Crowdfunding *for success*

K&L Gates' Daniel Knight and Harry Crawford explain how crowdfunding can help your business grow.

CROWDFUNDING HAS NOW been around for many years and platforms like Kickstarter and Pozible have been used to raise money for all kinds of kooky things. It is estimated that the global crowdfunding industry raised $US45 billion in 2015. So, what about companies using crowdfunding to raise capital for their businesses?

Australian law doesn't currently allow for "crowd-sourced funding" (CSF), which is a type of crowdfunding by which companies raise equity. But that's all about to change, thanks to new federal laws set to take effect by early 2018. These changes will open the door for Australia's numerous fashion start-ups and small-to-medium sized labels to use CSF to fund growth, potentially taking these businesses into their next phase.

What is CSF?

With usual crowdfunding, you might "pledge" to a campaign online for a musician to record an album and then, if the project gets off the ground, receive an album in return. CSF is similar, but instead it allows companies to raise funds and, in exchange for financial contributions, investors receive shares in the company (rather than a product or service).

Currently, proprietary companies can only issue shares to 50 non-employees before having to "float" and become a public company. Also, to issue shares to the public, a formal disclosure document called a prospectus may be needed and the costs of preparing this document can make going public to raise equity unattractive to smaller businesses.

PRESENTED BY
K&L GATES

That is where CSF comes in. When the new CSF regime takes effect, companies will be able to use a licensed online crowdfunding platform to issue shares without having to go through the formalities of disclosure and financial reporting obligations that have ordinarily gone along with becoming a public company. Companies can create their own CSF campaign, get direct access to people who want to support their brand, and get as many investors as they can to invest smaller amounts in the company.

Who can use CSF?

The new laws will only allow for CSF fundraising by public unlisted companies with annual revenue and gross assets of less than $25 million. Here are just a few features of the new CSF regime:

- Proprietary companies will be able to convert to public unlisted companies in order to access CSF and its associated exemptions from ordinary disclosure and financial reporting requirements.
- Companies can raise a maximum of $5 million through CSF.
- Companies are not required to appoint an auditor or have audited financial reports until more than $1 million has been raised from CSF offers.
- A "CSF offer document" must be prepared for a CSF offer, however this will be much lighter than a formal prospectus.
- CSF investors can only invest $10,000 per company per year.

What's next for CSF?

As discussed above, under the new laws, CSF will only be available to unlisted public companies. However, the Australian Government has recently announced a proposal to also allow proprietary companies to use CSF, which would further reduce cost and compliance burdens.

If these touted changes come to pass, there would be further requirements upon proprietary companies in order to be able to access CSF. Here are some to keep in mind, which would apply in addition to the requirements above:

CSF will be available to proprietary companies that have at least two directors.

Proprietary companies that have CSF shareholders will have to prepare annual financial and directors' reports in accordance with accounting standards.

Proprietary companies that make a CSF offer will have to include details about the offer and CSF shareholders as part of their company registers.

CSF could become even more accessible in the future under the Government's new proposal for proprietary companies. It could be time to start thinking about whether CSF could be a component of your business' growth strategy. Why not chat to a lawyer about what is involved in order for your business to meet the requirements of the new scheme and benefit from CSF. ■

For more information about issues relating to crowd-sourced funding, please contact Daniel Knight, Senior Associate at K&L Gates (Daniel.Knight@klgates.com). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.