



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 261

# Crowd-sourced funding: Guide for public companies

September 2017

## About this guide

This is a guide for public companies seeking to raise funds through crowd-sourced funding.

This guide explains when a public company is eligible to make an offer of shares under the crowd-sourced funding (CSF) regime in the Corporations Act and what obligations, including disclosure obligations, apply.

This guide also explains the temporary concessions available to public companies making CSF offers from certain reporting, audit and corporate governance requirements that would usually apply to public companies.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in September 2017 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>A</b>	<b>Overview</b> .....	<b>4</b>
	What is crowd-sourced funding? .....	4
	How is crowd-sourced funding regulated? .....	5
	Purpose and scope of this guide .....	7
<b>B</b>	<b>Are your company and its offer eligible?</b> .....	<b>8</b>
	Determine if your company is eligible .....	8
	Determine if your company's offer is eligible .....	14
<b>C</b>	<b>How to make a CSF offer</b> .....	<b>19</b>
	Process for a making a CSF offer .....	19
	What obligations apply to CSF offers? .....	27
	Meeting your additional obligations to investors .....	35
<b>D</b>	<b>Preparing the CSF offer document</b> .....	<b>37</b>
	How to prepare a CSF offer document .....	37
	What are the key requirements for CSF offer documents? .....	38
	What minimum information must be included? .....	38
	Section 1: Risk warning for investors .....	41
	Section 2: Information about your company .....	41
	Section 3: Information about the offer .....	52
	Section 4: Information about investor rights .....	54
	Is the CSF offer document 'clear, concise and effective'? .....	56
<b>E</b>	<b>Is the CSF offer document defective?</b> .....	<b>58</b>
	When is a CSF offer document defective? .....	58
	What must your company do if its CSF offer document is defective? .....	60
	Is your company liable for a defective CSF offer document? .....	63
	What is ASIC's role and what powers do we have? .....	65
<b>F</b>	<b>Temporary corporate governance and reporting concessions</b> .....	<b>66</b>
	What obligations apply to public companies and their directors? .....	66
	Why are temporary concessions provided? .....	67
	Is your company eligible for the concessions? .....	68
	What concessions are available? .....	70
	When do the concessions cease? .....	72
	<b>Key terms</b> .....	<b>75</b>
	<b>Related information</b> .....	<b>77</b>
	<b>Appendix: Template CSF offer document</b> .....	<b>79</b>

## A Overview

### Key points

Crowd-sourced funding allows start-ups and other small to medium sized companies to access capital from a large number of investors.

Part 6D.3A of the *Corporations Act 2001* (Corporations Act) provides a regulatory framework for equity-based crowd-sourced funding by unlisted public companies, enabling them to make offers of ordinary shares to retail investors, through a licensed intermediary's platform, using an offer document.

This guide will assist companies making offers of shares under the crowd-sourced funding (CSF) regime to understand their role and comply with their obligations.

Specifically, this guide will help you understand:

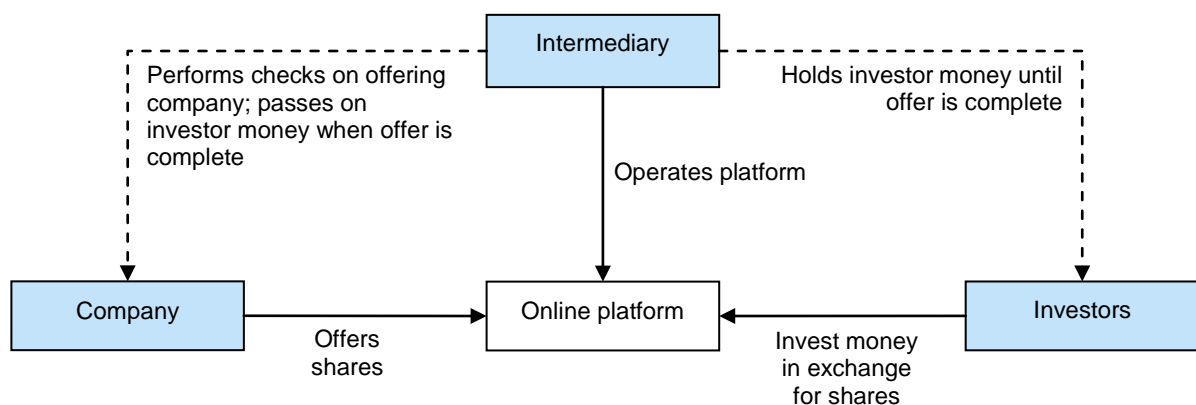
- whether your company is eligible to make an offer of its shares under the CSF regime;
- how to prepare a CSF offer document for your company's CSF offer;
- the process for making CSF offers, including what obligations and investor protections apply to your company's offer; and
- whether your company can rely on the temporary concessions from certain reporting, audit and corporate governance obligations that usually apply to public companies.

## What is crowd-sourced funding?

RG 261.1 Crowd-sourced funding involves a company raising funds—usually through an online intermediary—from a large number of individual investors who make relatively small financial contributions to the company.

RG 261.2 While there are different types of crowd-sourced funding, this guide focuses specifically on equity-based crowd-sourced funding, which involves a company offering its ordinary shares to investors in return for a relatively small cash investment. Figure 1 illustrates how equity-based crowd-sourced funding works, with an intermediary performing checks on the offering company, operating an online platform (through which the company offers shares and investors invest money in exchange for shares), holding investor money and passing investor money to the company when the offer is complete.

Note: There are other types of crowd-sourced funding that are not equity-based—for example, non-investment crowd-sourced funding which involves a donation towards a cause or a down payment for goods or services.

**Figure 1: How equity-based crowd-sourced funding works**

Note: The process shown in Figure 1 is described in RG 261.2 (accessible version).

RG 261.3 Crowd-sourced funding provides a fundraising option for start-ups or small to medium sized companies. These companies are often at an early stage of their development and may not yet have a viable or profitable business.

RG 261.4 This means investments through CSF offers may be highly speculative, with an increased risk of failure and loss to equity investors. Investments through CSF offers may also be illiquid, reducing investors' ability to exit.

## How is crowd-sourced funding regulated?

RG 261.5 The *Corporations Amendment (Crowd-sourced Funding) Act 2017* introduced a regulatory regime for crowd-sourced funding. The CSF regime aims to facilitate flexible and low-cost access to capital for small to medium sized unlisted public companies by reducing the regulatory requirements for making public offers, while ensuring adequate protections for retail investors.

Note: See the [Explanatory Memorandum](#) to the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

RG 261.6 The CSF regime contained in Pt 6D.3A of the Corporations Act allows unlisted public companies with less than \$25 million in assets and annual revenue to make offers of ordinary shares to retail investors, through a licensed CSF intermediary's platform, using a CSF offer document. Eligible companies can raise up to \$5 million in any 12-month period under the CSF regime.

RG 261.7 The key features of the CSF regime are summarised in Table 1 below, along with references to relevant guidance.

**Table 1: Key features of the CSF laws**

Key feature	Summary	Guidance
Is your company eligible to make CSF offers?	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.	Section B of this guide
How much capital can your company raise?	Eligible companies can raise up to \$5 million in any 12-month period (the 'issuer cap').	Section B of this guide
What are the additional obligations to investors?	<p>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.</p> <p>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.</p> <p>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.</p> <p>CSF offers can only be made via a licensed CSF intermediary's platform.</p>	<p>Section C of this guide</p> <p>See also <a href="#">Regulatory Guide 262</a> <i>Crowd-sourced funding: Guide for intermediaries</i> (RG 262)</p>
What must be disclosed in a CSF offer document?	Companies making CSF offers must prepare a CSF offer document that includes prescribed minimum information. There are consequences if the disclosure is defective.	Sections D and E of this guide
What are the gatekeeper role and obligations of the CSF intermediary?	<p>The CSF intermediary:</p> <ul style="list-style-type: none"> <li>• must hold an Australian financial services (AFS) licence with an authorisation to provide a crowd-funding service;</li> <li>• performs checks on the offering company, its directors and the CSF offer document;</li> <li>• performs checks on investors, including assessing whether an investor is a retail client, and holds investor money on trust;</li> <li>• operates a platform for CSF offers; and</li> <li>• has an obligation to suspend or close a CSF offer in certain circumstances (e.g. where the CSF offer document is defective).</li> </ul>	RG 262
Does your company need to comply with all reporting, audit and annual general meeting (AGM) requirements?	<p>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.</p> <p>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.</p>	Section F of this guide

Source: Part 6D.3A of the Corporations Act.

## Purpose and scope of this guide

- RG 261.8 This guide will help you:
- (a) determine whether your company is eligible to make offers of its shares under the CSF regime (Section B);
  - (b) understand the process for making CSF offers through a CSF intermediary, including your obligations and the investor protections that apply (Section C);
  - (c) prepare a CSF offer document for your company's offer that complies with the minimum information requirements and understand the consequences if the document is defective (Sections D and E of this guide and the template CSF offer document in the Appendix); and
  - (d) understand how the temporary concessions from certain reporting, audit and AGM obligations operate, so you can determine whether your company is eligible to rely on these concessions (Section F).
- RG 261.9 This guide does not cover the role and obligations of CSF intermediaries, which are covered in a separate guide, RG 262. In addition, this guide does not cover other offers of securities, which are covered in [Regulatory Guide 254](#) *Offering securities under a disclosure document* (RG 254), or other forms of crowd-sourced funding (such as donation-based funding) that are not regulated by ASIC.

## B Are your company and its offer eligible?

### Key points

This section will help you and the CSF intermediary hosting your company's CSF offer on its platform to determine whether:

- your company is eligible to make offers under the CSF regime; and
- your company's offer is an eligible CSF offer that complies with the issuer cap and other requirements.

### Determine if your company is eligible

RG 261.10 Table 2 sets out the requirements for your company to be eligible to make offers under the CSF regime. All requirements must be satisfied at the time the offer is made—that is, when the CSF offer document for the offer is first published on the CSF intermediary's platform.

**Table 2: Requirements for company eligibility to make a CSF offer**

Your company must	Corporations Act reference	Guidance reference
Be a public company limited by shares	s738H(1)(a)	RG 261.14– RG 261.16
Have its principal place of business in Australia	s738H(1)(b)	RG 261.14– RG 261.16
Have a majority of its directors (excluding alternate directors) ordinarily residing in Australia	s738H(1)(c)	RG 261.14– RG 261.16
Not exceed the assets and annual revenue caps of \$25 million (including the assets and revenue of its related parties)	s738H(1)(d)	RG 261.17– RG 261.28
Not be a listed company (including its related parties)	s738H(1)(e)	RG 261.29– RG 261.30
Not have a substantial purpose of investing in other companies, entities or schemes (including its related parties)	s738H(1)(f)	RG 261.31

Source: Part 6D.3A of the Corporations Act.

RG 261.11 The CSF intermediary has an obligation to conduct checks, prior to publishing the CSF offer document, to satisfy itself that your company is eligible to make a CSF offer. If the intermediary determines that your company is not eligible, it must not publish the offer on its platform.



Note: The CSF intermediary must conduct these checks to a reasonable standard, including, for example, checking that the information is consistent with ASIC's records—see RG 262 for further information.

- RG 261.12 If your company does not meet each of the requirements in Table 2, it will not be able to use the CSF regime to make an offer of its shares. However, your company may still make offers of its shares:
- (a) using a prospectus or other disclosure document under Pt 6D.2 of the Corporations Act; or
  - (b) to investors who are not required to be given a prospectus or other disclosure document (for example, angel investors or venture capital funds) if one of the exceptions in s708 of the Corporations Act applies.

Note: See RG 254 for further information on when a prospectus is required.

- RG 261.13 ASIC has the power to grant relief from the provisions in the CSF regime in Pt 6D.3A of the Corporations Act, including the eligibility requirements in Table 2 above: s741. We are generally unlikely to use this power, except in exceptional circumstances. For further guidance on the circumstances in which we may exercise our relief powers, see [Regulatory Guide 51 Applications for relief](#) (RG 51).

Note: ASIC also has a specific determination power in relation to the assets and revenue caps (see RG 261.24) and the issuer cap (see RG 261.47).

### **Registered public company with its principal business and directors residing in Australia**

- RG 261.14 To be eligible, your company needs to be, or convert to, a public company limited by shares.

Note: To register as or convert to a public company, you will need to lodge a [Form 201 Application for registration as an Australian company](#) or [Form 206 Application for change of company type](#) (as applicable).

- RG 261.15 Your company must also have its principal place of business and a majority of directors (excluding any alternate directors) ordinarily residing in Australia.

Note: Public companies must have at least three directors (counting alternate directors) and at least two directors must ordinarily reside in Australia—see s201A(2).

- RG 261.16 Table 3 sets out the types of companies that meet these requirements and are therefore eligible, and companies that are not eligible.

**Table 3: Company types and eligibility to make CSF offers**

Types of eligible public companies	Types of ineligible companies
<p>Eligible companies include:</p> <ul style="list-style-type: none"> <li>• public companies with share capital registered under Ch 2A;</li> <li>• bodies corporate registered as a public company under Pt 5B.1; and</li> <li>• foreign companies registered as a public company under Pt 5B.1.</li> </ul>	<p>Ineligible companies include:</p> <ul style="list-style-type: none"> <li>• public companies that do not have share capital (e.g. companies limited by guarantee);</li> <li>• proprietary limited companies;</li> <li>• foreign companies and registrable Australian bodies registered under Pt 5B.2; and</li> <li>• any type of company with its principal business and/or a majority of its directors ordinarily residing overseas.</li> </ul>

### The assets and revenue caps

RG 261.17 To be an eligible company, the consolidated gross assets and annual revenue of your company and all of its related parties must not exceed the assets and annual revenue caps of \$25 million.

RG 261.18 This means that at the time you are determining eligibility:

- (a) the value of the consolidated gross assets of your company and all of its related parties must be less than \$25 million (the assets cap); and
- (b) the value of the consolidated annual revenue of your company and all of its related parties must be less than \$25 million (the revenue cap).

### Rules for calculating the caps

RG 261.19 When calculating the caps, your company must:

- (a) for the annual revenue cap—use the 12-month period immediately prior to the time when your company’s eligibility is being determined; and
- (b) for both the assets and revenue caps—include the consolidated assets and revenue of all of your company’s related parties (if any).

Note: Your company’s eligibility must be determined at the ‘test time’ (s738H). For the purposes of making a CSF offer, your company must be eligible at the time the CSF offer is made, which requires your company to calculate its assets and revenue caps by reference to the 12-month period immediately prior to making the CSF offer.

RG 261.20 We recognise that your company may have difficulty determining its consolidated annual revenue for the 12-month period immediately prior to, or its consolidated assets at, the time it makes a CSF offer (for example, because it undertakes a month-end reconciliation of its financial records). In these circumstances, your company may calculate its annual revenue and assets by having reference to its most recent ‘month-end’, which should generally be no more than six weeks before the date of the CSF offer.

RG 261.21 To determine whether your company meets the assets and revenue caps, your company and the CSF intermediary should have regard to the company's financial records. Your company must keep up-to-date written financial records accurately recording its transactions and its financial position and performance: s286.

Note: A company's financial records must be retained for seven years and a failure to keep or retain financial records is an offence. 'Financial records' includes (among other things) invoices, receipts, entry books and working papers in relation to the preparation of financial statements.

*Related parties*

RG 261.22 For the assets and revenue caps (and all other requirements of the CSF regime in Pt 6D.3A), 'related party' means:

- (a) a 'related body corporate' of your company—that is, its holding company, its subsidiaries or a subsidiary of its holding company (i.e. a 'sister' company); or
- (b) an entity controlled by:
  - (i) a person who controls your company; or
  - (ii) an associate of that person.

Note: See the definitions of 'related body corporate' in s50 and 'subsidiary' in s46 of the Corporations Act.

RG 261.23 In the 'related party' definition:

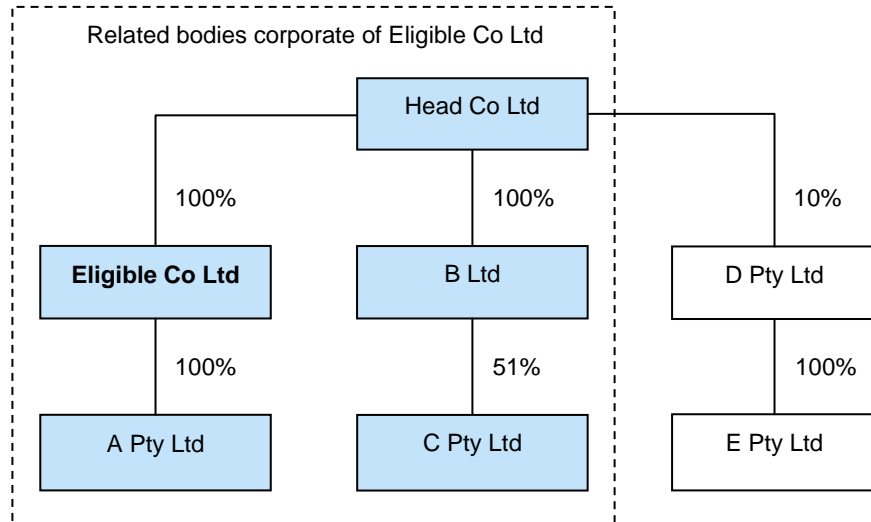
- (a) the concept of 'control' refers to persons with the capacity to determine the outcome of decisions about a company's financial and operating policies; and
- (b) the concept of 'associates', when referring to associates of a company, includes a director or secretary of that company or a director or secretary of a related body corporate of that company. It also includes persons who are acting, or propose to act, in concert with each other in relation to a company's affairs, which may include, for example, family members or persons with common investments and dealings.

Note: See the definition of 'control' in s50AA and the meaning of 'associate' in s10, 11, 15 and 16 of the Corporations Act.

RG 261.24 ASIC has the power to make a determination that the assets or revenue of other closely related bodies should be included in the calculation of the assets or revenue caps: s740. We may exercise this power in rare circumstances, for example, where we have concerns that entities that are closely related (but not 'related parties') are making multiple CSF offers to avoid the assets or revenue caps.

RG 261.25 An example of related bodies corporate, as described in RG 261.22(a), is shown below in Figure 2 and explained in Table 4.

**Figure 2: Example of related bodies corporate**



Note 1: All holdings shown in this example are direct holdings. The example assumes there are no cross-holdings, associate relationships (other than through a corporate group), or practical control below 50%.

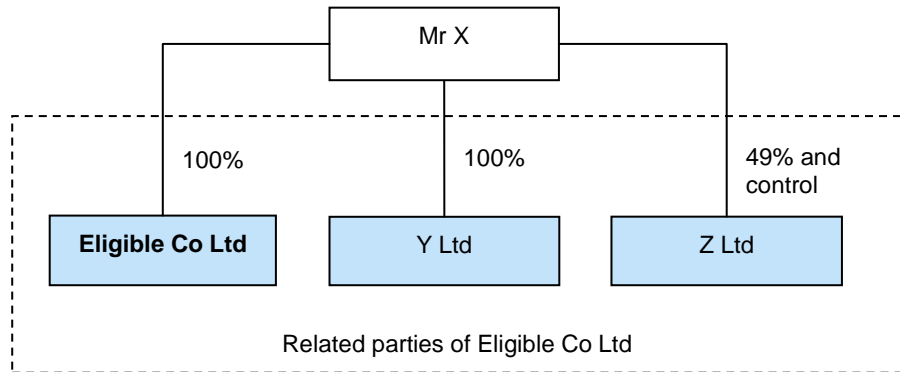
Note 2: The holdings shown in Figure 2 are explained in Table 4 below (accessible version).

**Table 4: Explanation of related bodies corporate in Figure 2**

Entity	Related body corporate of Eligible Co Ltd?	Explanation
Head Co Ltd	Yes	Head Co Ltd is the holding company of Eligible Co Ltd.
A Pty Ltd	Yes	A Pty Ltd is a direct subsidiary of Eligible Co Ltd.
B Ltd	Yes	Head Co Ltd is the holding company of B Ltd, which means B Ltd has the same holding company as Eligible Co Ltd.
C Pty Ltd	Yes	C Pty Ltd is an indirect subsidiary (held through B Ltd's 51% interest) of Head Co Ltd, which is the holding company of Eligible Co Ltd.
D Pty Ltd	No	D Pty Ltd is not a subsidiary of Head Co Ltd (which only has a 10% interest) and Head Co Ltd does not 'control' D Pty Ltd.
E Pty Ltd	No	E Pty Ltd is a subsidiary of D Pty Ltd, which is not a related body corporate of Eligible Co Ltd.

RG 261.26 An example of related parties, through the control relationships described in RG 261.22(b), is shown below in Figure 3 and explained in RG 261.27–RG 261.28.

**Figure 3: Example of related party relationships as a result of control**



Note 1: All holdings shown in this example are direct holdings. The example assumes there are no cross-holdings, associate relationships, or practical control below 50%, unless indicated. Where control is indicated, it is assumed that s50AA of the Corporations Act is satisfied.

Note 2: The control relationships shown in Figure 3 are explained in RG 261.27–RG 261.28 below (accessible version).

RG 261.27 In Figure 3, Mr X holds 100% of Y Ltd and 49% plus control of Z Ltd, and also controls Eligible Co Ltd through a 100% interest. Therefore, Y Ltd and Z Ltd are related parties of Eligible Co Ltd.

RG 261.28 In Figure 3, because the definition of ‘related parties’ is not intended to cover natural person controllers of companies making CSF offers, Mr X is not a related party of Eligible Co Ltd. However, any companies controlled by an associate of Mr X, which may include a family member of Mr X, would be related parties of Eligible Co Ltd.

### Must be an unlisted company

RG 261.29 To be eligible to make a CSF offer, your company and any related parties must not be listed on an Australian financial market.

RG 261.30 The Australian financial markets that list companies include Australian Securities Exchange (ASX), National Stock Exchange of Australia (NSX), Sydney Stock Exchange (SSX) and the IR Plus Securities Exchange.

Note: A list of prescribed financial markets in Australia is contained in reg 1.0.02A. We also keep an updated list of [Licensed domestic financial markets operating in Australia](#) on the ASIC website (although not all markets noted on our website are markets that list companies, as some relate to derivatives and other financial products).

### Must not be an investment company

RG 261.31 To be eligible to make a CSF offer, your company and any related parties must not be an investment company—that is, if a substantial part of its

business or a related party's business involves investing in other companies, entities or schemes (e.g. a managed fund), including for the purpose of making a profit through that investment, then your company is not eligible.

## Determine if your company's offer is eligible

RG 261.32 Table 5 sets out the requirements for an offer to be an eligible CSF offer. All requirements must be satisfied at the time the offer is made—that is, when the CSF offer document is first published on the CSF intermediary's platform.

**Table 5: Requirements for CSF offer eligibility**

Your company's offer must	Corporations Act reference	Guidance
Be made by an eligible company	s738G(1)(b), s738H	RG 261.10– RG 261.31
Expressly state that the offer is made under the CSF regime	s738B(b)	RG 261.35
Be an offer for the issue of fully-paid ordinary shares	s738G(1)(a), s738G(1)(c), reg 6D.3A.01	RG 261.36– RG 261.38
Not be used to raise funds to: <ul style="list-style-type: none"> <li>invest in other companies, entities or schemes; or</li> <li>loan to related parties</li> </ul>	s738G(1)(e) reg 6D.3A.01	RG 261.39– RG 261.40
Comply with the issuer cap (offers to raise no more than \$5 million in any 12-month period)	s738G(1)(d), s738G(2)	RG 261.41– RG 261.51

Source: Part 6D.3A of the Corporations Act.

RG 261.33 The CSF intermediary has an obligation to conduct checks, prior to publishing the CSF offer document, to satisfy itself that the offer is an eligible CSF offer. If the intermediary determines that your company's offer is not eligible, then it must not publish the offer on its platform.

Note: The CSF intermediary must conduct these checks to a reasonable standard, including, for example, checking that the information is consistent with ASIC's records—see RG 262 for further information.

RG 261.34 If your company's offer does not meet each of the requirements in Table 5, then it will not be an eligible CSF offer. If your company proceeds with the offer it will require a prospectus or other disclosure document under Pt 6D.2, unless one of the exceptions in s708 of the Corporations Act applies.

Note: See RG 254 for further guidance on when a company is required to lodge a prospectus or other disclosure document for an offer of its shares.

- RG 261.35 If an offer is expressly stated to be made under the CSF regime, but is not an eligible CSF offer, ASIC may make a stop order to prevent the offer from proceeding: see RG 261.219–RG 261.222.

### Offer for the issue of ordinary shares

- RG 261.36 Your company’s CSF offer must be an offer of fully-paid ordinary shares—offers of other types of securities (e.g. partly-paid shares, preference shares, options or debentures) are not currently permitted under the CSF regime.

Note: The Corporations Regulations 2001 (Corporations Regulations) permit the CSF regime to be extended to a broader range of securities in the future (see reg 6D.3A.01).

- RG 261.37 Your company’s CSF offer must be an offer for the issue, not the sale, of shares—that is, the offer can only cover primary issues and not transfers or sales of shares that are already issued (e.g. sales of shares issued to the founders or directors of the company).

- RG 261.38 Offers to sell shares that have been issued under CSF offers are not covered by the CSF regime. Investors are not able to sell shares acquired under a CSF offer within 12 months of their issue without a prospectus or other disclosure document, unless an exemption in s708 applies (e.g. sales to sophisticated or professional investors) or unless ASIC gives relief.

Note: See the on-sale provisions in s707(3)–(4) of the Corporations Act. [Regulatory Guide 173](#) *Disclosure for on-sale of securities and other financial products* (RG 173) provides further guidance on the on-sale provisions and the circumstances where we may provide relief from the disclosure requirements in Ch 6D of the Corporations Act for the on-sale of securities.

### Use of funds raised under the offer

- RG 261.39 Your company’s CSF offer will not be eligible if:
- (a) your company or its related parties intends to use any of the funds raised for investment purposes—that is, if any of the funds (even if only a small amount) will be used to invest in other companies, entities or schemes, then the offer is not eligible;
  - (b) your company intends to use any of the funds raised to provide a loan (i.e. issue a ‘credit facility’) to a related party of the company or to facilitate a related party providing a loan to your company or another related party of your company—that is, if any of the funds (even if only a small amount) will be loaned to a related party, either directly (e.g. in the form of a cash loan or mortgage) or indirectly (e.g. any form of financial accommodation), under any contract, arrangement or understanding (formal or informal), then the offer is not eligible.

Note: See reg 7.1.06 for the definition of a ‘credit facility’.

RG 261.40 Your company must include in its CSF offer document a description of how it intends to use the funds raised under the CSF offer. Further guidance on this is provided in Table 19 in Section D.

### The issuer cap: \$5 million in 12 months

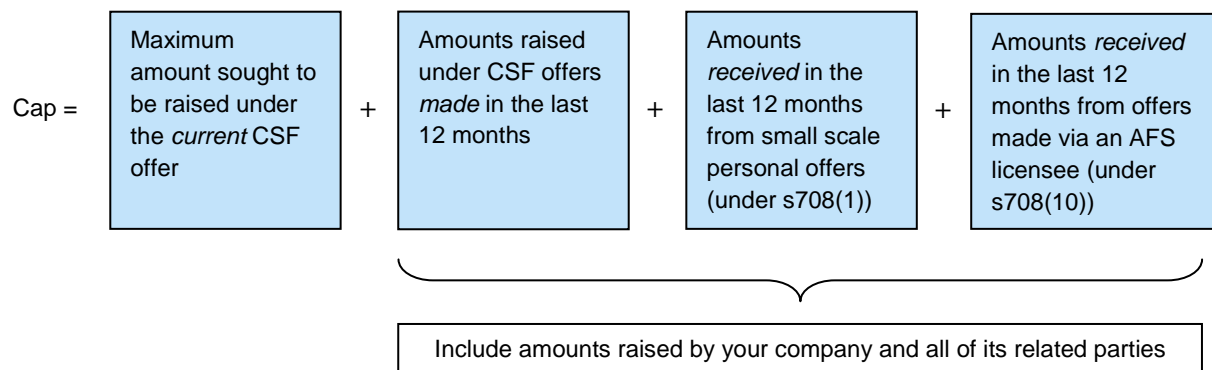
RG 261.41 Under the issuer cap, your company and its related parties must not raise more than \$5 million in any 12-month period through CSF offers and certain other offers.

Note: The Corporations Act allows regulations to be made in the future to adjust the maximum amount for the issuer cap.

### Calculating the issuer cap

RG 261.42 Use the formula shown in Figure 4 and explained in RG 261.44–RG 261.50 to calculate the amounts that count towards the issuer cap.

Figure 4: Formula for calculating the issuer cap



Note: The formula shown in Figure 4 is explained in RG 261.44 (accessible version).

### Amounts that count towards the issuer cap

RG 261.43 Figure 4 above illustrates what amounts raised under certain offers must be counted towards the issuer cap, and the relevant time for determining whether these amounts fall within the 12-month period prior to your company's current CSF offer.

RG 261.44 As illustrated in Figure 4, when calculating the issuer cap, you must include:

- (a) the maximum amount sought to be raised by your company under the current CSF offer;
- (b) all amounts raised by your company and its related parties under any other CSF offers *made* in the last 12 months; and
- (c) all amounts *received* in the last 12 months by your company and its related parties under:



- (i) small scale personal offers under s708(1); and

Note: Section 708(1) of the Corporations Act exempts from disclosure under Pt 6D.2 offers resulting in no more than 20 issues or sales in any 12-month period and raising no more than \$2 million in any 12-month period.

- (ii) offers made via an AFS licensee under s708(10)).

Note: Section 708(10) of the Corporations Act exempts offers made via an AFS licensee from disclosure under Pt 6D.2, where the AFS licensee is satisfied on reasonable grounds that the person to whom the offer is made has previous experience in investing that allows them to assess the merits and risks of the offer.

RG 261.45 It is important to note that *all* funds raised from your company's current CSF offer, whether the funds are received from retail investors or sophisticated or professional investors (that may otherwise be exempt from disclosure under the exceptions in s708(8) and 708(11) of the Corporations Act), are included in the issuer cap. For example, this would include a cornerstone investor who makes a large investment in a company via a CSF offer (even if they are a sophisticated or professional investor).

RG 261.46 However, if your company makes a separate offer of shares (that is not a CSF offer) to sophisticated or professional investors (for example, a concurrent offer via the CSF intermediary's platform available only to certain sophisticated or professional investors), then funds raised from that offer do not count towards the issuer cap. Any such offer should be clearly differentiated from the CSF offer and the CSF intermediary must take care to ensure the offer (and funds raised under the offer) is not presented on the platform as a CSF offer (otherwise this may be misleading).

Note: Section 738E of the Corporations Act provides that a company that makes a CSF offer of shares may also make an offer of the same class of shares under an exception in s708. However, where the exceptions in s708 are relied on, the offer will not be a CSF offer (with all the investor protections under the CSF regime).

RG 261.47 In addition, ASIC has the power to make a determination that the amounts raised by other closely related bodies under CSF offers or other certain offers should be included in the calculation of the issuer cap: s740. We may exercise this power in rare circumstances, for example, where we have concerns that entities that are closely related (but not 'related parties') are making multiple CSF offers or other offers of shares to avoid the issuer cap.

*Timing of previous offers that count towards the issuer cap*

RG 261.48 When determining whether to include amounts raised under previous CSF offers, you must look at when the offer was *made*—that is, when the CSF offer document was first published on the CSF intermediary's platform.

RG 261.49 When determining whether to include amounts raised under previous small scale personal offers or offers made through an AFS licensee, you must look at when the amount raised under the offer was *received*. That is, even if such

offers were *made* more than 12 months ago, any funds *received* in the last 12 months under those offers will count towards the cap.

*Amounts excluded from the issuer cap*

RG 261.50 When calculating the issuer cap, do not count funds raised from other offers of shares that do not require disclosure because of an exception in s708 of the Corporations Act (other than s708(1) and s708(10)), unless these offers are made under a CSF offer (see RG 261.45). For example, funds raised under offers made to sophisticated or professional investors under the exceptions in s708(8) and s708(11) of the Corporations Act do not count towards the issuer cap.

RG 261.51 Below is an example of how to calculate the issuer cap using the rules explained above at RG 261.42–RG 261.50.

#### Example 1: Calculating the issuer cap

New Co Ltd is intending to make an offer under the CSF regime on 30 June 2019. The minimum and maximum subscription amounts for that CSF offer are \$500,000 and \$1 million respectively.

New Co Ltd has previously made two CSF offers:

- on 31 January 2019, which raised \$2 million; and
- on 20 June 2018, which raised \$1 million.

In the period from 30 June 2018 to 31 December 2018, New Co Ltd received \$2 million from small scale personal offers made on 20 June 2018. New Co Ltd also received \$500,000 from these offers between 20 June and 30 June 2018.

In calculating the amounts that count towards the issuer cap, New Co Ltd must:

- *include* the \$1 million maximum subscription amount sought to be raised under its current CSF offer;
- *include* the \$2 million raised under the 31 January 2019 CSF offer, as that offer was made in the 12 months prior to the current CSF offer;
- *exclude* the \$1 million raised under the 20 June 2018 CSF offer, as that offer was made more than 12 months prior to the current CSF offer;
- *include* the \$2 million received on or after 30 June 2018 under the small scale personal offers; and
- *exclude* the \$500,000 received under the small scale personal offers prior 30 June 2018.

The total amount counting towards the issuer cap is \$5 million (made up of \$1 million, \$2 million and \$2 million). As the total does not exceed the issuer cap of \$5 million, the current offer will be an eligible CSF offer.

## C How to make a CSF offer

### Key points

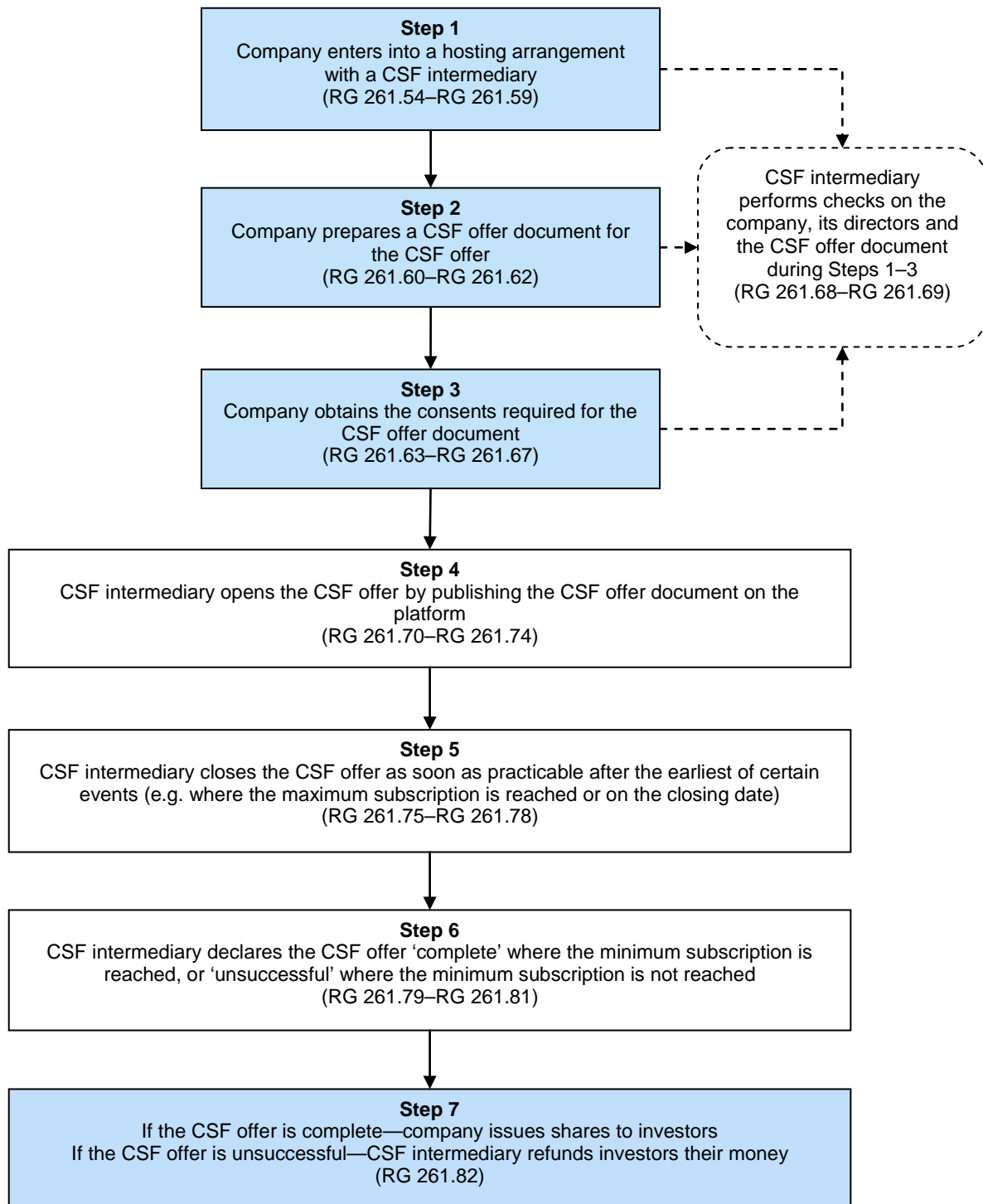
This section explains:

- the process for making offers of shares under the CSF regime; and
- the obligations and investor protections that apply to CSF offers.

### Process for a making a CSF offer

RG 261.52 If your company and its offer are eligible (see Section B), then your company may make an offer of its shares under the CSF regime.

RG 261.53 Figure 5 illustrates a step-by-step process for making a CSF offer. The company making the offer is responsible for Steps 1, 2, 3 and 7. The other steps are completed by the CSF intermediary whose platform your company has selected to host its CSF offer. The process is also set out in detail at RG 261.54–RG 261.82, and the figure includes references to further guidance on each step.

**Figure 5: Process for making a CSF offer**

Note: The process for making a CSF offer shown in Figure 5 is set out in detail at RG 261.54–RG 261.82 (accessible version).

## Step 1: Enter into a hosting arrangement

RG 261.54 Your company will need to choose a CSF intermediary to host the CSF offer and enter into a hosting arrangement with the intermediary for the publication of the CSF offer document and the conduct of the offer on the intermediary's online platform.

Note: The CSF intermediary must hold an AFS licence with the required authorisation to provide a crowd-funding service (see RG 262).

RG 261.55 Prior to entering into a hosting arrangement with a CSF intermediary, you should check the CSF intermediary holds an AFS licence authorising it to provide crowd-funding services. This is important as some intermediaries may refer to themselves as a 'crowd-funding platform', without having the appropriate AFS licence.

RG 261.56 The proposed CSF intermediary will likely conduct checks on your company—to be satisfied that it is eligible to make offers under the CSF regime—prior to entering into a hosting agreement (see RG 261.68–RG 261.69 for the checks that an intermediary is required to undertake).

RG 261.57 The hosting arrangement between your company and the CSF intermediary will include the intermediary's services, the fees for their services, and the intermediary's obligations (for example, to provide an application facility and a communication facility for the CSF offer).

Note 1: The 'application facility' allows the CSF intermediary to receive applications and application money from investors under a CSF offer. A 'communication facility' allows investors, your company and the intermediary to communicate with each other about the offer.

Note 2: There are no restrictions on the fees that may be agreed between your company and the CSF intermediary.

RG 261.58 In addition, the hosting arrangement:

- (a) must require all investor applications and all application money to be sent or paid to, and dealt with by, the CSF intermediary; and
- (b) may place limits on when the CSF intermediary may exercise its discretion to close the CSF offer, except where the intermediary is required by law to close the offer (see RG 261.75–RG 261.78 below).

RG 261.59 Your company may be a retail client of the CSF intermediary. If this is the case, you should make sure that your company receives a Financial Services Guide from the intermediary, which will include information about the intermediary's fees, compensation arrangements and the dispute resolution avenues available for complaints about the intermediary's services.

Note: Your company may be a retail client if it is a 'small business' (less than 100 employees if it is a manufacturer of goods, or otherwise 20 employees) and intends to raise less than \$500,000 under its CSF offer (s761G). See RG 262 for further information about the obligations of AFS licensees, including the obligation to provide

a Financial Services Guide and to have adequate internal and external dispute resolution procedures in place.

## Step 2: Prepare a CSF offer document for the offer

RG 261.60 Your company must prepare a CSF offer document for each offer it makes under the CSF regime. The offer document must contain certain minimum information, which is prescribed under the law. In addition, the offer document must be worded and presented in a ‘clear, concise and effective’ manner.

Note: See s738J and 738K of the Corporations Act.

RG 261.61 Section D sets out the minimum information that must be included and provides guidance to help you prepare a compliant CSF offer document. Section E explains when a CSF offer document is defective and ASIC’s role and powers in relation to CSF offer documents.

RG 261.62 The Appendix contains a template to assist you in preparing a CSF offer document for your company’s offer. The template is a guide (not a prescribed form) and use of the template is optional. We strongly encourage your company and the CSF intermediary to present and format the CSF offer document in a way that enhances the readability and accessibility of the document for retail investors.

## Step 3: Obtain consents for publication of the CSF offer document

RG 261.63 Before arranging for the CSF intermediary to publish the CSF offer document, your company must obtain the written consent of each of the persons listed in Table 6 below. Consent is not required for citing certain statements made by government officials, statements in books, journals and geological reports and trading data: see RG 261.65–RG 261.67 below.

**Table 6: Consents required for publication of the CSF offer document**

Person	Nature of the consent
Every director of the company	Must consent to the publication of the CSF offer document on a platform of the CSF intermediary.
Every person named in the CSF offer document as a proposed director of the company	Must consent to the publication of the CSF offer document on a platform of the CSF intermediary.

Person	Nature of the consent
<p>A person named in the CSF offer document as having made a statement:</p> <ul style="list-style-type: none"> <li>• that is included in the offer document; or</li> <li>• on which a statement made in the offer document is based</li> </ul>	<p>Must consent to the statement being included in the CSF offer document in the form and context in which it is included.</p> <p>The CSF offer document must state that the person has given this consent. The consent must not have been withdrawn before the company arranges for the offer document to be published.</p>

Source: Section 738M of the Corporations Act.

RG 261.64 Your company must keep a copy of these consents for seven years after the consent was given: s738M(3). If your company does not obtain the required consent or does not retain copies of these consents, then it will commit an offence.

### Relief from obtaining consent for certain statements

RG 261.65 We recognise that it may not be practical or may be difficult for a company to obtain the consent of particular people to include certain statements in a CSF offer document. Accordingly, we have provided relief in [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#) so that you may include in your company's CSF offer document the following statements without consent:

- statements made by government officials or in a public official document;
- statements already published in a book, journal or comparable publication;
- statements referring to historical geological reports that are included in a current geological report set out in the CSF offer document; and
- trading data relating to trading on a prescribed financial market or approved foreign exchanges.

RG 261.66 There are certain requirements that apply when relying on the relief in ASIC Corporations (Consents to Statements) Instrument 2016/72. For example, the relief in RG 261.65(a) and RG 261.65(b) does not apply where the original statement was made in connection with your company, your company's CSF offer or any business, property or person that is the subject of the CSF offer document.

RG 261.67 For further detailed guidance on the relief in ASIC Corporations (Consents to Statements) Instrument 2016/72 and the requirements for relying on the relief, see Section D of [Regulatory Guide 55 Statements in disclosure documents and PDSs: Consent to quote](#) (RG 55).

## CSF intermediary conducts prescribed checks

RG 261.68 Prior to entering into a hosting arrangement with your company and prior to the publication of the CSF offer and CSF offer document, the CSF intermediary will conduct a number of checks on your company, its officers and the CSF offer document. These checks (which are prescribed under the law) include checks on:

- (a) the identity (e.g. name, Australian Company Number (ACN), company type and address) and eligibility of your company and the eligibility of your company's offer;
- (b) your company's CSF offer document—in particular, whether the offer document contains the minimum information required and is worded and presented in a 'clear, concise and effective' manner; and
- (c) your company's directors, senior managers and other officers (e.g. company secretary)—including:
  - (i) verifying their identity;
  - (ii) whether they are of good fame or character and whether legal or disciplinary actions against directors or senior managers, if any, have been disclosed in the CSF offer document; and
  - (iii) whether the CSF intermediary has reason to believe that the company or a director or other officer has *knowingly* engaged in misleading or deceptive conduct in relation to the CSF offer (for example, where the directors have made dishonest representations about their company or the offer).

Note: For further guidance on the gatekeeper role and the checks to be conducted by the CSF intermediary both prior to and during the course of your company's CSF offer, see RG 262.

RG 261.69 It is important to regularly communicate with the CSF intermediary hosting your company's CSF offer prior to and during the preparation of the CSF offer document, as the intermediary must be satisfied that your company and its offer are eligible and that the offer document meets the requirements under the law, before the offer can proceed.

## Step 4: CSF intermediary publishes the CSF offer document on its platform and opens the offer

RG 261.70 Once you have obtained the necessary consents, and the CSF intermediary has completed and is satisfied with its checks, the intermediary may publish your company's CSF offer on its online platform.

RG 261.71 The offer opens when the CSF offer document is first published on the CSF intermediary's platform, and remains open until closed by the intermediary. When an offer is suspended by an intermediary, it still remains open.



- RG 261.72 It is an offence for your company to:
- (a) use more than one CSF intermediary's platform—that is, your company can only use one intermediary for the same CSF offer (but can use a different intermediary in relation to an earlier or later offer); or
  - (b) make a CSF offer where the hosting agreement does not require all applications and application money to be handled via the CSF intermediary.

RG 261.73 The CSF offer can only be *made* by publishing a CSF offer document on the platform of the CSF intermediary. If your company also makes a copy of the CSF offer document available on its website or your company or the CSF intermediary otherwise distributes the offer document (e.g. by email or on social media), you should include a statement directing investors to the intermediary's platform and you must comply with the rules about advertising a CSF offer.

Note: If your company advertises a CSF offer, it must include a prescribed statement that investors should consider the CSF offer document and the general risk warning in deciding whether to apply under the offer. See RG 261.89–RG 261.92 for further information.

RG 261.74 Under the law, your company's CSF offer can be open for a maximum of three months, or a shorter period specified in the CSF offer document. The offer period cannot be extended for any reason, including if the offer document is found to be defective and a replacement or supplementary offer document is provided to investors.

### **Step 5: CSF intermediary suspends or closes the offer**

RG 261.75 A CSF offer is closed from the time when the CSF intermediary gives written notice on the platform that the offer is closed.

RG 261.76 The CSF intermediary *may* close a CSF offer at any time, although the hosting arrangement between your company and the intermediary can place limits on when the intermediary can close the offer (except where the intermediary is required to close the offer under the Corporations Act).

RG 261.77 The CSF intermediary *must* close or suspend a CSF offer as soon as practicable after becoming aware that the CSF offer document is 'defective'. If the intermediary elects to suspend (rather than close) the offer, then it must decide whether to re-open the offer (i.e. if your company provides a supplementary or replacement offer document correcting the defect) or close the offer (i.e. if the defect is not corrected through further disclosure).

Note: Information on when a CSF offer document is defective is provided in Section E of this guide.

RG 261.78 The CSF intermediary *must* close the CSF offer as soon as practicable after the earlier of the following times:

- (a) three months from when the offer was made;
- (b) any shorter period specified in the CSF offer document as the date that the offer will close;
- (c) the offer is fully subscribed to the maximum subscription amount;
- (d) your company withdraws the offer; or

Note: A company can withdraw a CSF offer at any time before the offer is complete. To do so, a company must notify the CSF intermediary that the offer is withdrawn (s738S of the Corporations Act). The intermediary must, as soon as practicable, close the offer and remove the CSF offer document from its platform.

- (e) the intermediary becomes prohibited from continuing to publish the CSF offer document under its gatekeeper obligations—that is, the intermediary is no longer satisfied with the results of its ongoing checks during the course of the offer (see Step 3 above for details on the checks CSF intermediaries are required to undertake).

### **Step 6: CSF intermediary declares the offer ‘complete’ or ‘unsuccessful’**

RG 261.79 When the CSF intermediary has closed a CSF offer (i.e. at the expiry of three months or the specified offer period, or because the offer is fully subscribed), the CSF intermediary must determine, after the expiry of all investor withdrawal rights, whether the offer:

- (a) is complete—that is, the minimum subscription amount for the offer has been raised (excluding any withdrawn or rejected applications); or
- (b) is unsuccessful—that is, the minimum subscription amount was not raised.

RG 261.80 A CSF offer cannot be complete unless all retail investor withdrawal rights—whether statutory or provided for by the CSF intermediary—have expired. This means an intermediary must wait for the expiry of:

- (a) the five-day cooling-off period—retail investors have an unconditional right to withdraw from a CSF offer within five business days of making an application; and

Note: The ‘cooling-off’ rights provide retail clients with time to reconsider their decision to invest and to withdraw their application. If the application is withdrawn, the intermediary must return the application money—see Table 10 below and RG 262 for further information.

- (b) all withdrawal rights—all investors have one month to withdraw their application where a company publishes a supplementary or replacement CSF offer document in relation to a defective CSF offer document.

- RG 261.81 If a CSF offer is closed for a reason other than the offer period has ended or the offer is fully subscribed—that is, it was withdrawn by the company, or the CSF intermediary had to close the offer under its gatekeeper obligations—it can never be complete. In these circumstances, the CSF intermediary must refund application money to all investors who have applied under the offer.

### Step 7: Your company issues shares or the CSF intermediary refunds investor money

- RG 261.82 If the CSF intermediary determines that your company's CSF offer:
- (a) is complete—your company will be required to issue shares to applicants under the offer and the intermediary will be required to pay the application money to your company (less fees payable to the intermediary under the hosting agreement) following the issue of the shares;
  - (b) is unsuccessful—the intermediary must refund application money to applicants; or
  - (c) is closed, but not complete (i.e. because it was withdrawn or closed under the intermediary's gatekeeper obligations)—the intermediary must refund application money to applicants.

Note: For further information on how the CSF intermediary is required to deal with application money, see Table 4 in RG 262.

## What obligations apply to CSF offers?

- RG 261.83 Your company should be aware of the obligations and prohibitions that apply when making offers under the CSF regime—these are set out in Table 7 below. In most cases, a failure to comply with these obligations and prohibitions will mean your company will commit an offence.

**Table 7: Obligations and prohibitions applying to CSF offers**

When making a CSF offer	Corporations Act reference	Guidance reference
Your company and its related parties must not have more than one CSF offer open at a time.	s738R	RG 261.84
Your company and its related parties must not provide or arrange for any financial assistance to enable retail investors to invest in your company's CSF offer.	s738ZE	RG 261.85– RG 261.87

When making a CSF offer	Corporations Act reference	Guidance
Your company must comply with the rules about advertising its CSF offer. This includes a requirement to include in all advertisements a statement directing investors to the general risk warning and CSF offer document.	s738ZG	RG 261.88– RG 261.107  See also RG 234
Your company must not engage in misleading or deceptive conduct. Advertising, and statements or information published on the CSF intermediary's platform or on the communication facility, must not be misleading or deceptive.	s1041E, s1041F, s1041H	RG 261.88– RG 261.107  See also RG 234
Your company must not give personal advice to investors in relation to its shares.	766B reg 7.1.08(3)	RG 261.108– RG 261.110
Your company must only make the offer of its shares via a CSF offer document published on a CSF intermediary's platform. Offers of shares in the course of, or because of, an unsolicited meeting or telephone call are not permitted.	s738L, s736	RG 261.111– RG 261.114  <a href="#">Regulatory Guide 38</a> <i>The hawking provisions</i> (RG 38)
You must not make a CSF offer for a company that has not been formed or does not exist.	s738ZF	N/A
Your company must notify the CSF intermediary when it becomes aware that its CSF offer document is defective.	s738V	Section E
Your company must not offer shares under a CSF offer document if the document is defective.	s738Y	Section E

Source: Corporations Act.

### Multiple CSF offers are prohibited

- RG 261.84 Your company and its related parties must not have more than one CSF offer open at any time—that is, an offer cannot be made at a time when another offer is open or suspended.

### Your company must not provide financial assistance

- RG 261.85 Your company, its related parties and the CSF intermediary hosting your company's CSF offer must not provide financial assistance, or arrange for financial assistance to be provided, to a retail investor in connection with your company's offer. For example, your company must not provide a loan (whether or not interest is charged to the borrower) to a retail investor so that the investor can purchase shares under your company's offer.

Note: The term ‘financial assistance’ has the meaning given in Pt 2J.3 of the Corporations Act. If your company, its related parties or the CSF intermediary do not comply with this prohibition, they will commit an offence.

- RG 261.86 A company that financially supports the purchase of its own shares under a CSF offer may seek to artificially inflate investor demand for its shares, may inappropriately induce investors to participate in the offer or may cause the offer to appear more successful than it actually is.
- RG 261.87 This prohibition applies whether the financial assistance is provided before or after the investor acquires shares under the CSF offer.

### Rules about advertising the CSF offer

- RG 261.88 We recognise that advertising plays an important role in crowd-sourced funding. We want to ensure that companies, CSF intermediaries and other promoters give clear, accurate and balanced messages when advertising CSF offers.

### Prescribed statement must be included in advertisements

- RG 261.89 Your company may advertise its CSF offer or intended offer, both before and after the CSF offer document is published on the CSF intermediary’s platform, provided that the advertisement or publication includes a statement that investors should consider the offer document and the general risk warning in deciding whether to apply under the offer.

Note: See s738ZG(6) of the Corporations Act. If this statement is not included (and no other exceptions apply), your company and/or its officers will commit a strict liability offence, punishable by a maximum penalty of 30 penalty units.

- RG 261.90 The requirement to include a statement directing investors to the CSF offer document and general risk warning in advertisements for CSF offers aims to alert investors to the information contained in the CSF offer document, before applying for shares under an offer. The requirement applies to all forms of advertising, including advertising on social media (e.g. Twitter, YouTube and Facebook).
- RG 261.91 Without the inclusion of a statement that investors should consider the CSF offer document and the general risk warning, your company, the CSF intermediary hosting the CSF offer and other persons must not:
- (a) advertise the offer or intended offer; or
  - (b) publish a statement that:
    - (i) directly or indirectly refers to the offer or intended offer; or
    - (ii) is reasonably likely to induce people to apply for shares under the offer or intended offer.

Note: See s738ZG(1) of the Corporations Act.

- RG 261.92 In determining whether a statement indirectly refers to a CSF offer or intended offer, or is reasonably likely to induce investors to apply under an offer, the following three factors must be considered:
- (a) whether the statement is part of normal advertising directed at maintaining or attracting customers;
  - (b) whether the statement contains information that deals with the affairs of the company; and
  - (c) whether an investor would likely be encouraged to invest in shares on the basis of the statement rather than the CSF offer document.

Note: See s738ZG(3) of the Corporations Act.

**Advertising and information on the CSF intermediary's platform must not be misleading or deceptive**

- RG 261.93 Your company and the CSF intermediary must ensure that advertisements for a CSF offer are not misleading or deceptive. Advertising includes information published on the communication facility for the offer and advertising on social media. The obligation not to engage in misleading or deceptive conduct also applies to information on the CSF intermediary's platform.

Note: Whether a particular statement is misleading or deceptive will depend on all the circumstances of the particular case.

- RG 261.94 [Regulatory Guide 234](#) *Advertising financial products and services (including credit): Good practice guidance* (RG 234) provides detailed good practice guidance, which may assist you in ensuring that advertisements are not misleading or deceptive: see in particular Section B of RG 234.
- RG 261.95 When presenting information on the CSF intermediary's platform, your company and the intermediary should consider the prescribed minimum information in the CSF offer document. A statement in the CSF offer document may become misleading when it is taken out of context in an advertisement or when published on the intermediary's platform.
- RG 261.96 In particular, your company and the CSF intermediary should ensure the presentation of information on the intermediary's platform about your company and the CSF offer is not misleading. For example, it may be misleading to:
- (a) overstate or give unbalanced emphasis to the potential benefits (e.g. investment returns) and positive information (e.g. about the company and its management), or create unrealistic expectations by giving undue prominence to the benefits compared with the risks associated with your company's business;
  - (b) not clearly or prominently disclose information about the risks facing your company's business or adverse information about your company

(e.g. convictions or penalties against the company or its directors)—information about risks should be given sufficient prominence compared to information about benefits and should be clearly signposted on the intermediary’s platform; or

- (c) present views about the offer as those of investors or unrelated parties, whether on the communication facility, the intermediary’s platform or in advertising (including contributions to social media), if in fact these are the views of your company, the intermediary or any associates.

RG 261.97 Failure to give adequate prominence on the platform to key adverse information (e.g. risks facing the business and convictions or penalties against the company or its directors) otherwise contained in the CSF offer document may cause the information on the platform to be misleading. Generally, key information that may be important to an investor’s decision should be clear, prominent and easily accessible on the platform.

Note: See RG 262 for further guidance about the need to prominently display certain information on the CSF intermediary’s platform, including the general risk warning and the CSF offer document itself.

RG 261.98 We encourage the use of digital media (e.g. video or audio presentations) to assist investors in understanding information about a CSF offer. Your company and the CSF intermediary should take care to ensure there is nothing misleading or deceptive in your advertisements, when using different media for communicating with investors about an offer.

#### **Statements made by your company on the communication facility**

RG 261.99 While your company’s CSF offer is open, the CSF intermediary must provide a communication facility for the offer on its platform.

RG 261.100 The purpose of the communication facility is to allow your company, the CSF intermediary and potential investors to communicate with each other about your company’s CSF offer. The facility must enable a person who accesses the CSF offer document to post comments about the offer, see posts made by others and ask your company and the intermediary questions about the offer. It also enables your company or the intermediary to respond to questions and comments posted on the facility.

RG 261.101 Your company must ensure that all comments made by its officers and employees on the communication facility are made in good faith. Statements made in good faith on the communication facility for a CSF offer are permitted under the advertising rules. If comments are not made in good faith, then your company may breach the advertising rules.

Note: Officers, employees or agents of your company must clearly disclose their relationship to your company and/or the CSF intermediary when making posts on the communication facility.

- RG 261.102 You should ensure that all statements made by or on behalf of your company on the communication facility are not misleading or deceptive. This means that statements made by your company must be balanced (focusing on both benefits and risks of the CSF offer), accurately represent your company's business and not create misleading impressions.

### Other publications and statements your company can make

- RG 261.103 There are several other types of publications and statements your company can make without breaching the rules about advertising CSF offers—these are set out in Table 8 below.

**Table 8: Other publications and statements your company can make without breaching the advertising rules for CSF offers**

Type of publication	Explanation
Notice or report of general meeting	A notice or report of a general meeting of your company is permitted.
Reports about your company, published by your company	Your company can make publications that consist solely of a report about your company and do not: <ul style="list-style-type: none"> <li>• contain information that has a material effect on your company (other than information that has already been made public by your company in a CSF offer document, lodged disclosure document, annual report or notice of general meeting); and</li> <li>• refer (directly or indirectly) to your company's CSF offer or intended offer.</li> </ul>

Source: Section 738ZG of the Corporations Act.

### Publications and statements made by other persons

- RG 261.104 Certain persons (such as publishers and media reporters) can publish or make statements about your CSF offer or intended offer without breaching the advertising rules—these are set out in Table 9 below.

**Table 9: Publications and statements other persons can make without breaching the advertising rules for CSF offers**

Type of person or publication	Explanation
Publishers	Media businesses (newspapers, magazines, radio and television broadcasters and their electronic equivalents) can publish an advertisement or publication about a CSF offer or intended offer in the ordinary course of their business.



Type of person or publication	Explanation
Statements made on the communication facility on the CSF intermediary's platform	A person (including the CSF intermediary and investors) can make a statement in good faith on the communication facility for a CSF offer provided on the intermediary's platform.
News report or media comment	A person can publish a news report or make other genuine comment in the media that refers to a CSF offer document that is published on a CSF intermediary's platform, information in a CSF offer document and information that is contained in certain other permitted reports (e.g. a notice of general meeting or report published by the company).
Reports by independent third parties	<p>An independent third party may publish a report about shares of your company.</p> <p>An entity will be an independent third party if it is not the company making the CSF offer, a director of that company, the CSF intermediary hosting the offer, or anyone else who has an interest in the success of the offer. An entity will not be independent if they receive consideration or a benefit for the publication.</p>

Source: Section 738ZG of the Corporations Act.

### Consequences of breaching the advertising rules

- RG 261.105 Where advertisements or marketing activities are misleading or deceptive, or do not include the required statement advising investors to consider the CSF offer document and general risk warning for CSF offers, ASIC may:
- exercise our stop order powers to stop the advertisement from continuing to be published (see RG 261.219–RG 261.222); or
  - take action against the company making the offer, the CSF intermediary or the party responsible for the advertisement.
- RG 261.106 When assessing whether an advertisement is misleading or deceptive, we will consider a range of factors that contribute to the overall impression of the advertisement. See Section D of RG 234 for further guidance on the factors we will consider and ASIC's regulatory powers in relation to misleading or deceptive conduct.
- RG 261.107 In addition, the CSF intermediary hosting your company's CSF offer must take action—by closing the offer—if it has reason to believe that the directors of your company have *knowingly* engaged in misleading or deceptive conduct in relation to the offer. This includes misleading advertisements or misleading statements by your company on the intermediary's platform or the communication facility for the offer.

Note: The CSF intermediary's obligation to close the CSF offer will only arise where the intermediary has reason to believe the company *knowingly* engaged in misleading or deceptive conduct. There may be cases where a company may have, for example, unintentionally provided information that is misleading.

## Providing financial product advice

RG 261.108 Generally, persons providing financial product advice are required to hold an AFS licence under the Corporations Act.

RG 261.109 Your company will not be providing 'financial product advice' if it:

- (a) provides a CSF offer document for its CSF offer published on the CSF intermediary's platform—and the offer document does not contain personal advice;
- (b) provides information or makes a statement that is published on the intermediary's platform or on the communication facility for its offer that contains or draws on information otherwise contained in the CSF offer document (and attributes that information to the offer document)—and the statement does not contain personal advice;
- (c) publishes an advertisement in relation to its offer or intended offer that contains or draws on information otherwise contained in the CSF offer document (and attributes that information to the offer document) and that complies with the advertising rules—and the advertisement or publication does not contain personal advice.

Note: See reg 7.1.08(3). Personal advice generally is financial product advice that is given or directed to a person where the provider of the advice has considered one or more of the person's objectives, financial situation and needs (see s766B(2)).

RG 261.110 If your company gives general advice (but not personal advice) about its shares on the CSF intermediary's platform or on the communication facility for its CSF offer, then it should (at the same time as giving the advice):

- (a) advise investors that it is not licensed to provide financial product advice in relation to the company's shares; and
- (b) notify retail investors about the availability of cooling-off rights.

## Offers must be made via the CSF intermediary's platform

RG 261.111 CSF offers can only be made via a CSF intermediary's platform. This ensures that investors are not able to apply for shares without receiving the CSF offer document published on the intermediary's platform, which contains the minimum information required to be provided to investors.

Note: See s738L(1) of the Corporations Act. However, your company and the CSF intermediary may advertise the CSF offer and distribute or make available a copy of the CSF offer document (e.g. on the company's website, by email or on social media) provided that this complies with the rules about advertising a CSF offer.

RG 261.112 Your company must not offer shares in the course of, or because of, an unsolicited meeting or telephone call. This includes inviting investors to apply for shares in your company. This is called the prohibition against securities hawking.

Note: See s736 of the Corporations Act. While Pt 6D.3 of the Corporations Act does not generally apply to offers made under the CSF regime, the securities hawking prohibition in s736 may apply where an offer is made in the course of an unsolicited meeting or telephone call *and* is not expressed to be made under the CSF regime (meaning it will not be a CSF offer). If a company offering shares expresses the offer to be a CSF offer *and* the offer is eligible to be made under the CSF regime, the prohibition on securities hawking will not technically apply.

RG 261.113 If your company—or other persons including officers and employees of your company and the CSF intermediary—makes an unsolicited approach to investors in connection with your company’s offer:

- (a) it will contravene the rules for making offers under the CSF regime, because the offer will have been made otherwise than on the platform of a CSF intermediary; and
- (b) it may contravene the prohibition against securities hawking.

RG 261.114 [Regulatory Guide 38](#) *The hawking provisions* (RG 38) provides guidance on how we administer the prohibition on hawking in s736 of the Corporations Act, including the circumstances in which we consider a telephone call or meeting may be ‘unsolicited’.

## Meeting your additional obligations to investors

RG 261.115 There are a number of additional obligations concerning investors participating in CSF offers that your company and the CSF intermediary are required to meet. These obligations are set out in Table 10 below.

RG 261.116 Although it is the CSF intermediary’s role to monitor compliance with these obligations, it is important for your company to be aware of them, as they impact retail investors participating in the CSF offer.

**Table 10: Additional obligations to investors participating in CSF offers**

Obligation	Explanation
Investor cap	<p>Retail investors can invest a maximum of \$10,000 through CSF offers by the same company via the same CSF intermediary in any 12-month period.</p> <p>Where there are joint applicants, each applicant is taken to have made an individual application for the whole amount under the application (which counts towards each applicant's investor cap).</p> <p>The CSF intermediary must reject an investor's application where it will result in the investor breaching the cap, and refund the application money to the investor as soon as practicable.</p>
Unconditional cooling-off rights	<p>Retail investors have up to five days after making an application to reconsider their investment and withdraw their application.</p> <p>The investor must exercise their cooling-off rights using the method specified by the CSF intermediary on its platform.</p> <p>Where an investor exercises their cooling-off rights, the intermediary must refund their application money in full as soon as practicable.</p>
General risk warning	<p>A general risk warning statement, using specified wording required by law, must be provided to retail investors in the CSF offer document and on the CSF intermediary's platform.</p> <p>The purpose of the general risk warning is to alert potential investors—particularly retail investors—to the potential risks and high failure rates of start-ups and early-stage companies, which are most likely to be making offers under the CSF regime.</p> <p>You must include the general risk warning in Section 1 of the CSF offer document: see RG 261.135.</p> <p>The intermediary must prominently display the general risk warning on its platform at all times while a CSF offer is open or suspended.</p>
Risk acknowledgement	<p>Retail investors must acknowledge that they have read and understood the general risk warning before applying for shares under a CSF offer.</p> <p>The CSF intermediary must reject an application from a retail investor where the investor has not completed the risk acknowledgement.</p>

Source: Sections 738D, 738Z, 738ZA, 738ZC and 738ZD of the Corporations Act and regs 6D.3A.03, 6D.3A.07 and 6D.3A.10 of the Corporations Regulations.

## D Preparing the CSF offer document

### Key points

This section will help you prepare a CSF offer document that complies with the minimum information requirements under the law.

It explains what information should generally be included in the CSF offer document. The guidance in this section is not intended to be a 'checklist' for your company's CSF offer document, as some of the information may not be relevant or material to your company.

The Appendix to this guide contains a template to assist you in preparing a CSF offer document for your company's CSF offer. The template gives instructions on and examples of information to consider including in each section of the CSF offer document.

### How to prepare a CSF offer document

- RG 261.117 A CSF offer document is required for each offer your company makes under the CSF regime. Your company and its directors are responsible and liable for the information contained in the offer document (see Section E of this guide).
- RG 261.118 Accordingly, it is important for the directors of your company to take steps to satisfy themselves that all information contained in the CSF offer document is accurate, that all of the required information has been included and that there is nothing misleading in the offer document.
- RG 261.119 We recommend 'fact-checking' your company's CSF offer document to ensure it is accurate and all statements have a reasonable basis.
- RG 261.120 It is critical that the directors are involved in this process, since directors of start-ups or small to medium sized businesses are often intimately involved with and have a close understanding of the company's business. Management personnel should also be involved in this process, if they have knowledge of key commercial and financial information required to be included in a CSF offer document.
- RG 261.121 The CSF intermediary hosting your company's CSF offer will also undertake checks on the CSF offer document to satisfy itself that the minimum information has been included and that the 'clear, concise and effective' requirement has been met.

## What are the key requirements for CSF offer documents?

RG 261.122 The key requirements under the law for CSF offer documents are set out in Table 11.

**Table 11: Key requirements for CSF offer documents**

The CSF offer document must	Corporations Act reference	Guidance
Include the minimum information required by law	s738J(2), reg 6D.3A.02–6D.3A.06	RG 261.126–RG 261.175
Be worded and presented in a ‘clear, concise and effective’ manner	s738K	RG 261.176–RG 261.178
Not be misleading or deceptive	s738U	Section E RG 261.181–RG 261.191

Source: Part 6D.3A of the Corporations Act.

- RG 261.123 If your company’s CSF offer document does not meet the requirements in Table 11, then it may be defective. Further information about when a CSF offer document is defective and how your company may correct the deficiency is contained in Section E of this guide.
- RG 261.124 The CSF intermediary hosting the CSF offer has an obligation to check whether the CSF offer document complies with the minimum information and ‘clear, concise and effective’ requirements, before it is published on the intermediary’s platform and during the course of the offer.
- RG 261.125 Where the CSF offer document does not comply with the law, ASIC may make certain orders—on an interim or final basis—to prevent the CSF offer from proceeding. This power also extends to certain advertisements and publications associated with an offer. Section E contains further details on ASIC’s powers in relation to defective documents and advertisements.

## What minimum information must be included?

RG 261.126 Table 12 set outs the information that must be included in a CSF offer document as prescribed by the law.

**Table 12: Minimum information required by law to be included in a CSF offer document**

Section	The CSF offer document must include	Guidance	Template CSF offer document
Contents page	A table of contents with specific sections and headings (prescribed by law).	N/A	Contents (p. 2)
Section 1: Risk warnings	A general risk warning about crowd-sourced funding (wording prescribed by law).	RG 261.135– RG 261.136	Section 1 (p. 3)
Section 2: Information about your company	Information about your company—including its: <ul style="list-style-type: none"> <li>• company details;</li> <li>• business and organisational structure;</li> <li>• main risks;</li> <li>• capital structure;</li> <li>• financial statements;</li> <li>• directors and senior managers; and</li> <li>• details of certain convictions, penalties or administrative actions against your company and its directors or senior managers.</li> </ul>	RG 261.137– RG 261.168,  Table 13– Table 18	Section 2 (pp. 4–9)
Section 3: Information about the offer	Information about the offer—including: <ul style="list-style-type: none"> <li>• the rights associated with the shares on offer;</li> <li>• the offer period and the minimum and maximum subscription amounts under the offer; and</li> <li>• how the funds raised will be used.</li> </ul>	RG 261.169– RG 261.170  Table 19	Section 3 (pp. 10–13)
Section 4: Information about investor rights	Information about investor rights—including: <ul style="list-style-type: none"> <li>• the cooling-off period;</li> <li>• the effect of the reporting and corporate governance concessions; and</li> <li>• the effect of the communication facility on the CSF intermediary's platform.</li> </ul>	RG 261.171– RG 261.174  Table 20	Section 4 (pp. 14–15)

Source: Regulations 6D.3A.02–6D.3A.06 of the Corporations Regulations.

### Facilitating concise disclosure and flexibility in the order and presentation of CSF offer documents

- RG 261.127 The information in Table 12 is the *minimum* information that a company must include in the CSF offer document—you may include additional information that you consider relevant or helpful to assist retail investors in making a decision whether to invest in your company.
- RG 261.128 In particular, you should consider if all material information about your company has been included in the CSF offer document, to minimise the risk of it being misleading or deceptive.

Note: If material price-sensitive information is not made publicly available, there is also a risk that your company may breach the prohibition against ‘insider information’ in s1043A, where your company procures applications for shares.

RG 261.129 Our guidance in this section explains:

- (a) information that should generally be included in the CSF offer document to meet the minimum information requirements; and
- (b) additional information that may be material and relevant for investors, which your company should consider including in its CSF offer document to help meet the obligation to ensure the offer document is not misleading or deceptive.

RG 261.130 Our guidance is not intended to be a prescriptive ‘checklist’ for your company’s CSF offer document, as some of the information may not be relevant or material to your company. We recognise that the content and length of a CSF offer document will vary depending on your company’s circumstances, including the complexity of its business.

RG 261.131 While the law prescribes the exact order of the four key sections of the CSF offer document and the information that must be included in each section (see Table 12 above), the presentation and ordering of information *within* each section of the CSF offer document is flexible (for example, the information that must be contained in Section 2 of the CSF offer document can be ordered and presented within that section of the offer document as you consider appropriate).

RG 261.132 We will administer the law in a way that facilitates flexibility in the presentation of CSF offer documents and promotes concise disclosure (i.e. reducing the length of CSF offer documents). In particular, we consider the following practices are appropriate:

- (a) using cross-references to other information *within* the CSF offer document, where information would otherwise be duplicated;

Note: For example, there is some potential overlap in the minimum information requirements for Sections 2 and 3 of the CSF offer document where the shares under a CSF offer are in an existing class of shares, which means that strict compliance with the law may result in duplication of information about the rights associated with the shares.

- (b) using annexures or appendices to the CSF offer document for additional information (not prescribed under the law) that is not key information or is less important to investors (i.e. information of low materiality or relevance). This might include the notes to the financial statements or details of the terms of convertible securities, complex debt instruments or a debt facility; and
- (c) using annexures or appendices to attach copies of other key documents, such as shareholder agreements or your company’s constitution, to the CSF offer document. However, where required by law, you must also include a description of certain information contained in these



documents in the CSF offer document itself (that is, merely attaching the other document to the CSF offer document may not be sufficient to meet the requirements under the law).

### Template CSF offer document

- RG 261.133 We have included a template CSF offer document in the Appendix to this guide. The template provides you with a standard structure, accompanied by instructions and example content, to help your company prepare a CSF offer document that includes the minimum information required by law.
- RG 261.134 The template is a guidance tool (not a prescribed form) and use of the template is optional. We strongly encourage your company and the CSF intermediary to present and format the CSF offer document in a way that enhances the readability, accessibility and digital compatibility of the document for retail investors.

## Section 1: Risk warning for investors

- RG 261.135 Section 1 of the CSF offer document must include a prominent general risk warning about crowd-sourced funding—in the exact wording contained in the Corporations Regulations—to investors.

Note: See Section 1 of the template CSF offer document in the Appendix for the prescribed wording of the general risk warning (which is contained in reg 6D.3A.03).

- RG 261.136 The purpose of the general risk warning is to alert retail investors to the risks associated with investing in CSF offers, including the risk that investors may lose their money.

## Section 2: Information about your company

- RG 261.137 Section 2 of the CSF offer document must include certain information, set out in Table 13 below, about your company, its business and its directors and senior managers.

**Table 13: Information about your company that must be included in the CSF offer document**

Category	What to include	Guidance	Template CSF offer document
Company details	Your company's name, ACN, company type (e.g. public company limited by shares) and the address of its registered office and principal place of business.	N/A	Section 2.1 (p. 4)

Category	What to include	Guidance	Template CSF offer document
Criminal and civil legal actions against your company	<p>Details of and a description of the circumstances giving rise to:</p> <ul style="list-style-type: none"> <li>any convictions of criminal offences or civil penalties imposed under the Corporations Act against your company;</li> <li>any enforceable undertaking given to ASIC by your company; and</li> <li>any other convictions or penalties (under other laws) against your company in the last 10 years.</li> </ul>	N/A	Section 2.2.5 (p. 6)
Your company's business	A description of your company's business and organisational structure.	Table 14	Section 2.2 (pp. 4–5)
Capital structure	A description of your company's debt and equity capital structure, including all classes of issued securities (e.g. shares and options) and rights associated with all classes of securities.	Table 15	Section 2.3 (pp. 6–7)
Directors and senior managers	<p>Identity, skills and relevant experience of all current (and proposed) directors and senior managers.</p> <p>Details of any criminal or civil legal or disciplinary actions under the Corporations Act or any other laws (in the last 10 years) against, or enforceable undertakings given to ASIC by, your company's directors and senior managers.</p>	Table 16	Section 2.4 (pp. 7–8)
Key risks	A description of the main risks facing your company's business.	Table 17 RG 261.144– RG 261.150	Section 2.5 (pp. 8–9)
Financial information	<p>Your company's financial statements for the most recent financial year.</p> <p>These are the financial statements your company is required to prepare under the Corporations Act, which would generally include a statement of financial position, a profit and loss statement, a cash flow statement and a statement of changes in equity.</p> <p>Your financial statements must:</p> <ul style="list-style-type: none"> <li>be for a financial year (i.e. a 12-month period), unless your company has not yet had its first financial year; and</li> <li>be prepared in accordance with the accounting standards.</li> </ul> <p>Inclusion of a copy of your company's full financial report, directors' report and auditor's report is not mandatory.</p>	Table 18 RG 261.151– RG 261.168	Section 2.6 (p. 9)

Source: Regulation 6D.3A.04 of the Corporations Regulations.

## Your company's business and organisational structure

RG 261.138 Table 14 sets out what information about your company's business and organisational structure should generally be included in the CSF offer document. Instructions on this information are provided in Section 2.2 of the template CSF offer document in the Appendix, together with example content.

**Table 14: Information about your company's business and organisational structure that should be included in the CSF offer document**

Category	What to include
Nature of the business	<p>Explain what your company does and the main function of its business.</p> <p>This should generally include a description of:</p> <ul style="list-style-type: none"> <li>• the stage of development (e.g. whether your company is a start-up or an existing business with an operating history); and</li> <li>• the sector or industry in which the business operates, provided you explain how the information is relevant to your company.</li> </ul> <p>For example, this might involve providing information on the following:</p> <ul style="list-style-type: none"> <li>• the industry maturity and size;</li> <li>• your company's market share, key competitors and barriers to entry;</li> <li>• details of your company's current business activities (if any); and</li> <li>• any external threats or opportunities (e.g. a new government initiative that is likely to increase demand for your company's product).</li> </ul>
Business strategy	<p>Explain your company's business objectives and strategy at a high level.</p> <p>You should consider specifying the expected timeframe for achieving the objectives (if you have a reasonable basis for this).</p> <p>If your company does not expect to make money or generate income in the short term (e.g. if it is a start-up company), its business strategy may involve an explanation of its short-term objectives and how it proposes to meet those objectives. If your company does not expect to make money in the short term, this should be clearly stated.</p>
Business model	<p>Provide a description of your company's business model—that is, how your company proposes to make money and generate income or capital growth.</p> <p>You should consider including an explanation of the main components of your company's business model and the key assumptions underlying the business model. These are the factors your company depends on to make money or achieve its main objective—for example:</p> <ul style="list-style-type: none"> <li>• key suppliers or customers and distribution channels;</li> <li>• intellectual property and its legal status (e.g. whether your company has a patent or licence);</li> <li>• the importance of key personnel to implementing your company's business model; and</li> <li>• key assets and whether they are owned or leased.</li> </ul>

Category	What to include
Organisational structure	<p>Provide a description of your company's organisational structure—that is, the various roles, responsibilities and reporting structures within your company and how these are arranged to achieve its organisational objectives.</p> <p>This might include explaining:</p> <ul style="list-style-type: none"> <li>• how the various roles and responsibilities are allocated; and</li> <li>• any external management or outsourcing arrangements.</li> </ul>

## Your company's capital structure

RG 261.139 Table 15 sets out what information about your company's capital structure should generally be included in the CSF offer document. Instructions on this information are provided in Section 2.3 of the template CSF offer document in the Appendix, together with example content.

**Table 15: Information about your company's capital structure that should be included in the CSF offer document**

Category	What to include
Capital structure	<p>Your company's capital structure is how your company finances its business operations using different sources of funding—that is, debt and equity financing.</p> <p>Provide details of how your company finances its business operations. This may involve an explanation of how your company finances its start-up, cash flow and ongoing operations, and the extent to which your company depends on equity finance, external or internal debt finance, government loans or grants.</p>
Equity (pre- and post-offer)	<p>Provide details of:</p> <ul style="list-style-type: none"> <li>• all classes of shares (e.g. ordinary shares, non-voting shares, preference shares), the number of shares on issue and whether there are any unpaid amounts on issued shares;</li> <li>• the number of options on issue (if any) and the key terms of the options (e.g. the exercise period and exercise price);</li> <li>• details of any other securities on issue (e.g. convertible notes); and</li> <li>• the number of ordinary shares that may be issued under the CSF offer.</li> </ul> <p>You should also consider providing details of your company's share capital after the offer on an undiluted basis and on a fully diluted basis (i.e. presuming all options and convertible securities are exercised).</p>

Category	What to include
Rights associated with securities	<p>Summarise the key rights associated with all classes of securities on issue contained in the company's constitution and any shareholder agreements (as applicable). This generally includes:</p> <ul style="list-style-type: none"> <li>• voting rights;</li> <li>• dividend rights;</li> <li>• any special rights held by majority shareholders, such as pre-emptive rights (e.g. majority shareholders may have the first right to buy the shares of a selling shareholder) or 'tag along' and 'drag along' rights; and</li> <li>• any restrictions on the issue or transfer of shares (e.g. if approval of directors or majority shareholders is required).</li> </ul> <p>You should consider explaining the implications of special shareholders rights and any restrictions on transfers of shares for minority shareholders (e.g. shareholders may have limited opportunities to exit their investment).</p>
Majority shareholders	<p>You should consider disclosing the identity of all majority shareholders (e.g. founding directors and their associated entities) and their percentage shareholding and voting power in the company, before and after the CSF offer.</p>
Debt	<p>If your company relies on debt financing (e.g. bank loans, director finance or related party loans), you should consider explaining:</p> <ul style="list-style-type: none"> <li>• any key terms or conditions of your company's debt financing (e.g. term of the loan, principal amount borrowed, amount outstanding, interest rate and any security provided for the loan);</li> <li>• whether your company is able to meet repayments from earnings or otherwise (if there is a reasonable basis for predicting this); and</li> <li>• when key financing needs to be renewed (if known).</li> </ul>
Other financing	<p>If your company relies on government funding, you should consider including:</p> <ul style="list-style-type: none"> <li>• the amount and term of the funding; and</li> <li>• any key terms or conditions of the funding, including repayment terms (if any).</li> </ul>

## Directors and senior managers

RG 261.140 Table 16 sets out what information about your company's current (and any proposed) directors and senior managers should generally be included in the CSF offer document.

Note: See s9 of the Corporations Act as modified by [ASIC Corporations \(Disclosure Relief—Offers to Associates\) Instrument 2017/737](#), which defines 'senior manager' as any person who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director or secretary of the body). This would likely include persons that form part of your company's executive management or management team.

RG 261.141 Instructions on information about directors and senior managers are provided in Section 2.4 of the template CSF offer document in the Appendix.

**Table 16: Information about current and proposed directors and senior managers that should be included in the CSF offer document**

Category	What to include
Identity and role	<p>You must disclose the person's full name.</p> <p>Consider describing the role the person will perform (e.g. managing director, non-executive director, chief financial officer). A brief description of their duties may also be relevant for investors.</p>
Skills and experience	<p>You must disclose details of the person's skills and experience that are relevant to the role they have in your company. You should consider explaining how their skills and experience are relevant to the role.</p>
Legal or disciplinary action	<p>You must disclose the following legal or disciplinary actions (if any) against your current and proposed directors and senior managers:</p> <ul style="list-style-type: none"> <li>• convictions of criminal offences under the Corporations Act;</li> <li>• civil penalties imposed under the Corporations Act;</li> <li>• disqualifications from managing a company under the Corporations Act;</li> <li>• banning or disqualification orders (relating to an AFS licence) under s920A or 921A of the Corporations Act;</li> <li>• whether the person is or has been a director, company secretary or senior manager of a company when it became insolvent;</li> <li>• whether the person is or has been subject to a written undertaking accepted by ASIC under s93AA or 93A of the <i>Australian Securities and Investments Commission Act 2001</i> (ASIC Act); and</li> <li>• any other convictions or penalties against the director or senior manager (acting in that capacity in relation to your company or another company) under any other laws in the last 10 years.</li> </ul> <p>You must include details of, and a description of the circumstances giving rise to, each of the offences, penalties, disqualifications, banning or court orders, insolvencies or undertakings (as applicable). This should generally include a summary of the facts and any formal judgment (e.g. court judgment) or decision (e.g. by ASIC) in relation to the legal or disciplinary action or undertaking.</p> <p>You should provide details of the director or senior manager's capacity and involvement with a previous company insolvency (if applicable).</p> <p style="text-align: center;">Note: The CSF intermediary also has an obligation to check whether the directors and senior managers of the company are of good fame and character, have had any legal or disciplinary actions against them and, if so, that these have been disclosed in the CSF offer document (see s738Q and RG 262).</p>
RG 261.142	<p>You might also consider including other relevant information about directors and senior management, such as their interests in the company's securities, remuneration (including salary and bonus entitlements) and any other non-cash benefits (such as options).</p>
RG 261.143	<p>The information about directors and senior managers should be:</p> <ol style="list-style-type: none"> <li>(a) appropriately balanced—for example, disclosure about a director's disciplinary history should be given appropriate prominence compared to disclosure of the director's experience and achievements; and</li> </ol>

- (b) appropriately explained—we recommend that information about a director’s or manager’s track record and achievements include an explanation of the context, to allow investors to assess what weight, if any, to place on the information about a director’s background.

### **Main risks facing your business**

- RG 261.144 Section 2 of the CSF offer document must include a description of the main risks facing your company’s business—that is, the risks that are inherent in your company’s business model and that may impact its success or failure.
- RG 261.145 The main risks will generally be the strategic and operational risks that directors and management focus on when they are managing the business. They are usually the type of events that have a reasonable likelihood of occurring and, if they did occur, would have a very significant effect on your company’s financial position and the value of shareholders’ investments.
- RG 261.146 You do not need to list every risk that may impact your company’s business. That is, general risks relevant to all businesses (e.g. risks arising from general economic conditions, changes to interest rates or illiquidity of shares) or remote risks would not generally be included, unless they directly impact your business model. Generally, we would expect only the top three to five main risks to be disclosed.
- RG 261.147 You should consider explaining in your company’s CSF offer document:
- (a) why these risks are the main risks from the investor’s perspective;
  - (b) the likelihood of a risk occurring (often such disclosure would be general and at a high level); and
  - (c) the consequences of a risk occurring (e.g. loss of a key contract will adversely affect your company’s income and profitability).
- RG 261.148 Information about risks should be:
- (a) concise—the disclosure should focus on only the most important or main risks;
  - (b) specific and tailored to your company’s circumstances, rather than generic in nature; and
  - (c) presented in a way that gives prominence to the most important risks (for example, you may order the risks from most to least important).
- RG 261.149 Table 17 sets out a non-exhaustive list of some common risks that may affect an early-stage or start-up company. The CSF offer document should not refer to a risk listed in Table 17 if it is not relevant to your company.
- RG 261.150 Instructions on risk disclosure are provided in Section 2.5 of the template CSF offer document in the Appendix, together with example content.

**Table 17: Common risks for an early-stage or start-up business**

Type of risk	Examples to consider
Market or competition risk	Unproven market demand for product or service. Ability to compete successfully with existing or new competitors or to secure first mover advantage.
Failure to secure or loss of key personnel	Inability to engage key personnel with experience and expertise that is critical to the success of the business or loss of key personnel (e.g. founders of the company).
Failure to secure or loss of supplier or customer	Inability to secure or losing a major supplier or customer. Reliance on overseas suppliers or manufacturing.
Important contract	Early termination of an important contract that your business is highly dependent on.
Intellectual property	Adverse impact on the company's ability to compete due to the inability to obtain, maintain and enforce intellectual property protection covering its products.
Financing risk	Being unable to obtain finance. High dependence on government grants or assistance.
Legal or regulatory risks	Loss or timetable implications due to an inability to obtain regulatory and other approvals.
Technology and operational risks	Failure of technology required to successfully design, manufacture and market the product. Inability to secure distributors and vendors to sell the product.

## Financial information about your company

- RG 261.151 Section 2 of the CSF offer document must include your company's financial statements for the most recent financial year. Table 18 sets out the financial statements that must be included.

Note: The term 'financial statements' means the financial statements in relation to your company required under the accounting standards (s295(2)). This does not mean your full annual financial report—which also includes the directors' declaration and any notes to the financial statements (s295(1)).

- RG 261.152 Instructions on financial information in a CSF offer document are provided in Section 2.6 of the template CSF offer document in the Appendix.
- RG 261.153 There may also be other financial information about your company that is material and relevant to an investor deciding whether to participate in a CSF offer (for example, information in the notes to the financial statements and events that have had a material effect on your company since the balance date of its most recent financial statements). This information is discussed below in RG 261.159–RG 261.165.



**Table 18: Financial statements that must be included in the CSF offer document**

Category	What to include
Financial statements	<p>Your company must include its financial statements. These are the financial statements your company is required to prepare under the Corporations Act, which would generally include:</p> <ul style="list-style-type: none"> <li>• a statement of financial position (also known as a ‘balance sheet’) for the most recent financial year—showing the major asset, liability and equity groups;</li> <li>• a profit and loss statement (also known as the ‘income statement’) for the most recent financial year—showing major revenues and expense items, and profit or loss, including earnings before interest and tax (EBIT) and net profit after tax (NPAT);</li> <li>• a statement of cash flows (the ‘cash flow statement’) for the most recent financial year—showing, at a minimum, operating cash flows; and</li> <li>• a statement of changes in equity—showing changes in owner’s equity.</li> </ul> <p>Your company is not required to include its full financial report—which includes the directors’ declaration and any notes to the financial statements—or its directors’ report or auditor’s report (if applicable), unless these contain material information, then you should consider including that information: see RG 261.159–RG 261.165 below.</p> <p>If your company is eligible to rely on the temporary concession from the audit requirement (see Section F), then the financial statements do not need to be audited or reviewed by an auditor and your company does not need to include an auditor’s opinion on the financial statements.</p> <p>However, the financial statements included in the CSF offer document must be prepared and presented in accordance with the accounting standards.</p>
Consolidated or separate financial statements	<p>If your company is required under the accounting standards to prepare consolidated financial statements—that is, incorporating the financial statements of your company’s controlled subsidiaries (if any)—then you must include the consolidated financial statements in the CSF offer document.</p> <p>If your company is not required under the accounting standards to prepare consolidated financial statements—then you must include your company’s separate financial statements in the CSF offer document.</p>
Reporting period	<p>If your company has already had its first financial year (e.g. it has been at least 12 months since its incorporation as a company)—the financial statements included in the CSF offer document must be for its most recently completed financial year (being a 12-month period or a period of up to 18 months, if it was your company’s first financial year).</p> <p>If your company has been incorporated for less than 12 months at the time of the CSF offer (i.e. it has not yet had a full financial year)—the financial statements included in the CSF offer document must be for the period from the date of incorporation to one month before the date of the offer.</p>

### Companies incorporated for more than 12 months

- RG 261.154 If your company has been incorporated for more than 12 months and has had its first financial year, then you must include the financial statements in Table 18 above, even if your company has not commenced business or earned any income (i.e. your revenue is ‘zero’).

- RG 261.155 The financial statements included in the CSF offer document must be up-to-date—that is, they must relate to your company’s most recently completed financial year.

Note: A company’s first financial year starts on the day it is registered or incorporated as a company and lasts for 12 months or the period (not longer than 18 months) as determined by the directors. Each subsequent financial year must be 12 months long (see s323D of the Corporations Act).

### Companies incorporated for less than 12 months

- RG 261.156 If your company is a start-up company and has been incorporated for less than 12 months at the time of the CSF offer (i.e. it has not yet had a full financial year), you must include the financial statements in Table 18 for the period from your company’s date of incorporation to the date that is one month before the date the CSF offer is made. An example is provided below.

#### Example 2: Financial statements if incorporated less than 12 months

New Co Ltd was registered as a public company on 29 September 2017 and intends to make a CSF offer on 30 June 2018. New Co Ltd does not have any subsidiary companies that it owns or controls.

New Co Ltd must include in the CSF offer document its company’s financial statements for the period from 29 September 2017 to 31 May 2018 (being a period of approximately 8 months, ending one month before the date of the offer).

### Consolidated financial statements

- RG 261.157 The accounting standards require certain companies to prepare consolidated financial statements in relation to a consolidated entity, which incorporates the financial position and performance of the company’s controlled subsidiaries and presents the financial statements of the group as a single economic entity.

Note: See in particular Australian Accounting Standard AASB 10 *Consolidated Financial Statements*.

- RG 261.158 If the accounting standards require your company to prepare consolidated financial statements, then these must be included in the CSF offer document for your company’s CSF offer. Otherwise, your company’s separate financial statements must be provided (even if your company has a parent company and is part of that company’s consolidated group).

### Other information associated with your company’s financial statements

- RG 261.159 There may be circumstances where other information associated with your company’s financial statements—such as information contained in the notes

to the financial statements, or the directors' report, or an expert report attached to the financial report—may also need to be included in the CSF offer document.

- RG 261.160 In particular, the notes to your company's financial statements provide important narrative descriptions of the items presented in the financial statements. The information in the financial statements, together with the notes, assists investors and other users of the financial statements to understand your company's financial position and performance.
- RG 261.161 Where material and relevant information is contained in the notes to your company's financial statements or in other parts of the financial report, not including that information in the CSF offer document may cause the financial statements in the offer document to be misleading. You should consider whether there is any material and relevant information in the notes to your financial statements, directors' report or other documents associated with your financial statements and whether the exclusion of this information may mislead investors about your company's financial position or performance.
- RG 261.162 If there has been an event that has had a material effect on your company since the date of its most recent financial statements, then you should consider including a description of this event and the impact on your company to avoid the risk of your company's CSF offer document being misleading.
- RG 261.163 If your company is eligible to rely on the temporary concession from the audit requirement (see Section F), then the financial statements included in the CSF offer document do not need to be audited or reviewed by an auditor and you do not need to include an auditor's opinion on the financial statements.
- RG 261.164 However, if your company's most recent financial statements have been audited (e.g. because it was a public company for prior financial years), then any modified opinion or additional communication by the auditor (e.g. a going concern emphasis of matter or qualification) is likely to be material information that should be disclosed in the CSF offer document.
- RG 261.165 You should also consider including details of where your company's full financial reports can be accessed—for example, from the company on request or from ASIC (if the financial reports have been lodged with ASIC).

### **Prospective financial information**

- RG 261.166 The CSF offer document should only include financial forecasts, targets or other forward-looking statements if there are reasonable grounds for their inclusion—otherwise, the information will be misleading.

Note: Reasonable grounds means there must be a sufficient objective foundation for the statement, for example if the information is underpinned by an independent expert's report. Information supported by hypothetical assumptions or based on certain contingencies may not indicate reasonable grounds.

RG 261.167 If you have reasonable grounds to include forecasts or other prospective financial information in your company's CSF offer document, then we expect the key assumptions and methodologies used to develop the information to also be disclosed in the offer document.

RG 261.168 Section E of this guide, specifically RG 261.181–RG 261.191, contains guidance on when a CSF offer document may be misleading or deceptive, including when prospective financial information or other forward-looking statements are included where there is no reasonable basis to do so. For further detailed guidance, see [Regulatory Guide 170](#) *Prospective financial information* (RG 170).

### Section 3: Information about the offer

RG 261.169 Section 3 of the CSF offer document must include certain information about the CSF offer—the information that should generally be included is set out in Table 19 below. Instructions on information about the offer are provided in Section 3 of the template CSF offer document in the Appendix, together with example content.

**Table 19: Information about the CSF offer that should be included in the CSF offer document**

Topic	What to include
Terms and conditions	<p>You must include a description of:</p> <ul style="list-style-type: none"> <li>the type of shares being offered (i.e. fully-paid ordinary shares);</li> <li>the offer price (i.e. how much investors must pay for shares);</li> <li>the minimum and maximum subscription amounts (note that if the minimum subscription is not reached, the CSF offer will not be complete and application money must be refunded to investors); and</li> <li>the expected offer period, unless the offer is closed earlier (i.e. if the maximum subscription is reached, the CSF intermediary must close the offer).</li> </ul>

Topic	What to include
Rights associated with shares	<p>You must include a description of the rights associated with the shares contained in the company's constitution, which generally includes:</p> <ul style="list-style-type: none"> <li>• voting rights;</li> <li>• dividend rights;</li> <li>• rights to call and receive notice of general meetings;</li> <li>• rights to elect and remove directors;</li> <li>• rights in the event of a winding-up of the company; and</li> <li>• any restrictions on the issue or transfer of shares (e.g. if approval of directors or majority shareholders is required).</li> </ul> <p>Information about shareholder rights should be explained in plain language and from the perspective of investors (i.e. what these rights mean in practice and how the different classes of shares rank against each other).</p>
Use of funds	<p>Describe how your company intends to use the funds raised under the CSF offer (based on minimum and maximum subscription amounts).</p> <p>If the funds are to be used for a variety of purposes, consider including a breakdown of how much will be applied to each purpose.</p> <p style="padding-left: 40px;">Note: If a significant portion of the funds will be allocated to working capital, you should explain what constitutes working capital. If funds will be used to pay the costs of the offer, then the aggregate costs of the offer should also be itemised.</p> <p>You should consider describing:</p> <ul style="list-style-type: none"> <li>• when funds will be used (if there is a reasonable basis for predicting this);</li> <li>• whether the full offer amount and/or the minimum subscription amount are sufficient to meet your company's objectives. If not, clearly state if your company will need to raise more equity or debt capital (if this is known);</li> <li>• why certain activities will be scaled back if only the minimum subscription is raised (i.e. why certain activities are prioritised over others).</li> </ul>
Payments to related parties and other persons	<p>You must describe whether any of the funds raised will be paid (directly or indirectly) to:</p> <ul style="list-style-type: none"> <li>• any current or proposed directors or senior managers of your company;</li> <li>• any related parties of your company;</li> <li>• any person that 'controls' your company or persons who hold more than 20% of the voting rights in the company (e.g. controlling or major shareholders);</li> <li>• the CSF intermediary publishing the CSF offer or any of the intermediary's related parties; and</li> <li>• any person promoting or marketing the offer.</li> </ul> <p>This includes whether any of the funds will be paid through an interposed entity for the benefit of the person, for example payments made to a nominee or trust for the benefit of the person.</p>

Topic	What to include
Previous CSF offers	<p>You must provide a description of all previous CSF offers (if any) made by:</p> <ul style="list-style-type: none"> <li>• your company;</li> <li>• any other company in which your company's directors or senior managers were appointed (at the time of that CSF offer) as a director or senior manager;</li> <li>• any related parties of your company; or</li> <li>• any other company controlled by (at the time of the CSF offer) a person that 'controls' your company (e.g. controlling shareholders).</li> </ul> <p>You must disclose the following details about the previous CSF offers:</p> <ul style="list-style-type: none"> <li>• who made the offer and when; and</li> <li>• a description of the outcome of the offer (for example, whether the offer was complete and the minimum subscription amount was raised, or whether the offer was unsuccessful).</li> </ul>

- RG 261.170 You might also consider including information about the tax implications for investors applying for shares under the CSF offer, including their eligibility for tax incentives that may be available for investing in qualifying early-stage innovation companies. This information may be useful and relevant for investors when deciding whether to participate in an offer. However, it should be accompanied by a statement advising investors to seek their own professional tax advice.

Note: See the *Tax Laws Amendment (Tax Incentives for Innovation) Act 2016*. Further information is available on the Australian Taxation Office website—see [Tax incentives for early stage investors](#).

## Section 4: Information about investor rights

- RG 261.171 You must include specific information about investor rights—including cooling-off rights and the effect of the temporary reporting and corporate governance concessions on investor rights (if your company is relying on these concessions)—in Section 4 of the CSF offer document. This information is set out in Table 20 below.
- RG 261.172 Information about investor cooling-off rights is important, as retail investors have only a small window (five business days) to change their minds and withdraw from a CSF offer to receive a refund of their money. In addition, information about the AGM, audit and reporting concessions is important as it impacts shareholder rights.
- RG 261.173 You should present this information in plain language and from the perspective of retail investors. For example, consider explaining the practical implications of the concessions for investors.

RG 261.174 Instructions on information about investor rights are provided in Section 4 of the template CSF offer document in the Appendix, together with example content.

**Table 20: Information about investor rights that should be included in the CSF offer document**

Topic	What to include	Guidance
Cooling-off rights	<p>You must include a description of the cooling-off rights in s738ZD of the Corporations Act.</p> <p>You should generally explain that:</p> <ul style="list-style-type: none"> <li>• a retail investor has an unconditional right to withdraw their application under a CSF offer within five business days of making an application, for any reason (e.g. if they change their mind);</li> <li>• investors must exercise withdrawal rights via the CSF intermediary's platform using the method specified by the intermediary; and</li> <li>• it is the intermediary's obligation to refund application money in full to investors.</li> </ul>	Table 10 and RG 262
AGM concession	<p>If your company is relying on the relief in s250N(5) and (6) of the Corporations Act, which provides that an eligible company is not required to hold an AGM for up to five years—it must provide a description of the effect of the relief.</p> <p>You should generally explain that:</p> <ul style="list-style-type: none"> <li>• shareholders will not be provided with an opportunity to directly question directors and management in an open forum about the management, business operations, financial position or performance of the company;</li> <li>• if shareholders have any concerns, they will need to directly approach the company to obtain answers to their queries or concerns; and</li> <li>• the directors of the company may still be required to hold a general meeting in other circumstances (e.g. where requested to by shareholders with at least 5% of the votes that may be cast at a general meeting).</li> </ul>	Section F RG 261.236– RG 261.238
Audit concession	<p>If your company is relying on the relief in s301(5) of the Corporations Act from the requirement to audit its financial reports—it must provide a description of the effect of the relief.</p> <p>You should generally explain that your company's financial reports will not be subject to auditor oversight—which means there is no independent assurance as to whether the financial statements provide a true and fair view of the company's financial position and performance, or whether the accounting standards have been complied with.</p>	Section F RG 261.239– RG 261.241

Topic	What to include	Guidance
Annual report distribution concession	<p>If your company is relying on the relief in s314(1AF) and (2A) of the Corporations Act, which provides reduced requirements for the distribution of the annual reports of an eligible company for up to five years—it must provide a description of the effect of the relief.</p> <p>You should generally explain that:</p> <ul style="list-style-type: none"> <li>shareholders will not be given the opportunity to elect to receive the annual report by way of email or post; and</li> <li>shareholders will need to access the annual report on the company's website (rather than be sent a copy).</li> </ul>	<p>Section F</p> <p>RG 261.242– RG 261.244</p>
CSF intermediary's communication facility	<p>A description of the effect of s738ZA(5) of the Corporations Act, which requires the CSF intermediary hosting the CSF offer to provide a communication facility for the offer on its platform.</p> <p>You should generally explain:</p> <ul style="list-style-type: none"> <li>the purpose of the communication facility, which is to allow potential investors, your company and the CSF intermediary to communicate with each other about your company's CSF offer;</li> <li>how the communication facility works—that is, investors who access the CSF offer document will be able to post comments and questions about the offer, see the posts of other investors and that the company or intermediary is able to respond to questions and comments posted on the facility;</li> <li>that officers, employees or agents of your company, and related parties or associates of your company or the intermediary, must clearly disclose their relationship to your company and/or the intermediary when making posts on the facility; and</li> <li>that comments on the communication facility must be made in good faith, otherwise the advertising rules may be breached.</li> </ul>	<p>RG 262</p>

RG 261.175 You might also consider including information about:

- (a) how shareholders can exit their investment in your company (for example, if there is a secondary market for selling the shares or whether investors may have the opportunity to participate in or benefit from an exit event); and
- (b) where shareholders can access ongoing information about your company (e.g. company updates)—this is particularly important if your company is relying on the AGM and reporting concessions.

## Is the CSF offer document 'clear, concise and effective'?

RG 261.176 The CSF offer document must be worded and presented in a 'clear, concise and effective' manner. This requirement applies to both:

- (a) the wording of information in the CSF offer document (i.e. choice of language); and



- (b) the presentation of the CSF offer document (i.e. choice of communication tools, layout, style and structure).

RG 261.177 [Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors* (RG 228) sets out some widely accepted communication tools to help you create a ‘clear, concise and effective’ offer document for your company’s CSF offer: see in particular Section B, Table 3 and Table 4 of RG 228.

Note: Although the guidance in Section B of RG 228 is stated to apply to prospectuses, the guidance is also relevant to CSF offer documents and the requirement for CSF offer documents to be ‘clear, concise and effective’.

RG 261.178 You should analyse how best to word and present the information in your company’s CSF offer document, keeping the possible readers of the document front of mind. You might also consider using other tools to help you create a ‘clear, concise and effective’ CSF offer document, including reviewing research on the communication needs of retail investors.

## E Is the CSF offer document defective?

### Key points

This section explains:

- when a CSF offer document is defective;
- what your company must do if its CSF offer document is defective; and
- what liability your company and its directors may have for an offer of shares made under a defective CSF offer document.

This section also explains ASIC's role in relation to CSF offer documents and what we might do when we have concerns that your company's offer document is defective.

### When is a CSF offer document defective?

RG 261.179 Your company and its directors are liable to an investor who suffers loss or damage if an offer of your shares is made under a defective CSF offer document. It is important for you to know when the CSF offer document may be defective and what steps your company should take if it becomes aware that its CSF offer document is defective.

RG 261.180 The CSF offer document will be defective if:

- (a) it contains statements that are misleading or deceptive;
- (b) there is an omission of information—that is, it does not contain the minimum information required to be included in a CSF offer document (see Table 12 above, for the minimum information requirements); or
- (c) there is new information that requires disclosure—that is, since the CSF offer document was published, a new circumstance has arisen that would have been required to be included in the CSF offer document, if it had arisen before the document was published.

Note: See s738U of the Corporations Act.

### Misleading or deceptive statements

RG 261.181 You must ensure there are no misleading or deceptive statements in your company's CSF offer document. When drafting, it is important to consider whether there is any information in the offer document that is likely to mislead or deceive retail investors.

RG 261.182 Whether a CSF offer document is misleading or deceptive relates not only to whether the *content* of a statement is misleading (e.g. whether it is inaccurate

or creates a misleading impression), but also whether the *presentation* of information may cause it to be misleading even though the content is not.

RG 261.183 Examples of misleading *content* include:

- (a) statements or representations about a future matter (‘forward-looking statements’), for example, sales or production targets—where there are no reasonable grounds for making the statement;
- (b) prospective financial information, for example, forecasts and projections of future revenue, profits or costs—where there are no reasonable grounds for that information; or
- (c) only disclosing part, but not all, of the information material to a matter, for example, stating the company’s revenue figure for the most recent financial year but not explaining that part of this revenue was due to a one-off transaction that is unlikely to occur again in the future.

RG 261.184 Whether there are reasonable grounds to include forward-looking statements or prospective financial information is discussed below at RG 261.186–RG 261.191.

RG 261.185 Examples of misleading *presentation* include:

- (a) giving undue prominence to positive information and key benefits in a way that is potentially misleading;
- (b) not giving sufficient prominence to important risks in a way that creates a misleading impression that investors do not need to pay much attention to the risks.

### **Can you include forward-looking statements?**

RG 261.186 Examples of forward-looking statements include statements containing prospective financial information (such as financial forecasts, revenue or profit targets), and estimates of the timeline to complete a project.

RG 261.187 The CSF offer document should only include forward-looking statements if there are reasonable grounds for their inclusion—otherwise, the information will be misleading.

Note: See s738U(2) of the Corporations Act. This applies even if your company has used the information to estimate future performance for internal planning purposes.

RG 261.188 Forward-looking statements that relate to forward-sales contracts or leases, or are supported by independent industry experts’ reports or independent accountants’ reports, may indicate reasonable grounds. Short-term forecasts (up to two years) relating to an existing business and based on events management reasonably expects to take place may also indicate reasonable grounds.

- RG 261.189 However, forward-looking statements that are speculative or based only on hypothetical assumptions or on mere opinions will not be supported by reasonable grounds, and will therefore be misleading.
- RG 261.190 If ASIC is concerned that the CSF offer document contains misleading or deceptive information—including where we consider your company does not have reasonable grounds for the inclusion of forward-looking statements—we may exercise our stop order powers to prevent the CSF offer from proceeding: see RG 261.219–RG 261.222 below.
- RG 261.191 If you intend to include forward-looking statements or prospective financial information (such as short-term financial forecasts) in the CSF offer document, more detailed guidance can be found in RG 170.

Note: While RG 170 is stated to apply to prospective financial information in prospectuses, the guidance in RG 170 is relevant to the inclusion of prospective financial information, and forward-looking statements more generally, in a CSF offer document.

## What must your company do if its CSF offer document is defective?

- RG 261.192 Your company must not offer shares if its CSF offer document is defective, or your company, its directors and other people involved in the CSF offer may be exposed to liability: see RG 261.212–RG 261.216 below for further information.

Note: See s738Y of the Corporations Act.

- RG 261.193 Your company should take the following steps if it becomes aware, *after* the CSF offer document is published on the CSF intermediary's platform and while the CSF offer is open, that its offer document is defective.

### Step 1: Notify the CSF intermediary

- RG 261.194 If your company becomes aware that its CSF offer document is defective, it must notify the CSF intermediary hosting the offer as soon as practicable.
- RG 261.195 If any of your company's directors or other persons liable for the CSF offer document become aware the offer document is defective, that person must notify your company and the CSF intermediary as soon as practicable.

Note: If the CSF intermediary first becomes aware that the CSF offer document is defective, it must notify your company as soon as practicable (see RG 262).

- RG 261.196 If your company or its directors do not know that the CSF offer document is defective, then no obligation to notify the CSF intermediary arises.

- RG 261.197 If your company or its directors fail to comply with their notification obligations they will commit an offence. We recommend that your company provide any notice in writing and retain a copy of the notice for its records.

### **Step 2: CSF intermediary suspends or closes the CSF offer**

- RG 261.198 Once the CSF intermediary becomes aware that the CSF offer document is defective (because your company notified the intermediary or otherwise), it must:
- (a) remove the offer document from its platform—this will prevent further applications from being received under a defective offer document; and
  - (b) either:
    - (i) close the CSF offer—in this case, the intermediary must refund application money to all investors who have applied under the offer; or
    - (ii) suspend the CSF offer—in this case, your company may correct any deficiencies by way of a supplementary or replacement CSF offer document containing corrective disclosure (see Step 3 below). Investors who have applied under the offer must be provided with the supplementary or replacement offer document and one month to withdraw their application and be repaid.

Note: The intermediary suspends or closes the offer by giving notice on its platform.

- RG 261.199 If the CSF intermediary suspends the CSF offer, the suspension continues until a supplementary or replacement CSF offer document is published on the intermediary's platform or the offer is otherwise closed by the intermediary (for example, where your company elects to withdraw the offer or does not provide a supplementary or replacement offer document).

### **Step 3: Prepare a supplementary or replacement CSF offer document**

- RG 261.200 Where your company's original CSF offer document is defective, it may prepare a supplementary or replacement CSF offer document to correct any deficiencies in the CSF offer document. A supplementary CSF offer document accompanies or is attached to an original CSF offer document. A replacement CSF offer document replaces an original CSF offer document.

Note: See s738W of the Corporations Act.

- RG 261.201 Your company may also prepare a supplementary or replacement CSF offer document if its offer document does not comply with the requirement to be 'clear, concise and effective'.

RG 261.202 However, your company cannot provide a supplementary or replacement CSF offer document in any other circumstances (i.e. to provide investors with additional information that is not otherwise required to be disclosed under the minimum information requirements in Table 12 above).

**What to include in a supplementary or replacement offer document**

RG 261.203 At the beginning of a supplementary CSF offer document, there must be:

- (a) a statement that it is a supplementary CSF offer document;
- (b) an identification of the original offer document it supplements; and
- (c) a statement that it is to be read together with the original offer document (and any other supplementary documents that have been published).

RG 261.204 At the beginning of a replacement CSF offer document, there must be:

- (a) a statement that it is a replacement CSF offer document; and
- (b) an identification of the original offer document it replaces.

RG 261.205 Your supplementary or replacement CSF offer document must not incorporate any changes made otherwise than for the purpose of correcting a defect or for the purpose of complying with the requirement for it to be ‘clear, concise and effective’.

**Steps before publication of the supplementary or replacement offer document**

RG 261.206 Before publication of a supplementary or replacement CSF offer document:

- (a) your company will need to obtain fresh consents from each of the persons liable for the offer document. These persons (including directors and proposed directors) are listed in Table 6 at RG 261.63; and

Note 1: As a replacement CSF offer document replaces the original CSF offer document, each of your company’s directors will need to consent to the publication of the replacement offer document in its entirety (the prior consent given in relation to the original offer document has no application to offers and applications made after the replacement offer document is published).

Note 2: If a person (other than a director or proposed director) had consented to a statement in the original CSF offer document and the supplementary or replacement offer document does not make a material change to the form or context of that statement, then your company will not need to obtain a fresh consent from that person.

- (b) the CSF intermediary will conduct its checks on your company’s supplementary or replacement offer document. These checks are the same checks the intermediary conducted on the original offer document, set out in RG 261.68 above. The intermediary is not obliged to publish the offer document if the results of the checks are not satisfactory.

## Step 4: Publication of the supplementary or replacement CSF offer document and offering applicant withdrawal rights

### Investor withdrawal rights

- RG 261.207 When the CSF intermediary publishes your company's supplementary or replacement CSF offer document on its platform it must, as soon as practicable, give each applicant that has already applied under the CSF offer written notice that they have one month to withdraw their application and be refunded their application money.
- RG 261.208 The written notice of withdrawal rights must be accompanied by the supplementary or replacement CSF offer document.
- RG 261.209 An applicant who wants to withdraw their application must do so in writing within one month of receiving the notice from the CSF intermediary, and the intermediary must refund their application money as soon as practicable.

### Offer re-opens

- RG 261.210 Once the CSF intermediary publishes a supplementary or replacement CSF offer document on its platform, the CSF offer will be open again, which means new applications can be received via the application facility.
- RG 261.211 If there is a further defect in the supplementary or replacement CSF offer document, Steps 1–4 above may be followed again.

## Is your company liable for a defective CSF offer document?

- RG 261.212 Your company, its directors and other people involved in the CSF offer may be exposed to action for recovery of loss or damage by an investor where your company makes an offer of shares under a defective CSF offer document.
- RG 261.213 In addition, your company may commit an offence if it offers shares under a defective CSF offer document and the defect (i.e. the misleading statement, omission or new circumstance which led to the document being defective) is materially adverse from the point of view of an investor.
- RG 261.214 You should apply an objective test when considering whether a misleading or deceptive statement, an omission, or a new circumstance is 'materially adverse from the point of view of an investor'. That is, it should be considered from the point of view of a hypothetical reasonable investor.
- RG 261.215 Table 21 below sets out which people are liable for offers of shares made under a defective CSF offer document and to what extent they may be liable.

**Table 21: Persons liable on a defective CSF offer document**

These persons	Are liable for loss or damage caused by	Are criminally liable (unless a defence applies)
Company making a CSF offer	Any part of a defective CSF offer document	Where the defect is materially adverse
Each director of a company making a CSF offer	Any part of a defective CSF offer document	If they are involved in the company's contravention
A person named in a CSF offer document with their consent as a proposed director of the company	Any part of a defective CSF offer document	If they are involved in the company's contravention
An underwriter (but not a sub-underwriter) of a CSF offer named in a CSF offer document with their consent	Any part of a defective CSF offer document	If they are involved in the company's contravention
A person named in a CSF offer document with their consent as having made a statement: <ul style="list-style-type: none"> <li>• that is included in the offer document; or</li> <li>• on which a statement made in the offer document is based</li> </ul>	The inclusion of the statement in the CSF offer document	If they are involved in the company's contravention
A CSF intermediary that publishes a CSF offer document on its platform	Any part of a defective CSF offer document, but only where the CSF intermediary <i>knows</i> the offer document is defective	Where the CSF intermediary <i>knows</i> the CSF offer document is defective and the defect is materially adverse
Any person whose conduct resulted in, or was involved in, offers of shares being made under a defective CSF offer document	Their conduct	If they are involved in the company's contravention

Source: Section 738Y of the Corporations Act.

RG 261.216 There are a number of defences available to your company and other persons who would otherwise commit an offence or be liable under Table 21 for an offer of shares under a defective CSF offer document—these are:

- (a) *lack of knowledge*—that is, where the person did not know the offer document was defective;
- (b) *reasonable reliance*—that is, where the person placed reasonable reliance on information given by another person (other than an employee, agent or director of the company), for example, a professional or legal adviser; and
- (c) *withdrawal of consent*—that is, where a person publicly withdrew their consent to be named in the offer document.



## What is ASIC's role and what powers do we have?

### Review of CSF offer documents

- RG 261.217 Your company and the CSF intermediary must ensure your company's CSF offer document complies with the law before it is published and while the CSF offer remains open.
- RG 261.218 It is not our responsibility to review CSF offer documents at any time. Unlike prospectuses, CSF offer documents are not required to be lodged with ASIC.

### What we do when there are disclosure concerns

- RG 261.219 ASIC can exercise a range of administrative powers, including our stop order powers or taking enforcement action, where we identify concerns with the disclosure in a CSF offer document or in advertisements for a CSF offer.
- RG 261.220 A stop order is an administrative mechanism that allows us to prevent the offer or issue of shares under a CSF offer document where we consider that:
- (a) the CSF offer document is defective;
  - (b) the CSF offer document is not worded and presented in a 'clear, concise and effective' manner; or
  - (c) the offer is expressly stated to be made under the CSF regime, but is not an eligible CSF offer.
- RG 261.221 We may also use our stop order powers where an advertisement or publication for a CSF offer contains a misleading or deceptive statement or does not include the required statement advising investors to consider the CSF offer document and general risk warning.
- RG 261.222 Further information on ASIC's stop order powers and the process that we follow when exercising these powers can be found in RG 254.

## F Temporary corporate governance and reporting concessions

### Key points

There are temporary concessions, available for up to five years, for eligible public companies making offers under the CSF regime.

These concessions mean an eligible company does not have to comply with the requirements for a public company to:

- hold an annual general meeting (AGM);
- appoint an auditor and have its financial reports audited; and
- distribute hard copies or electronic copies of its annual reports to shareholders.

This section explains when a public company is eligible to rely on the temporary concessions, what concessions are available and when the concessions cease to apply.

### What obligations apply to public companies and their directors?

RG 261.223 As public companies raise funds from the public, they are required to comply with additional reporting and corporate governance obligations that ensure greater accountability and responsibility to the company's shareholders.

RG 261.224 Some of the key public company obligations (that are different to the obligations of a proprietary company) are set out in Table 22 below.

**Table 22: Key obligations of public companies**

Topic	Your company must	Corporations Act reference
AGM	Hold an AGM every year.	s250N
Reporting	Prepare and lodge audited annual financial reports and appoint an auditor to conduct a yearly audit of the financial reports.  Distribute copies of the company's annual reports—being the annual financial report, directors' report and auditor's report—to shareholders within four months of the end of the financial year.	Ch 2M.3
Minimum number of officers	Have at least three directors and at least one company secretary.	s201A, 204A
Constitution	Lodge a copy of its constitution with ASIC and notify ASIC of changes to the constitution.	s136

Topic	Your company must	Corporations Act reference
Related parties	Obtain member approval before giving financial benefits to related parties (which includes directors and their spouses, children or parents).	Ch 2E See also <a href="#">Regulatory Guide 76</a> <i>Related party transactions</i> (RG 76)
Directors	Your company's directors cannot be removed by other directors but are subject to removal by the company's shareholders.  Your company's directors cannot be present or vote on matters where there is a material personal interest being considered at a directors' meeting.	s195, 203D, 203E

Source: Corporations Act.

RG 261.225 In addition, it is important for directors of public companies raising funds through CSF to be aware of their directors' duties, particularly when dealing with money raised from the public. Chapter 2D of the Corporations Act imposes a number of statutory duties on directors to exercise their powers and discharge their duties with care and diligence, in good faith in the best interests of the company, and for a proper purpose.

RG 261.226 It is important for public companies and their directors to be aware of their statutory obligations and to ensure they have adequate internal systems and processes in place to comply with these obligations.

## Why are temporary concessions provided?

RG 261.227 To undertake CSF offers, companies need to be registered as, or convert to, a public company. Temporary concessions from certain public company corporate governance and reporting requirements are available to eligible companies to reduce the regulatory burden of a public company structure.

RG 261.228 The temporary concessions, available for up to five years after registration as or conversion to a public company, mean that eligible companies do not have to comply with the requirements to:

- (a) hold an AGM;
- (b) appoint an auditor and have their financial reports audited; and
- (c) notify shareholders of the different ways to receive the company's annual reports and distribute hard copies or electronic copies of their annual reports to shareholders who elect to receive them in that way.

RG 261.229 The temporary concessions are only available to companies that register as or convert to a public company *after* the commencement of the CSF regime.

Note: The *Corporations Amendment (Crowd-sourced Funding) Act 2017* received royal assent on 28 March 2017 and commences on 29 September 2017.

RG 261.230 If your company wishes to register as or convert to a public company to raise funds under the CSF regime and rely on the temporary concessions, it will need to lodge a [Form 201 Application for registration as an Australian company](#) or [Form 206 Application for change of company type](#) (as applicable).

Note 1: See [ASIC's crowd-sourced funding webpage](#) and [Information Sheet 18 Changing a company type](#) (INFO 18) for further information on lodging these forms.

Note 2: A company that has converted to a public company to make a CSF offer may convert back to a proprietary company if, for example, its CSF offer is unsuccessful, provided that it satisfies the requirements to be a proprietary company, including the prescribed revenue, asset and shareholder limits.

RG 261.231 A company that is registered as or converted to a public company *before* the commencement of the CSF regime will not be able to access the concessions and will be subject to the same requirements as other public companies. This is to ensure that public companies already subject to the public company obligations do not reduce their reporting or governance standards.

## Is your company eligible for the concessions?

RG 261.232 Table 23 sets out the eligibility requirements for the temporary concessions from the AGM, audit and reporting requirements available to public companies making offers under the CSF regime.

RG 261.233 Your company must satisfy the requirements:

- (a) at the time of registration as, or conversion to, a public company; and
- (b) annually—at the end of each financial year for which your company seeks to rely on the concessions (for financial years that end within five years of the date of registration as, or conversion to, a public company).

**Table 23: Eligibility requirements for the temporary concessions**

Your company must	Explanation	Timing of requirement
Become a public company	Your company must register as, or convert to, a public company after the commencement date of the CSF regime (i.e. 29 September 2017).  If your company was already a public company before 29 September 2017, then it is not eligible to rely on the concessions.  See Form 201 and Form 206 (as applicable).	At registration or conversion to a public company

Your company must	Explanation	Timing of requirement
Intend to make a CSF offer	<p>Your company must state in its application for registration or conversion that:</p> <ul style="list-style-type: none"> <li>• it will be eligible under s738Z1 for the temporary concessions on registration or conversion; and</li> <li>• it intends to make a CSF offer within the next 12 months.</li> </ul> <p>If your company makes a false statement about its eligibility for the concessions or its intention to make a CSF offer (for example, to take advantage of the temporary concessions), it will commit an offence.</p> <p>Note: See s1308 of the Corporations Act.</p>	At registration or conversion to a public company
Be eligible to make a CSF offer	<p>Your company must be eligible to make offers under the CSF regime.</p> <p>That is, your company must meet all of the eligibility requirements in Table 2, as discussed at RG 261.10–RG 261.31.</p>	At registration or conversion to a public company and at the end of each financial year
Be eligible to rely on the concessions	Your company must have been eligible for the concessions for every earlier financial year since registration or conversion as a public company (unless it is its first financial year).	At the end of each financial year
Complete a CSF offer within 12 months	<p>Your company must successfully complete a CSF offer within 12 months of registration as, or conversion to, a public company.</p> <p>Your company will not be able to rely on the concessions if:</p> <ul style="list-style-type: none"> <li>• its CSF offer is still open at the end of the 12-month period, as it will not be a completed offer (even if the offer subsequently successfully completes); or</li> <li>• its CSF offer is closed but not complete (i.e. because the minimum subscription was not met).</li> </ul>	At the end of each financial year
Not make any other public offers	Your company must have not made any other offers of its shares that require a prospectus or other disclosure document since it started accessing the concessions.	At the end of each financial year
Not have raised more than \$1 million under all CSF offers	<p>To be eligible for the audit concession, your company must have raised less than \$1 million under all previous CSF offers.</p> <p>The \$1 million cap does <i>not</i> reset every financial year—that is, you must count all CSF offers made by your company at any time.</p> <p>If your company raises more than \$1 million, the audit concession ceases to apply (but your company can still rely on the AGM and reporting concessions if it meets the other requirements in this table).</p>	At the end of each financial year

Source: Section 738Z1 of the Corporations Act.

## What concessions are available?

- RG 261.234 If your company meets the eligibility requirements in Table 23, it may rely on the temporary concessions for financial years that end within five years of the date of its registration as, or conversion to, a public company. The concessions are summarised in Table 24 and discussed in more detail below.
- RG 261.235 If your company is eligible to rely on the concessions, it should still consider having processes in place to facilitate ongoing communication with its shareholders and to provide them with information about the company (e.g. regular company updates).

**Table 24: Summary of temporary public company concessions**

Category	Concession	Corporations Act reference	Guidance
AGM	Your company is not required to hold an AGM for each calendar year.	s250N	RG 261.236– RG 261.238
Audit	Your company is not required to appoint an auditor or have its financial reports audited.	s301, s327A– 3247D	RG 261.239– RG 261.241
Distribution of annual reports	Your company is not required to notify shareholders of the different ways to receive its annual reports or send the reports in hard copy or by email to shareholders.	s314	RG 261.242– RG 261.244

Source: Corporations Act.

### AGM concession

- RG 261.236 Generally, a public company must hold an AGM:
- (a) within 18 months of registration; and
  - (b) each subsequent calendar year, within five months of the end of the financial year.

Note: See s250N of the Corporations Act.

- RG 261.237 If your company is eligible for the public company concessions at the end of a financial year, then it *does not* need to hold an AGM for that year.

- RG 261.238 The directors of your company may still be required to hold a general meeting in other circumstances—for example, where requested to by shareholders with at least 5% of the votes that may be cast at a general meeting.

Note: See s249D of the Corporations Act.

## Audit concession

RG 261.239 Generally, a public company must:

- (a) appoint an auditor within one month after the day on which the company is registered unless the company, at a general meeting, has appointed an auditor; and

Note: See s327A of the Corporations Act. The auditor holds office until the company's first AGM, where the appointment is confirmed by the members or another auditor is appointed (see s327B–327D of the Corporations Act).

- (b) have its financial reports audited and obtain an auditor's report.

Note: See s301 of the Corporations Act. See also s300 as to the information that must be included in the directors' report about the auditor, and s314 and 316, which relate to the provision of an auditor's report to the shareholders of a public company.

RG 261.240 If your company is eligible for the public company concessions at the end of a financial year, then for that financial year, it *does not* need to:

- (a) appoint an auditor; or
- (b) have the company's financial reports audited.

RG 261.241 If your company is relying on the audit concession, it is still required to prepare and lodge its (un-audited) financial report and directors' report with ASIC within four months after the end of the financial year.

Note: See s319 of the Corporations Act for the lodgement and timing requirements. See s295, 296, 297, 298, 299 and 300 as to the content of the annual financial report and the directors' report (no auditor's report is required).

## Annual reports distribution concession

RG 261.242 Generally, a public company must provide its annual reports—being the annual financial report, directors' report and auditor's report—or a concise report to shareholders each year.

Note: See s314 of the Corporations Act. A 'concise report' includes, among other things, a concise financial report, directors' report and a statement by the auditor (s314(2)).

RG 261.243 The company must, on at least one occasion, directly notify each shareholder in writing of the options to receive or access the annual reports—being either in hard copy or electronic copy free of charge, or accessed on the company's (or other specified) website—and provide the reports in the format elected by the shareholder.

RG 261.244 If your company is eligible for the public company concessions at the end of a financial year, then your company only needs to make a copy of its annual reports (or a concise report) readily accessible on its website and *does not* need to notify shareholders of alternative ways to receive the reports.

## When do the concessions cease?

RG 261.245 Table 25 below explains when each temporary concession ceases to apply.

**Table 25: When the temporary concessions cease to apply**

Category	Concession ceases to apply
AGM	<p>At the earlier of:</p> <ul style="list-style-type: none"> <li>• five years from the date of registration as, or conversion to, a public company; or</li> <li>• when your company no longer meets all of the requirements in Table 23—that is, when it is not eligible to claim the concessions.</li> </ul>
Audit	<p>At the earlier of:</p> <ul style="list-style-type: none"> <li>• five years from the date of registration as, or conversion to, a public company;</li> <li>• when your company no longer meets all of the requirements in Table 23—that is, when it is not eligible to claim the concessions; or</li> <li>• when your company raises more than \$1 million for all CSF offers previously made.</li> </ul> <p>Note: A company that loses its concession from having audited financial statements only because it has raised more than \$1 million from CSF offers will still have access to the AGM and reporting concessions until it is no longer eligible for them.</p>
Distribution of annual reports	<p>At the earlier of:</p> <ul style="list-style-type: none"> <li>• five years from the date of registration as or conversion to a public company; or</li> <li>• when your company no longer meets all of the requirements in Table 23—that is, when your company is not eligible to claim the concessions.</li> </ul>

Source: Section 738Z1 of the Corporations Act.

RG 261.246 If your company's first financial year after registration as a public company is longer than 12 months, then all of the temporary concessions will cease to apply before the end of the company's fifth financial year.

Note: Under s323D(1) of the Corporations Act, a company's first financial year starts on the day on which it is registered or incorporated. It lasts for 12 months or the period (not longer than 18 months) determined by the directors (that is, your first financial year may be up to 18 months long).

RG 261.247 An example of when the temporary concessions cease to be available is provided below. This example assumes that the first financial year of the company is 12 months from the date of registration as, or conversion to, a public company.

### Example 3: When the temporary concessions start and cease to apply

New Co Ltd registers as a public company and satisfies the eligibility requirements in Table 23 at the time of its registration.

#### Financial year 1

New Co Ltd completes a successful CSF offer raising \$500,000 and meets



the eligibility requirements in Table 23 at the end of the financial year.

The AGM, audit and reporting concessions *apply*.

#### **Financial year 2**

New Co Ltd completes a successful CSF offer raising \$250,000 and meets the eligibility requirements in Table 23 at the end of the financial year.

The AGM, audit and reporting concessions *apply*.

#### **Financial year 3**

New Co Ltd completes a successful CSF offer raising \$300,000 and meets the eligibility requirements in Table 23 at the end of the financial year.

The AGM and reporting concessions *apply*.

The audit concession *ceases* as New Co Ltd has raised over \$1 million from CSF offers. New Co Ltd appoints an auditor within one month, and lodges audited financial reports for this financial year and subsequent financial years.

#### **Financial year 4**

New Co Ltd does not complete a CSF offer but meets the eligibility requirements in Table 23 at the end of the financial year.

The AGM and reporting concessions *apply*.

New Co Ltd lodges audited financial reports for this financial year and subsequent financial years.

#### **Financial year 5**

New Co Ltd does not complete a CSF offer but meets the eligibility requirements in Table 23 at the end of the financial year.

The AGM and reporting concessions *apply*.

New Co Ltd lodges audited financial reports for this financial year and subsequent financial years.

#### **Financial year 6**

The AGM and reporting concessions *cease*.

New Co Ltd re-elects its auditor at the AGM for this financial year.

RG 261.248 If your company can no longer rely on the concessions, it must comply with the AGM, audit and reporting obligations that usually apply to public companies. A summary of these obligations is provided in Table 26 below.

**Table 26: AGM, audit and reporting obligations of public companies not eligible for the concessions**

Concession	If the concessions cease (i.e. your company is no longer eligible)	Corporations Act reference
AGM	Your company must hold an AGM each calendar year, within five months of the end of its financial year.	s250N
Audit	<p>Your company must appoint an auditor within one month of losing access to the concessions (unless an auditor has been appointed at a general meeting).</p> <p>Your company must take reasonable steps to ensure an auditor is appropriately appointed. Failure by the directors to do this is an offence.</p> <p>If the concession ceases because:</p> <ul style="list-style-type: none"> <li>• your company no longer satisfies the eligibility requirements in Table 23—then the auditor holds office until the company’s first AGM; or</li> <li>• your company raised over \$1 million under CSF offers—then the auditor holds office until the auditor dies, is removed or a conflict of interest arises (in which case, a new auditor may not be elected until the next AGM is held, which may be a number of years if the AGM concession continues to apply).</li> </ul> <p>Your company must have its financial reports audited and obtain an auditor’s report.</p>	s301, 327C–327F, 328C, 328D, 328E
Distribution of annual reports	<p>Your company must directly notify each shareholder in writing that:</p> <ul style="list-style-type: none"> <li>• they may elect to receive, free of charge, a copy (hard copy or electronic) of the annual reports or a concise report; or</li> <li>• if they do not elect to receive a copy, they may access the annual reports or the concise report on the company’s website (or other specified website).</li> </ul> <p>Note: The annual reports include the annual financial report, directors’ report and auditor’s report.</p> <p>If a shareholder elects to receive a copy, then your company must send its annual reports (or concise report) to the shareholder via their selected method.</p> <p>If a shareholder does not elect to receive a copy, then your company must make a copy of its annual reports (or concise report) readily accessible on its website. Your company must also notify the shareholder in writing that the report is accessible on the website and of the website address where the report may be accessed.</p> <p>A shareholder’s election continues for each later financial year until the shareholder changes their election.</p>	s314

Source: Corporations Act.

## Key terms

Term	Meaning in this document
accounting standards	Standards issued by the Australian Accounting Standards Board under s334 of the Corporations Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
communication facility	A facility provided by a CSF intermediary in relation to a CSF offer that can be used by investors, the company making the offer and the CSF intermediary to communicate about the CSF offer
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
crowd-funding service	Has the meaning given in s766F of the Corporations Act
CSF	Crowd-sourced funding
CSF intermediary	An AFS licensee whose licence expressly authorises the licensee to provide a crowd-funding service  Note: See s738C of the Corporations Act.
CSF offer	An offer of ordinary shares that is made under the CSF regime in Pt 6D.3A of the Corporations Act  Note: See s738B of the Corporations Act.
CSF offer document	A document setting out the terms of a CSF offer that complies with s738J of the Corporations Act
CSF regime	The statutory regime for crowd-sourced funding in Pt 6D.3A of the Corporations Act regulating CSF offers
eligible CSF company	A company that meets the requirements in s738H of the Corporations Act to be eligible to make a CSF offer
general risk warning	A prescribed statement about the risks associated with investing in CSF offers  Note 1: See s738ZA(2) of the Corporations Act and reg 6D.3A.10 of the Corporations Regulations for the wording of the general risk warning that must appear prominently on a CSF intermediary's platform.  Note 2: See reg 6D.3A.03 of the Corporations Regulations for the wording of the general risk warning that must be included in a CSF offer document.

Term	Meaning in this document
platform	A website or other electronic facility provided by the CSF intermediary to host a CSF offer
related party	Has the meaning given in s738G(3) of the Corporations Act
retail investor	Has the same meaning as 'retail client in relation to a CSF offer' in s738D of the Corporations Act
senior manager	<p>A person who is concerned in, or takes part in, the management of the company (regardless of the person's designation and whether or not the person is a director or secretary of the company)</p> <p>Note: This is a definition contained in s9 of the Corporations Act, as modified by <a href="#">ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/737</a>.</p>

## Related information

### Headnotes

advertising restrictions, cooling-off rights, corporate governance concessions, crowd-sourced funding, CSF, intermediary, disclosure, eligible company, eligible offer, financial reporting concession, hawking, investor cap, investor rights, issuer cap, offer document, public company, risk acknowledgement, general risk warning, stop order

### Legislative instruments

[ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#)

[ASIC Corporations \(Disclosure Relief—Offers to Associates\) Instrument 2017/737](#)

### Regulatory guides

[RG 38](#) *The hawking provisions*

[RG 51](#) *Applications for relief*

[RG 55](#) *Statements in disclosure documents and PDSs: Consent to quote*

[RG 76](#) *Related party transactions*

[RG 170](#) *Prospective financial information*

[RG 173](#) *Disclosure for on-sale of securities and other financial products*

[RG 228](#) *Prospectuses: Effective disclosure for retail investors*

[RG 234](#) *Advertising financial products and services (including credit): Good practice guidance*

[RG 254](#) *Offering securities under a disclosure document*

[RG 262](#) *Crowd-sourced funding: Guide for intermediaries*

### Legislation

ASIC Act, s93AA, 93A

Corporations Act, Chs 2E, 2M.3, Pts 2J.3, 5B.1, 6D.2, 6D.3, 6D.3A, s9, 10, 11, 15, 16, 46, 50, 50AA, 136, 195, 201A, 203D, 203E, 204A, 249D, 250N, 286, 295, 296, 297, 298, 299, 300, 301, 314, 316, 319, 323D, 327A, 327B, 327C, 327D, 327E, 327F, 328C, 328D, 328E, 707, 708, 736, 738B, 738D, 738G, 738H, 738J, 738K, 738L, 738M, 738Q, 738R, 738S, 738U, 738V,

738W, 738Y, 738Z, 738ZA, 738ZC, 738ZD, 738ZE, 738ZF, 738ZG, 738ZI, 740, 741, 761G, 766B, 920A, 921A, 1041E, 1041F, 1041H, 1043A, 1308

*Corporations Amendment (Crowd-sourced Funding) Act 2017*

*Corporations Amendment (Crowd-sourced Funding) Regulations 2017*

*Corporations Regulations, regs 1.0.02A, 6D.3A.01–6D.3A.10, 7.1.06, 7.1.08*

*Tax Laws Amendment (Tax Incentives for Innovation) Act 2016*

## **Consultation papers and reports**

[CP 288](#) *Crowd-sourced funding: Guide for public companies*

[CP 289](#) *Crowd-sourced funding: Guide for intermediaries*

[REP 544](#) *Response to submissions on CP 288 and CP 289 on crowd-sourced funding*

## **Information sheets**

[INFO 18](#) *Changing a company type*

## **ASIC forms**

[Form 201](#) *Application for registration as an Australian company*

[Form 206](#) *Application for change of company type*

## **Other references**

*Australian Accounting Standard AASB 10 Consolidated Financial Statements*

[Explanatory Memorandum](#) to the Corporations Amendment (Crowd-sourced Funding) Bill 2016

## Appendix: Template CSF offer document

### **About this document**

*This is a template crowd-sourced funding (CSF) offer document. It is the Appendix to [Regulatory Guide 261](#) Crowd-sourced funding: Guide for public companies (RG 261), and should be read with that regulatory guide.*

*The purpose of this template CSF offer document is to provide a standard structure, accompanied by instructions and example content, to help your company prepare a CSF offer document for a CSF offer.*

*The template does not contain detailed substantive content, but provides limited examples of the type of content that should generally be included in each section of the CSF offer document. The examples provided are based on a hypothetical and limited scenario.*

*We have designed the template as a guidance tool (not a prescribed form) and use of the template is optional. It is not a compliance tool or a mechanism to protect your company against liability.*

### **Instructions**

*You may use this template as a starting point to draft your company's CSF offer document; however, you should remove all ASIC instructions, example text and headers/footers.*

*This template contains instructions about the minimum information that must be included in a CSF offer document under the Corporations Regulations, including the mandatory headings for the four key sections and the order of the sections. Information within each section is not required to follow a prescribed order and you may use cross-references to information within the document, where information would otherwise be duplicated. We have provided cross-references to where more detailed guidance can be found in Section D of RG 261.*

*The information in your company's CSF offer document should be tailored to the circumstances of your company and we recognise that the presentation, style, content and length of a CSF offer document will vary depending on certain matters, including the complexity of your company.*

*When drafting your company's CSF offer document you should:*

- avoid making the document too long – focus on information that is required by law, is material to an investor's decision or may be useful for investors to know*
- use plain language to assist investors in understanding the information*
- where appropriate, use tables, charts and other visual tools to present information in a way that is easy for investors to read.*

*We encourage you to present and format your company's CSF offer document in a way that enhances the readability, accessibility and digital compatibility of the document for retail investors.*

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# New Co Limited

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## Crowd-sourced funding offer document

dated [day] [month] [year]

Offer of fully-paid ordinary shares in New Co Limited at  
\$1 per share to raise a maximum of \$1,000,000

This crowd-sourced funding (CSF) offer document relates to the Offer of fully-paid ordinary shares in New Co Limited. This Offer is made under the CSF regime in Part 6D.3A of the *Corporations Act 2001* (Corporations Act).

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### Issuer

New Co Limited ACN 123 456 789

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### Intermediary

CSF Intermediary Co Limited AFSL 123 456

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# Contents

<b>Section 1: Risk warning</b> .....	<b>3</b>
<b>Section 2: Information about the Company</b> .....	<b>4</b>
2.1 Company details .....	4
2.2 Description of the business .....	4
2.3 Capital structure.....	6
2.4 Directors and senior managers .....	7
2.5 Risks facing the business.....	8
2.6 Financial information.....	9
<b>Section 3: Information about the Offer</b> .....	<b>10</b>
3.1 Terms of the Offer .....	10
3.2 Use of funds.....	10
3.3 Rights associated with the shares.....	12
3.4 Details of previous CSF offers.....	13
<b>Section 4: Information about investor rights</b> .....	<b>14</b>
4.1 Cooling-off rights.....	14
4.2 Effect of the corporate governance concessions.....	14
4.3 Communication facility for the Offer .....	15
<b>Glossary</b> .....	<b>16</b>
<b>Annexure</b> .....	<b>17</b>

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## Section 1: Risk warning

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*Include the below risk warning in Section 1 of your CSF offer document. This is the mandatory wording prescribed under the Corporations Regulations 2001 (Corporations Regulations) (reg 6D.3A.03).*

**Crowd-sourced funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of ventures is speculative and carries high risks.**

**You may lose your entire investment, and you should be in a position to bear this risk without undue hardship.**

**Even if the company is successful, the value of your investment and any return on the investment could be reduced if the company issues more shares.**

**Your investment is unlikely to be liquid. This means you are unlikely to be able to sell your shares quickly or at all if you need the money or decide that this investment is not right for you.**

**Even though you have remedies for misleading statements in the offer document or misconduct by the company, you may have difficulty recovering your money.**

**There are rules for handling your money. However, if your money is handled inappropriately or the person operating the platform on which this offer is published becomes insolvent, you may have difficulty recovering your money.**

**Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.**

## Section 2: Information about the Company

### 2.1 Company details

*Include your company name, company type, Australian Company Number (ACN), registered office address and the location or address of your company's principal place of business. An illustrative example is provided below.*

This offer of shares is made by New Co Limited ACN 123 456 789 (the Company). The Company was incorporated on [date] and converted to a public company on [date].

#### Registered office and contact details

*[Include address and contact details]*

#### Principal place of business

*[Include address/location]*

### 2.2 Description of the business

#### 2.2.1 Who are we?

*Include a description about what your company does, the main function of its business and any current activities. See Table 14 in RG 261 for further guidance. An illustrative example is provided below.*

We are an early-stage biomedical engineering and technology company based in Sydney, Australia.

Our core business is the research and development of a new bionic technology for use in prosthetic limbs. Our new technology design has been developed over the last two years and limited clinical trials have been conducted. We are currently undertaking additional limited clinical studies and are looking to move into the next phase of undertaking more extensive clinical trials and starting to manufacture our product for sale to the healthcare industry.

#### 2.2.2 What is our business strategy?

*Explain your company's business objectives and strategy. Specify the expected timeframe for achieving these objectives (but only if you have a reasonable basis for this). See Table 14 in RG 261 for further guidance. An illustrative example is provided below.*

We plan to expand the business through the development and manufacture of our product over the next one to three years.

Over this period, we intend to obtain patents and regulatory approvals for our product, undertake further clinical trials and commence manufacturing our product for commercial sale and licensing. We do not expect to make any income in the short to medium term.

### 2.2.3 What is our business model?

*Provide a description of your business model – that is, how you propose to make money and generate income or capital growth. See Table 14 in RG 261 for further guidance. An illustrative example is provided below.*

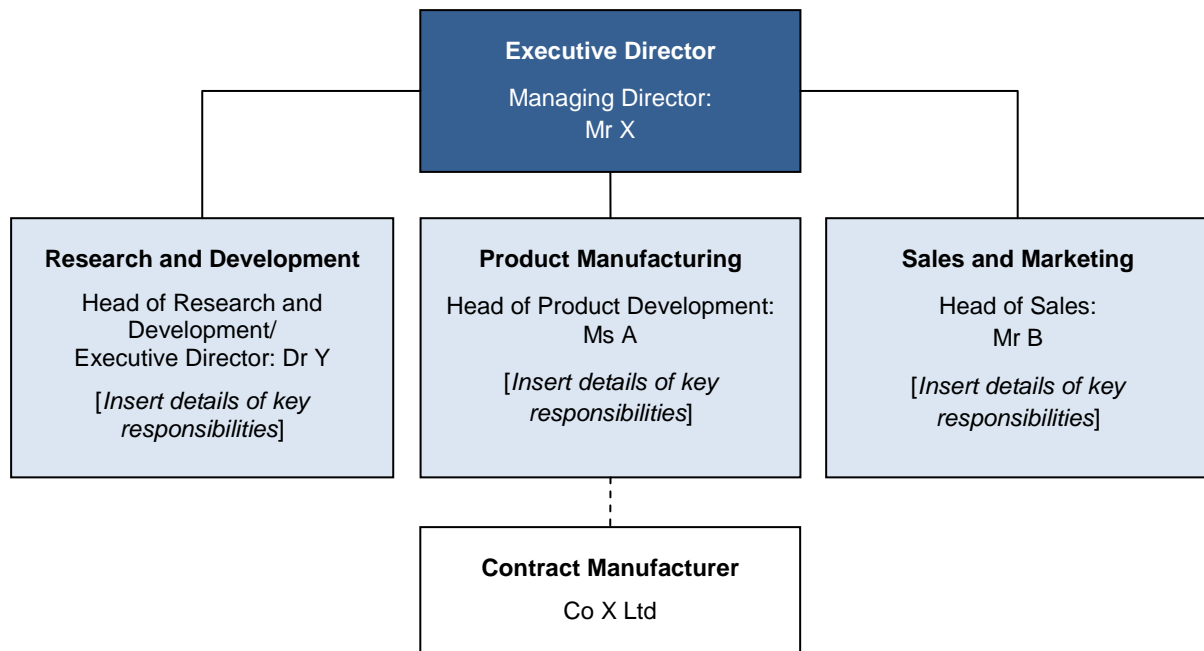
We anticipate that our main source of revenue will be the sale and licensing of our new bionics technology to the healthcare industry.

We will specifically target hospitals with a bionics research focus and private healthcare professionals/specialists that utilise bionic technologies in patient care. The success and profitability of the Company will depend on our ability to secure a long-term and large scale customer base or licensing arrangements, in order to sell and license our product at a profit.

### 2.2.4 What does our organisation look like?

*Provide a description of your organisational structure. See Table 14 in RG 261 for further guidance on what information should be included. An illustrative example is provided below.*

**Figure 1: Organisational structure**



As shown in Figure 1, Mr X is an Executive Director and Managing Director of the Company. The following directors and senior managers report to Mr X:

- Dr Y, Head of Research and Development/Executive Director [*insert details of key responsibilities*]
- Ms A, Head of Product Development [*insert details of key responsibilities*]
- Mr B, Head of Sales [*insert details of key responsibilities*].

The Company's contract manufacturer is Co X Ltd.

## 2.2.5 Legal or disciplinary actions against the Company

*Include details of, and a description of the circumstances giving rise to, any criminal convictions or civil penalties imposed under the Corporations Act 2001 against your company, any enforceable undertakings given to ASIC by your company and any other convictions or penalties (under any other laws) against your company in the last 10 years. Include a summary of the facts and any formal judgment (e.g. court judgment) or decision (e.g. by ASIC) in relation to the legal action or enforceable undertaking.*

## 2.3 Capital structure

*Include details of your company's debt and equity capital structure, including all classes of issued shares, options and other securities (e.g. convertible securities), if any. See Table 15 in RG 261 for further guidance. An illustrative example is provided below.*

### 2.3.1 Issued capital

As at the date of this CSF offer document, the Company has 2,500,000 Class A and 2,500,000 Class B shares and 500 options on issue. As set out in Table 1 below, the 5,000,000 shares are held by two of the Company's Executive Directors, Mr X (Managing Director) and Dr Y (Executive Director), and Mr X also has 500 options.

**Table 1: Issued capital of the Company before the Offer**

Shareholder	Share Type	Shares	Options
Mr X	Class A	2,500,000	500
Dr Y	Class B	2,500,000	Nil
<b>Total</b>	<b>N/A</b>	<b>5,000,000</b>	<b>500</b>

Table 2 sets out the issued capital of the Company following the Offer.

**Table 2: Issued capital of the Company following the Offer**

Shares	Minimum Subscription	Maximum Subscription
<b>Director shares (Mr X and Dr Y)</b>	5,000,000 (91%)	5,000,000 (83%)
<b>Offer shares</b>	500,000 (9%)	1,000,000 (17%)
<b>Total shares on issue (undiluted basis)*</b>	<b>5,500,000 (100%)</b>	<b>6,000,000 (100%)</b>

\* If Mr X exercises his 500 options, the fully diluted issued capital of the company will be 5,500,500 shares (minimum subscription) and 6,000,500 (maximum subscription).

## Rights associated with Class A shares, Class B shares and options

*Include a description of the key rights associated with all securities on issue. If there are additional rights, or terms of a shareholder agreement that are not material, you may consider including a summary of the additional rights or terms in an annexure to the CSF offer document. Consider providing a copy of your company constitution and/or any shareholder agreements in an annexure to the CSF offer document.*

Mr X's Class A shares have additional voting rights, with 10 votes for every share held. Dr Y's Class B shares hold one vote for every share held. *[Insert a description of other key rights associated with the shares]*

There is also a shareholder agreement between the Company's current shareholders, Mr X and Dr Y. Under the shareholder agreement, Mr X and Dr Y each have a first right to purchase the shares of any shareholder wishing to sell their shares. If this right is exercised, this means Mr X and Dr Y will maintain their majority ownership of the Company. If Mr X or Dr Y wish to sell their majority ownership of the Company to a third party, minority shareholders may be forced to sell their shares (this is known as a 'drag along' right).

Mr X may exercise his options at any time before 30 June 2018 at \$0.25 per share. *[Insert a description of other key rights associated with the options]*

Copies of the Company's constitution and the shareholder agreement between Mr X and Dr Y are attached in the Annexure and are available on the intermediary's platform.

### 2.3.2 Debt funding and other sources of funding

*Include a description of the key terms of any debt financing. If there are additional or complex terms that are not material or key information, you may consider including a summary of the additional terms in an annexure to the CSF offer document.*

#### Director loans

To date, our activities have been primarily funded by the Company's founding shareholders (Mr X and Dr Y). Mr X and Dr Y have loaned funds of \$*[insert]* in total to the Company. The key terms of this loan are set out below. *[Include key terms of loan]*

#### Government grants

The Company has secured award funding of \$*[insert]* from the Minister for Industry Innovation and Science. Details of the terms of this grant are below. *[Include terms of grant]*

## 2.4 Directors and senior managers

### 2.4.1 Our directors and management

*Include details of the skills and experience of each director and senior manager that are relevant to their role/position in your company. See Table 16 in RG 261 for further guidance.*

## 2.4.2 Legal or disciplinary actions

*Include details of, and a description of the circumstances giving rise to, the following legal or disciplinary actions, if any, against your company's current and proposed directors and senior managers:*

- *convictions of criminal offences under the Corporations Act*
- *civil penalties imposed under the Corporations Act*
- *disqualifications from managing a company under the Corporations Act*
- *banning or disqualification orders (relating to an AFS licence) under s920A or 921A of the Corporations Act*
- *whether the person is or has been a director, company secretary or senior manager of a company when it became insolvent*
- *any enforceable undertakings given to ASIC under s93AA or 93A of the Australian Securities and Investments Commission Act 2001 (ASIC Act)*
- *any other convictions or penalties under any other laws in the last 10 years.*

*See Table 16 in RG 261 for further guidance on the details that should be included.*

## 2.5 Risks facing the business

*Describe the main risks facing your company's business. Only the risks that may significantly impact the success or failure of the business should be included. See RG 261.144–RG 261.150 for further guidance. An illustrative example is provided below.*

An investment in the Company should be seen as high-risk and speculative. A description of the main risks that may impact our business is below. Investors should read this section carefully before deciding to apply for shares under the Offer. There are also other, more general, risks associated with the Company (for example, risks relating to general economic conditions or the inability to sell our shares).

**Table 3: Main risks**

Type of risk	Description of risk
<b>The Company's product is still in the development and clinical trial phase and may never be successfully commercialised</b>	<p>The Company has a limited operating history and is not yet profitable, as our product is still in the development and clinical trial phase.</p> <p>The commercial success of our product will depend on many factors, including our ability to demonstrate the effectiveness of the product (which will involve collecting further data from clinical trials and increasing acceptance of our product by healthcare professionals).</p> <p>If the results of the Company's further clinical trials are not successful or we are unable to increase awareness and acceptance of our product within the healthcare profession, we may not be able to successfully commercialise our product. There is also a risk that we will not be able to successfully expand our manufacturing, sales and marketing programs. This will have a material adverse effect on the Company's potential revenue and prospects.</p>

Type of risk	Description of risk
<p><b>The Company may not obtain the regulatory approvals required to sell its product</b></p>	<p>The Company has not yet received regulatory approval to sell our product in Australia or in any overseas jurisdictions. Our growth strategy depends on obtaining approvals from the relevant regulatory authorities.</p> <p>The Company has applied to the Therapeutic Goods Administration (TGA), Australia's regulatory approval authority, and is awaiting a response.</p> <p>There is no guarantee that we will receive all necessary regulatory approvals and we cannot predict with certainty the timelines for such approvals, or whether other requirements may be imposed by regulatory authorities (e.g. further clinical trials or other requirements to prove the effectiveness of our product).</p>
<p><b>The Company's success relies on its ability to protect its intellectual property</b></p>	<p>The protection of the Company's intellectual property is critical to our business and commercial success.</p> <p>If we are unable to protect or enforce the Company's intellectual property rights, there is a risk that other companies will copy our product and technology, which could adversely affect our ability to compete in the bionic technology market.</p> <p>We have three pending patent applications and there is no assurance that these applications will result in issued patents.</p>
<p><b>The Company will need additional funding to implement its business strategy</b></p>	<p>The Company's current cash reserves (plus the net proceeds of the Offer) will not be adequate for our funding requirements beyond the next 18–24 months.</p> <p>The Company will need to obtain additional funding to continue operations and execute its business strategy. We cannot guarantee the availability of funds in the future, or that the funds will be available on favourable terms. If we are unable to raise these funds, it could adversely impact the Company's business and prospects.</p>

## 2.6 Financial information

*Include your company's financial statements, including the balance sheet, profit and loss statement, cash flow statement and statement of changes in equity, for the most recent financial year.*

*If your company has been incorporated for less than 12 months (i.e. it has not yet had a full financial year), the financial statements included in the CSF offer document must be for the period from the date of incorporation to one month before the date of the CSF offer. If your company is required under the accounting standards to prepare consolidated financial statements, you must include the consolidated financial statements. Otherwise, you must include your company's separate financial statements.*

*Your company's full financial report is not required. However, you should consider including any material information contained in the notes to the financial statements (which, if omitted, may cause the financial statements to be misleading). See Table 18 in RG 261 and RG 261.154–RG 261.165 for further guidance.*



## Section 3: Information about the Offer

### 3.1 Terms of the Offer

*Provide details about your company's CSF offer, including the type of shares being offered, the minimum and maximum subscription amounts and the offer period. See Table 19 in RG 261 for further guidance. An illustrative example is provided below.*

The Company is offering up to 1,000,000 shares at an issue price of \$1 per share to raise up to \$1,000,000. The key terms and conditions of the Offer are set out in Table 4 below.

**Table 4: Terms of the Offer**

Term	Details
Shares	Fully-paid ordinary shares
Price	\$1 per share
Minimum Subscription	\$500,000
Maximum Subscription	\$1,000,000
Opening date	<i>[Insert the date the CSF offer document is published on the CSF intermediary's platform]</i>
Closing date	<i>[Insert a date no more than three months from the opening date], unless closed earlier by the Intermediary</i>

A description of the rights associated with the shares is set out in Section 3.3 below. To participate in the Offer, you must submit a completed application form together with the application money via the Intermediary's platform. The Intermediary's website provides instructions on how to apply for shares under the Offer.

The Intermediary must close the Offer early in certain circumstances. For example, if the Maximum Subscription is reached, the Offer must be closed. If the Minimum Subscription is not reached or the Offer is closed but not completed, you will be refunded your application money.

Investors may withdraw their application during the Cooling-off Period. Further information on investor cooling-off rights can be found in Section 4 of this CSF offer document.

The Offer is not underwritten.

### 3.2 Use of funds

*Describe how you intend to use the funds raised under the CSF offer (including funds raised in excess of the minimum subscription amount), and include a breakdown of how much will be applied to each purpose.*

Provide details of whether any of the funds raised will be paid (directly or indirectly) to:

- any current or proposed directors or senior managers of your company
- any related parties of your company
- any person that 'controls' your company or persons who hold more than 20% of the voting rights in the company (e.g. controlling or major shareholders)
- the CSF intermediary publishing the CSF offer or any of the intermediary's related parties
- any person promoting or marketing the CSF offer.

See Table 19 in RG 261 for further guidance. An illustrative example is provided below.

Table 5 below sets out the intended use of funds raised under this Offer based on the minimum and maximum subscription amounts.

**Table 5: Use of funds**

Intended use	Year 1: Minimum Subscription	Year 1: Maximum Subscription	Year 2: Minimum Subscription	Year 2: Maximum Subscription
Research and development	\$230,000	\$280,000	\$50,000	\$150,000
Regulatory approvals	\$10,000	\$10,000	Nil	Nil
Sales and marketing	Nil	Nil	\$5,000	\$30,000
Production	Nil	Nil	\$5,000	\$140,000
Working capital	\$120,000	\$150,000	\$40,000	\$200,000
Offer costs	\$40,000	\$40,000	Nil	Nil
<b>Total funds</b>	<b>\$400,000</b>	<b>\$480,000</b>	<b>\$100,000</b>	<b>\$520,000</b>

In Table 5, 'working capital' includes overhead expenses, employee wages and director remuneration. Details of payments to be made to directors and senior managers are itemised below:

- directors' remuneration: \$[insert]
- senior manager remuneration: \$[insert].

The costs of the Offer include the Intermediary's fees under the hosting agreement between the Company and the Intermediary. These fees are \$[insert].

Other than as specified above, no other payments from the funds raised will be paid (directly or indirectly) to related parties, controlling shareholders, or any other persons involved in promoting or marketing the Offer.

We expect that the Maximum Subscription amount will be sufficient to meet the Company's short-term objectives over the next 18–24 months.

If only the Minimum Subscription amount is raised, the Company will require further funding to be able to carry out our intended activities over the next 12–18 months. In such circumstances, the Company may consider undertaking a further crowd-sourced funding (CSF) offer under the CSF regime. Until additional funding is obtained, we will scale back sales and marketing and production activities and continue to focus our cash resources on research and development and working capital costs to advance the clinical trials of our new technology.

### 3.3 Rights associated with the shares

*Include a description of the rights associated with the shares being offered. The illustrative example below includes only some of the common shareholder rights – there may be others that apply to your company. See Table 19 in RG 261 for further guidance.*

Immediately after issue, the shares will be fully-paid shares. There will be no liability on the part of shareholders and the shares will rank equally with the shares currently on issue.

The rights associated with the shares are set out in the Company's constitution. A summary of these rights is set out below. A copy of the constitution is attached in the Annexure to this offer document and is available on the intermediary's platform.

#### 3.3.1 Voting rights

Each shareholder has one vote on a show of hands and, on a poll, one vote for each share held.

#### 3.3.2 Election and removal of directors

Shareholders may vote to elect and remove directors at a general meeting by way of ordinary resolution (50%).

#### 3.3.3 General meetings and notices

Directors have the power to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares. Shareholders who hold at least 5% of the votes which may be cast at a general meeting of the Company have the power to call and hold a meeting themselves or to require the directors to call and hold a meeting.

#### 3.3.4 Dividends

All shareholders have a right to receive any dividends declared and paid by the Company. The directors have a discretion and may resolve to pay dividends, subject to their obligations under the Corporations Act (for example, they cannot pay dividends unless the Company's assets are sufficiently in excess of its liabilities immediately before the dividend is declared and where it may materially prejudice the Company's ability to pay its creditors).

#### 3.3.5 Winding-up

If the Company is wound up and there are any assets left over after all the Company's debts have been paid, the surplus is distributed to holders of ordinary shares after secured and

unsecured creditors of the Company. Holders of fully-paid ordinary voting shares rank ahead of other classes of shares (if any).

### 3.4 Details of previous CSF offers

*Include a description of all previous CSF offers (if any) made by:*

- *your company*
- *any other company in which your directors or senior managers were appointed (at the time of that CSF offer) as a director or senior manager*
- *any related parties of your company*
- *any other company controlled (at the time of that CSF offer) by a person that 'controls' your company (e.g. controlling shareholders).*

*Include details about who made the CSF offer and when, and the outcome of the CSF offer (for example, whether the CSF offer was 'complete' and the minimum subscription amount was raised, or whether the CSF offer was 'unsuccessful'). See Table 19 in RG 261 for further guidance.*

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## Section 4: Information about investor rights

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### 4.1 Cooling-off rights

*Include a description of the cooling-off rights, which allow investors to withdraw their application under a CSF offer within five days of their application. See Table 20 in RG 261 for further guidance. An illustrative example is provided below.*

You have the right to withdraw your application under this Offer and to be repaid your application money. If you wish to withdraw your application for any reason (including if you change your mind about investing in the Company), you must do so within **five business days** of making your application (the Cooling-off Period).

You must withdraw your application via the Intermediary's platform as follows: *[insert the method or instructions for withdrawing offers, as specified by the Intermediary]*.

After your withdrawal has been processed, the Intermediary will refund the application money to your nominated account as soon as practicable.

### 4.2 Effect of the corporate governance concessions

*If your company is relying on the temporary concessions from certain audit, reporting and corporate governance obligations of public companies, then include a description of the effect of these concessions (as applicable). See Table 20 in RG 261 for further guidance. An illustrative example is provided below.*

#### 4.2.1 Annual general meetings

The Company is not required to hold an annual general meeting (AGM) for up to five years from its registration/conversion to a public company – being *[insert date]* (assuming the Company continues to meet the eligibility requirements).

This means that shareholders will not be provided with an opportunity to directly question the directors and management in an open forum about the management, business operations, financial position or performance of the Company, as this would usually take place at the AGM.

However, the directors of the Company may still be required to hold a general meeting in other circumstances, for example, where requested to by shareholders with at least 5% of the votes that may be cast at a general meeting.

If shareholders have any queries or concerns about the Company, they should contact the company secretary directly. *[Insert contact details for company secretary]*

## 4.2.2 Annual report

The Company is required to prepare annual financial reports and directors' reports at the end of each financial year and lodge these with ASIC (within four months of the financial year end). The Company has a 30 June year end and its financial reports must be lodged by 31 October each year.

Provided the Company continues to meet the eligibility requirements under the CSF regime, the Company is **not** required to have its financial reports audited for up to five years from its conversion to a public company – being [*insert date*].

This means that the Company's financial reports will not be subject to auditor oversight and, therefore, there will be no independent assurance of the Company's financial statements.

However, the directors of the Company are still required to make a declaration that the financial statements give a true and fair view of the Company's financial position and performance and that the financial statements comply with the accounting standards.

## 4.2.3 Distribution of annual report

Provided the Company continues to meet the eligibility requirements under the CSF regime, the Company is **not** required to notify shareholders in writing of the options to receive or access the annual report.

Shareholders will not be able to elect to receive a copy of the annual report by way of email or post. However, shareholders can access the annual report on the Company's website at the following address [*insert link to website*] or from ASIC, free of charge.

## 4.3 Communication facility for the Offer

*Include a description of the effect of the communication facility for your company's CSF offer on the CSF intermediary's platform. See Table 20 in RG 261 for further guidance. An illustrative example is provided below.*

You can ask questions about the Offer on the communication facility available on the Intermediary's platform. You can also use the communication facility to communicate with other investors, with the Company and with the Intermediary about this Offer.

You will be able to post comments and questions about the Offer and see the posts of other investors on the communication facility. The Company and/or the Intermediary will also be able to respond to questions and comments posted by investors.

Officers, employees or agents of the Company, and related parties or associates of the Company or the Intermediary, may participate in the facility and must clearly disclose their relationship to the Company and/or Intermediary when making posts on the facility.

Any comments made in good faith on the communication facility are not subject to the advertising restrictions in the Corporations Act.

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# Glossary

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*You may wish to include a glossary containing definitions of the key terms used in your company's CSF offer document. The wording below is for illustrative purposes only.*

**Company** means New Co Limited ACN 123 456 789

**Cooling-off Period** means the period ending five business days after an application is made under this Offer, during which an investor has a right to withdraw their application and be repaid their application money

**CSF** means crowd-sourced funding under Part 6D.3A of the Corporations Act

**Intermediary** means CSF Intermediary Co Limited AFSL 123 456

**Maximum Subscription** means the amount specified in this CSF offer document as the maximum amount sought to be raised by the Offer

**Minimum Subscription** means the amount specified in this CSF offer document as the minimum amount sought to be raised by the Offer

**Offer** means an offer of fully-paid ordinary shares by the Company under this CSF offer document

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## Annexure

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*To reduce the length of the CSF offer document, and to focus on the information prescribed by law and other key material and relevant information in the body of the document, you may wish to use annexures:*

- for additional information (not prescribed under the law) that is not key information or is less important to investors. This might include the notes to the financial statements or details of complex terms of convertible notes/securities or a debt facility; and*
- to attach copies of other key documents, such as shareholder agreements or your company's constitution, to the CSF offer document. However, where required by law, you must also include a description of certain information contained in these documents in the CSF offer document itself.*