before proprietary companies could access the CSF regime. Certain other provisions of the Corporations Act 2001 that prevent a proprietary company accessing the CSF regime are also proposed to be amended.

The main elements of the proposed rules are set out below.

**Defining those proprietary companies that are ‘eligible’ to access the CSF regime**

The Bill will extend access to the CSF regime to certain ‘eligible’ proprietary companies. In order to be eligible, a proprietary company would require at least two directors, the majority of which were resident in Australia.

**Item 13, proposed subsection 201A(1A)** would require that a proprietary company with CSF shareholders must have at least two (2) directors, and that either one (1) director (where there are only two directors) or a majority of directors must ordinarily reside in Australia. Under section 201A, ordinarily a proprietary company must have at least one director who must reside in Australia.

**Item 41, proposed paragraph 738H(1)(a)** establishes the main rules for CSF regime, to change the types of companies that are eligible to offer CSF shares to include proprietary companies with at least two directors. Proposed paragraph 738H(1)(a)(ii) allows regulations to be made imposing any additional requirements (beyond having two directors) that must be met before a proprietary company may offer CSF shares. Any such regulations would be made via the general regulation making power in section 1364 of the Corporations Act.

25. Proposed subsection 201A(1A).
27. Proposed subsection 103(2).
28. Proposed section 738ZK.
Carve-out from the maximum number of members proprietary companies may have to allow for CSF shareholders

Currently, a company that has more than 50 shareholders cannot be a proprietary company. However, shareholders that are also employees of a company are disregarded (carved-out) for the purposes of working out whether or not a company has more than 50 shareholders.

Item 6, proposed paragraph 113(2)(c) would provide an additional carve-out for shareholders that are CSF shareholders by allowing proprietary companies to have unlimited CSF shareholders so long as they continue to satisfy the existing limit on the number of shareholders (50 non-employee shareholders). Proposed paragraph 113(2)(d) would also disregard CSF shareholders of companies that are acquired by a proprietary company, where:

- the security was originally issued to another entity pursuant to a CSF offer by the company
- the securities have not been traded on a financial market (whether in Australia or elsewhere) and
- any requirements prescribed in regulations are met.

These amendments would allow a proprietary company to have:

- up to 50 non-employee, non-CSF shareholders
- any number of employee shareholders and
- any number of CSF shareholders.

Allowing proprietary companies to raise funds from the public if it is by way of a CSF offer

The current subsection 113(3) prevents—subject to some minor exemptions—proprietary companies from raising funds (fundraising) that would trigger disclosure under Chapter 6D requirements of the Corporations Act. Item 7, proposed subsection 113(3) would allow proprietary companies to make a CSF offer; despite the general prohibition on fundraising.

Enhanced reporting requirements for small proprietary companies with CSF capital

Small proprietary companies that had CSF capital would need to satisfy enhanced reporting requirements similar to those applying to all other proprietary companies.

Annual reports and directors’ reports would be required for small proprietary companies with CSF capital

Item 18, proposed paragraph 292(b) would require any small proprietary company that has CFS shareholders at any time during a year to prepare annual reports and directors reports.

Item 19, proposed subsection 296(1A) would have the effect of requiring any financial report of a proprietary company with CSF shareholders to be prepared according to accounting standards, despite the current exemptions in section 296 of the Corporations Act, which allow small proprietary companies to not have their financial reports audited in some circumstances.

Proposed subsections 298(1AC) and 298(3) would have the effect of requiring the directors of a small proprietary company with CSF shareholders to prepare a directors report, despite the current exceptions set out in section 298 of the Corporations Act, which allow directors of small proprietary companies to not provide a report in some circumstances.

Item 23, proposed paragraph 314(1)(a) and item 24, subsection 314(1AF) would allow small proprietary companies with CFS share capital to notify their members of the financial report only by making it available on the internet—to reflect the changes proposed by items 18 to 21.

Annual reports to be lodged

Item 26, proposed paragraph 319(2)(a) would deny to small proprietary companies with CSF members the general exemption from being required to lodge annual reports with ASIC within four (4) months, which is currently available to small proprietary companies because of the current subsection 319(2) of the Corporations Act. The effect of this proposed amendment would be to make it an offence for a small proprietary company with CSF members to fail to submit its annual report to ASIC.

Auditing of proprietary companies with CSF capital

Proprietary companies with more than $3 million in CSF capital would need to be audited.
‘CSF audit threshold,’ and a requirement for financial reports to be audited when exceeded

Item 22, proposed subsection 301(2) would require a proprietary company with CSF shareholders to have its financial report audited only if that company has raised an amount of CSF share capital that is more than the proposed ‘CSF audit threshold.’

Item 1 would amend the dictionary in section 9 of the Corporations Act to define the ‘CSF audit threshold’ as either $3 million, or any other amount prescribed by regulation. Item 16, proposed subsection 285(1) (table item 3) would update the overview table of Chapter 2M.1 to reflect the proposed auditing requirement.

Need to appoint when ‘CSF audit threshold’ exceeded

Item 30 and proposed subsections 325(2), (3) and (4) would require small proprietary companies that raise more than the ‘CSF audit threshold’ to appoint an auditor within one month of exceeding that threshold. Proposed subsection 325(3) would also allow a company up to one month to replace an auditor if the office of auditor became vacant for whatever reason.

Proposed subsection 325(4) would impose an obligation on a company to ‘take all reasonable steps to comply with, or secure compliance with’ the proposed subsection 325(2). Item 46 would amend the table in section 116KM of Schedule 3 of the Corporations Act to make non-compliance with proposed subsection 325(4) an offence subject to a maximum penalty of 25 penalty units, imprisonment for six (6) months, or both.

ASIC may appoint an auditor if none appointed

Items 35 to 39 propose amendments to sections 327E, 327F and 327G that would allow ASIC to appoint an auditor if a proprietary company was required to do so under the Act but had not done so. This provision would apply to all proprietary companies, not just small proprietary companies that have exceeded the ‘CSF audit threshold.’ Under the proposed amendments, an auditor appointed to a proprietary company would hold office until the company’s next general meeting.

Auditor independence requirements enhanced for small proprietary companies with CSF capital

Division 3 of Part 2M.4 of the Corporations Act deals with auditor independence. Sections 324CE, 324CF, and 324CG impose specific requirements with respect to auditor independence on individual auditors, audit firms, and audit companies respectively. Section 324CH defines ‘relevant relationships’ for the purposes of working out whether the requirements in sections 324CE, 324CF, and 324CG have been met.

Currently, the items 1 to 19 in the table in subsection 324CH(1) define certain types of relationships that are ‘relevant relationships’ for the purposes of sections 324CE, 324CF, and 324CG, but also provide that it is not a ‘relevant relationship’ if the audited body is a small proprietary company; meaning that the relationship does not engage the auditor independence requirements set out in sections 324CE, 324CF and 324CG.

Items 27 to 29 would have the effect of ensuring that the relationships set out in the first nine (9) items in the table in subsection 324CH(1) were ‘relevant relationships’ for the purpose of the auditor independence requirements in sections 324CE, 324CF and 324CG if the small proprietary company had raised more CSF capital than the ‘CSF audit threshold.’ Because of these proposed amendments, the persons with certain familial, employment or financial relationships to officers or audit-critical employees of small proprietary companies could not be an auditor of a small proprietary company with CSF capital above the CSF audit threshold (as they would have a ‘relevant relationship’ with the small proprietary company).

Restrictions on related party transactions extended to proprietary companies with CSF shareholders

Chapter 2E of the Corporation Act imposes certain restrictions on public companies undertaking transactions with related parties. Section 207 of the Corporations Act provides that the purpose of these restrictions is ‘to protect the interests of a public company’s members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.’ Item 45, proposed section 738ZK would extend those restrictions to proprietary companies with CSF shareholders.

Minor amendments related to proprietary companies with CSF capital

The Bill also proposes the following minor amendments that would affect proprietary companies with CSF capital.
Update of the Small Business Guide

Items 3 to 5 would update the Small Business Guide in Part 1.5 of the Corporations Act to reflect the amendments proposed by the other clauses of Schedule 1, Part 1 of the Bill.

Requirement to notify ASIC of commencing and ceasing to have CSF shareholders

The amendment to subsection 243X(1) proposed by item 14 and subsection 254Y(1) proposed by item 15 would require a proprietary company with CSF shareholders to:

- notify ASIC to when the company begins to have those CSF shareholders and
- notify ASIC if the company cancels all CSF shares and ceases to have CSF shareholders.

Item 9, proposed subsection 196(6AA) (item 10), and proposed paragraph 178A(1)(ix) (item 11) require that proprietary companies’ share registries maintain a record of CFS offers and CSF shareholders.

Concise reports requirements modified

Item 25, proposed subsection 314(2A) would have the effect of:

- only requiring the outcome of an audit and the qualifications of the auditor to be included in a concise report where that small proprietary company is actually required to be audited in a given year (that is, because it has CSF share capital greater than the proposed ‘CFS audit threshold’) and
- removing the general requirement in subsection 314(2) of the Corporations Act that a concise report must include an offer to provide the full financial report and auditor’s report to a member free of charge for small proprietary companies with CSF members. This amendment appears consistent with proposed paragraph 314(1)(a) (item 23) and subsection 314(1AF) (item 24) that would allow members to be informed of the contents of a financial report by that report being made available on the internet only.

Proprietary companies with CSF shareholders excluded from takeover provisions

Chapter 6 of the Corporations Act regulates the takeover of listed companies and unlisted companies that have more than 50 members. Subsection 606(1) in Part 6.1 or Chapter 6 of the Corporations Act establishes a general prohibition on acquisitions that involve a person acquiring any more than 20 per cent of a listed company or an unlisted company. Section 611 in Chapter 6, however, set out when the prohibition in subsection 606(1) does not apply; in effect, those transactions or entities that do not have to comply with the takeover provisions.

Item 40 would add a proposed table item 19A to the table in section 611 that would exclude acquisitions of proprietary companies with CSF shareholders from the takeover provisions. Proposed table item 19A would also allow additional requirements that must be met before such an acquisition is excluded from the takeover provisions to be prescribed by regulation.

Other amendments

The following amendments would apply to public, or both public and proprietary companies, in the CSF regime.

Grandfathering of limited governance requirements

Section 738ZI currently sets out those public companies that are eligible to access the limited governance requirements in the existing CSF regime. Items 42 to 44 propose to amend section 738ZI to limit the limited governance requirements to public companies that were registered, or converted from proprietary companies, prior to the commencement of these provisions. The Explanatory Memorandum to the Bill advises that, because upon the commencement of the proposed amendments proprietary will be able to access the CSF regime, the limited governance requirements originally established to make it easier for proprietary companies to convert to public companies will no longer be required.\(^\text{29}\) The limited governance requirements will remain available for companies already in, or entering into, the CSF regime until the commencement of the amendments in Schedule 1, Part 1. Item 2 of the table in section 2 would make those proposed amendments commence six months after the Bill receives the Royal Assent.

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Public companies to also only require an auditor when they have CSF capital in excess of $3 million

Items 47 to 49 of Schedule 1, Part 2 of the Bill would raise the audit threshold for companies that are already part of the CSF regime (public companies), which is set in subsection 301(5) of the Corporations Act. The threshold would be increased from circumstances where a company has raised more than $1 million via CSF offers to circumstances where the company has raised more than $3 million via CSF offers. While this increased threshold aligns with the proposed $3 million audit threshold for proprietary companies with CFS share capital, it would not be able to be altered via regulation. The increased audit threshold for public companies would commence on the day after the Bill received the Royal Assent.\(^\otext{30}\)

Clarity that CSF may not be listed on a foreign exchange, in addition to an Australian exchange

Proposed paragraph 738H(1)(e) would clarify that, in order to be an eligible CSF company, an entity must not be listed on a foreign stock exchange. Currently, the Corporations Act only prohibits CSF companies being listed on an Australian stock exchange.

Reduced period for people to withdraw an application and receive a refund because of a defective CSF offer document

Division 4 of Part 6D.3A of the Corporations Act provides for ‘defective’ CSF offer documents to be corrected in some circumstances. Currently, where a defective offer document has been provided, any person who has applied under that defective offer may, within one (1) month of being notified that the offer document was defective, withdraw their application and any their monies paid repaid. Items 51 52 of Schedule 1, Part 2 of the Bill would reduce the period in which applications may be withdrawn and monies are to be repaid to 14 days. The proposed change would only apply to CSF offers made after the commencement of the Schedule 1, Part 2; which item 3 of the Bill would make the day after the Bill receives Royal Assent.

\(^\otext{30}\) Item 52.