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SUBMISSION TO THE INQUIRY INTO THE CORPORATIONS AMENDMENT (CROWD-SOURCED FUNDING) BILL 2016 [PROVISIONS]

On 1 December 2016 the Senate referred the provisions of the Corporations Amendment (Crowd-sourced Funding) Bill 2016 to the Senate Economics Legislation Committee for inquiry and report.

Having reviewed the draft legislation and the accompanying explanatory memorandum BDO makes the following observations:

1. The definition of the 12 month period for testing the $25 million turnover cap is unclear and is capable of differing interpretations. and
2. Investor protection may be improved by requiring an auditor's review opinion to be provided prior to $1 million being raised or five years being reached.

1. Definition of the 12 month period for testing the $25 million turnover cap

Section 738H(2)(b) of the draft Bill requires that to be an eligible crowd sourced funding (CSF) company the company must comply with a turnover test of consolidated annual revenue of the company, and all its related parties, of less than $25 million.

In paragraph 2.25 of the Explanatory Memorandum this is expanded:

The turnover cap is based on the consolidated annual revenue for the 12-month period immediately prior to the time when determining eligibility to crowd fund. New companies that have not been operating for a full 12 months will still be able to crowd fund as long as their consolidated annual review for the period is under the $25 million cap.

We consider that it would be beneficial to clarify what is meant by "the 12-month period immediately prior to the time when determining eligibility to crowd fund", as this can be interpreted in at least three ways. It could mean any or all of:

- As shown in the most recent annual financial report that was lodged, or required to be lodged, with the Australian Securities and Investments Commission; or
- As shown in the most recent annual financial report; or
- For the 12 month period up to the last month end (or other recent date) prior to the issue of the Offer Document.

By way of example, if a company has a 30 June balance date and is seeking to demonstrate its eligibility in say September 2019 and has not yet completed its 30 June 2019 annual financial reports, as it is not yet required to, then the test could be interpreted one of three ways. It could be based on:

- The 30 June 2018 financial statements:
- The 30 June 2019 financial statements
- The turnover for the 12 months ended 31 August 2019.

This should be clarified. If the most recent annual financial report is used then the accounts could be as much as 16 months old at the time the test is performed. Our recommendation is that current financial information is the most relevant for this test.

As such the 12-month period immediately prior to the time when eligibility is determined should be used.

We recommend that the test should be based on a 12 month period ending within three months of the turnover eligibility test being performed. That means that in the example above if eligibility is tested in September 2019 then the test will be on revenue for the 12-month periods ended 30 June 2019, 31 July 2019 or 31 August 2019.

2. Independent audit requirement

The Bill provides an exemption for eligible CSF companies from appointing an auditor and preparing audited accounts until the earlier of the CSF Company raising $1 million in CSF funds or five years.

However if there is a perceived risk that is addressed by providing investors with audited financial reports then it would be appropriate for all investors to be provided some protection from this risk regardless of the amount that has been raised in CSF funds or the time since that occurred.

BDO considers it to be more appropriate to require some level of assurance to be given from an independent party for all CSF companies. A limited level of assurance should be provided below the $1 million threshold. Such financial procedures should be at level that does not burden the CSF Company with significant cost, but provides investors with some level of assurance (below that of an audit).

We recommend that a review (limited assurance) could be performed. This provides a lower level of comfort than an audit (reasonable assurance) but is designed to bring significant matters affecting the financial report to the auditor's attention.

Further, to ease the level of reporting for smaller CSF companies, a differential reporting regime should be considered. This could include allowing entities that are below the $1 million or 5 year threshold to apply a reduced disclosure regime or to apply a simplified reporting framework. This could be such as the International Accounting Standard Board's IFRS for small and medium-sized entities

("SMEs") or a modified reporting arrangement as is done in the UK under FRS 102, which provides for the exclusion of disclosures in the financial reports that relate to matters that would be irrelevant to an SME.

Any reporting requirement should clearly include reporting on related party transactions and going concern.

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