



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeover Panel and the Corporations Legislation
Question No.	066
Topic	Crowdfunding and Peer-to-Peer lending
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Committee member	Senator Deborah O'Neill

Question

CHAIR: Thank you. I understand what you're saying. How does ASIC regulate crowdfunding platforms and peer-to-peer lending services that facilitate capital raising for startups and small businesses? Are there any safeguards in place to protect investors participating in these fundraising methods?

Answer

The legislated Crowd Sourced Funding (CSF) regime came into effect in late 2017. Part 6D.3A of the Corporations Act 2001 provides a regulatory framework for equity-based crowd-sourced funding by unlisted public companies and proprietary companies, enabling them to make offers of full-paid ordinary shares (only) to retail investors, through a licensed intermediary's platform, using an offer document.

Australia introduced the regime after other jurisdictions, such as the UK (2012), US (2012) and New Zealand (2014).

According to research published by Birchal (a licensed intermediary), since the regime's inception \$248 million has been raised to 30 June 2023, with 327 offers being successful¹. Academic research indicates that on a per-capital basis, Australia's CSF regime is the second largest, only behind the UK².

The key features and protections of the CSF regime, include:

- Eligible companies can raise up to \$5 million in any 12-month period;
- Retail investors have an investment cap of \$10,000 per company in any 12-month period 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, which investors must acknowledge;
- Companies making CSF offers must prepare a CSF offer document that includes prescribed minimum information. There are consequences if the disclosure is defective (including ASIC stop orders) although unlike prospectuses the offer documents are not lodged with ASIC. Only where a complaint is received will a CSF offer document be reviewed;
- The CSF intermediaries perform a critical role. They must:
 - hold an AFS licence with an authorisation to provide a crowd-funding service (which ASIC oversees compliance with);
 - perform prescribed checks on the offering company, its directors and the CSF offer document to a reasonable standard;
 - perform checks on investors, including assessing whether an investor is a retail client;
 - hold investor money on trust; and
 - have an obligation to suspend or close a CSF offer in certain circumstances (e.g. where the CSF offer document is defective).

¹ FY23 CSF Report; Funded! Report - Birchal

² Professor Andrew A. Schwatz, University of Colorado, *Investment Crowdfunding* (Oxford University Press – 2023)

ASIC has published *RG 261 Crowd-sourced funding: Guide for companies* and *RG 262: Crowd-sourced funding: Guide for intermediaries* that provide extensive guidance for companies and intermediaries.

Unlike CSF, Peer to Peer or marketplace lending does not have a specific tailored regime in the Corporations Act. Under Australia's financial services and credit laws, providers of marketplace lending products and related services will generally need to hold:

- an AFS licence, and
- an Australian credit licence, if the loans made through the platform are consumer loans (e.g. loans to individuals for domestic, personal or household purposes). If the credit is only being provided for small business or investment purposes (except for individual or strata corporations investing in residential property) a credit licence will not be required and the consumer protections available to borrowers under the *National Consumer Credit Protection Act 2009* (the Credit Act) will not apply. Note: the protections in the Credit Act generally relate to borrowers, rather than investors/funders.

If the marketplace lending product is offered to investors who are retail clients using a managed investment scheme structure, the operator (i.e., the responsible entity) of the scheme will need to register the scheme with ASIC. Responsible entities of registered schemes must hold an AFS licence and are subject to significant additional regulatory obligations under Chapters 5C of the Corporations Act with respect to scheme constitutions and compliance plans, and the operation of the scheme, including obligations to exercise reasonable care and diligence, to hold scheme assets on trust, and to operate the scheme in the best interests of members.

As AFS licensees, providers have an extensive range of general and specific licence obligations.

The regulation of marketplace lending is a technical and detailed subject matter area. ASIC has published Information Sheet 213 to provide general guidance on market place lending (see: [Marketplace lending \(peer-to-peer lending\) products | ASIC](#)). ASIC has also provided guidance for retail investors on Moneysmart (see: [Peer to peer lending - Moneysmart.gov.au](#)).