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CROWD SOURCED EQUITY FUNDING

OBJECTIVES AND PRINCIPLES

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1. Efficiency

Efficiency is a heightened objective when raising small amounts from a large number of people. Adopting model terms and common disclosure formats would heighten efficiency. The current prospectus content rules in the *Corporations Act 2001* take quite the opposite approach – the current rules overwhelmingly prescribe qualitative principles rather than designated subjects. As a result, efficiency in fundraising in Australia is diminished.

All though is not lost. The principles approach has, including in the predecessor *Corporations Law*, been applied now for over 20 years. Widespread practice has led to a fairly well defined list of core and less frequent matters to be addressed in disclosure documents for fundraising. That list and those matters are though not comprehensively documented and readily available, and do not necessarily have force of law.

As the report notes, a list approach has recently been adopted in each of the United States of America (the US) and in Ontario, Canada. An Australian approach could combine both these lists, adding items reflective of current Australian or best practice. A catch-all item – Other material matters – should also be included.

The less bespoke the content, the greater the efficiency in preparation and consideration by investors. A headline standard form investment summary could be prepared, with detailed disclosure available on request. Heightened efficiency should lead to lesser time and costs involved, in both undertaking a fundraising and considering it. Lesser costs flowing to intermediaries should lead to higher net returns to the fundraising enterprise and for the venture.

Efficiency would also be heightened by the adoption of model rules for common forms of investment (e.g., ordinary shares, preference shares, redeemable preference shares and convertible notes) or debt instrument, with specific disclosure only required to the extent that the investment diverges from the model form. It is in each case money to be put to a use we are talking about.

2. Simplicity

Australian law and policy on fundraising for commercial use are complex and widely spread. Different rules apply to companies than to managed investment schemes, and without strong reason. Contrast the clarity of the *Charitable Fundraising Act 1991* (NSW).

Its simplicity derives:

- from its focus on the act of fundraising rather than the entity itself; and

- its regular wholesale review and redesign by seasoned professionals within the NSW Office of Parliamentary Counsel, *cf*. the *Corporations Act*, which has been added to bit-wise from the enactment of its predecessor, the *Corporations Law,* with principal drafting responsibility vested in an economic not legal agency, the Commonwealth Treasury.

Heightened simplicity should lead to greater efficiency and heightened accessibility, understanding and familiarity for a greater part of the Australian investment community, for the benefit of the Australian economy and innovation.

3. Practicality

Our fundraising legislation should be matched, as best one can, to Australian fundraising needs and opportunities and to those who have funds to invest.

Australia's retirement savings pool is said to be in the order of A$1.9 trillion, the third largest in the world by quantum and the largest per capita. The US pool is the largest. Access to these pools must be a high priority. These figures make it obvious that there is money around to be invested.

Monetary thresholds for the application of our fundraising laws have been little reviewed over the last 20 years, and not always on a practical basis.

Instead:

- our thresholds for fundraisers should reflect market prevalent funding needs and stages, addressing "seed", "angel", "early stage" and mature raisings, with automatic adjustment for CPI or another appropriate index to keep them current; and

- our thresholds and qualifications for investors should reflect financial acumen, professional, educational and experience qualifications and training, not just monetary amounts. A good case could also be made for excluding the value of the family home from sophisticated investor tests. Acumen built up over a career should not be legislatively "lost" simply by a reduction in salary or an asset loss or disposal, including on retirement. We want in our crowd both our elders and our wisest.

4. Convergence

Fundraising should not be primarily regulated by reference to the technology that delivers. It is the content, commercial context and intended use of the funds that are important and not the means of delivery. Focussing on delivery technology will also result in an unnecessary in-built use-by date for the legislation.

5. Inter-operability

Perhaps, the greatest impediment to investment into Australia by foreign persons is the unknowns represented by investing into Australia as a foreign jurisdiction. The more that our laws can be "just like at home" or be better than those "at home" the more investment we should be able to attract. A great place for this to be heightened is our fundraising laws.

The entry into an increasing number of bilateral Free Trade Agreements with the world's largest and most vibrant economies, the more a concern for interoperability between their economies and ours arises.

Often the choice for both investor and issuer alike is investment or development in your home jurisdiction or investment and development here in Australia. Increased interoperability of laws with our Free Trade Agreement partners, particularly the USA, should do more to take the issue of not knowing the laws in, for others, Australia as the foreign jurisdiction off the table. Relative regulatory advantage for Australian innovators to stay at home is also thereby achieved. Once that is done, Australia's other attributes, its natural and systemic advantages, can shine through.

Taking this issue off the table is all the more important when the technology, to be developed or delivered, is little constrained by jurisdictional boundaries. This is particularly so in the area of computer software. Australian software developers, like our medical researchers, are world class. Some of the fastest wealth creation endeavours on the planet are being realised in the computer software industry.

6. Entity neutrality

A fundraiser looking to develop a business in Australia should be able to choose the legal entity that will best enhance business success and lessen business risk. Each business opportunity, and the Australians willing to develop it, are a gift or part of the human and intellectual capacity of the nation. Whether the opportunity is developed through a company, a trust or through some other legal structure should not adversely impact efforts to raise funds to develop opportunities in Australia and to develop the Australians who pursue them.

Entity neutrality should also heighten efficiency and understanding, and lessen the time and costs involved. More fulsome regulation by the States and Territories of partnerships and trusts would also more likely increase efficiency given the clarity and layout of their legislation on these types of entity.

Entity peculiarities could be addressed around the edges of the core legislative regime.

We commend these objectives and principles to you.

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