



## Crowdfunding for co-operative securities

### Regulatory requirements for security offers - General

- The CSEF rules for offers under the *Corporations Act* do not apply to co-operatives.
- All security offers, shares, debentures and co-operative capital units (CCUs) must have a disclosure statement (similar to a disclosure document or offer document under the *Corporations Act*).
- All disclosure statements are lodged with the State or Territory Registrar where the co-operative is registered. Some disclosure statements must be 'approved' by the Registrar, while others are simply lodged and the Registrar has power to inspect and place a stop order or require an amended disclosure statement to be lodged. The lodgement process applies to public offers of debentures and CCUs and the process is the same as lodging a prospectus with ASIC. Note, ASIC has no regulatory control over offers of co-operative securities.
- Offers of securities cannot be published until there is a disclosure statement (either approved or lodged).
- There is no published regulatory guide for offers of debentures or CCUs by any Registrar.
- Offers to existing members are treated differently to offers to the public. Public offer disclosure statement requirements are the same as for a prospectus under the *Corporations Act* and so it can be assumed that the same disclosure guidance ought to apply.

### Regulatory matters for specific security issues

#### *Initial share offers*

- All distributing co-operatives must have an approved 'formation' disclosure statement as a pre-condition to registration.
- The formation disclosure statement offers both **membership** and **shares**. Co-operatives are member owned organisations where membership entails an obligation to have a relationship that is either transactional with the co-operative or based on something more than an investment. The shares are the member's capital contribution and part of the cost of membership.
- Only members can hold shares in the co-operative.
- Co-operative shares cannot be listed on a stock exchange as they are not freely transferable.
- Co-operative shares are repayable if a member leaves the co-operative.
- Offers of membership and shares are continuous. They do not necessarily have to have a time limit or cap, although at start up, most co-operatives would have a target. Co-operatives are required to update their disclosure statement so that it is always current.
- Co-operative shares are not the same as ordinary shares. They have a fixed price (ie no capital gain), a limited dividend and no vote. Voting is a right of membership.
- Persons, or the 'crowd', who can buy the shares are limited by the qualifications for membership defined in the co-op's constitution. For example, a co-operative of grain growers will only allow grain growers to be members. But a consumer co-operative will allow anyone who wants to consume the goods and services acquired by the co-operative can be members. Hepburn Wind Co-operative Ltd raised approximately \$12 million in share capital from many members to construct a small wind farm in Daylesford.

### ***Subsequent share offers***

Co-operatives can seek to make further share offers to their members being either shares with the same terms of issue, or a different class of shares with different rights attached. These are member only offers and there is no requirement for a disclosure statement, it is treated like a rights offer under the *Corporations Act*.

### ***Debenture and CCU offers to members***

- Offers to members of debentures or CCUs must have a disclosure statement incorporating Terms of Issue for the securities. A member offer can also be made to employees of the co-operative.
- Requirements for a disclosure statement are (s338(3) CNL)

The ***disclosure statement*** is a statement, approved by the Registrar, and containing the information that is reasonably necessary to enable a person to make an informed assessment of the financial prospects of the co-operative, including—

- (a) the purpose for which the money raised by the co-operative by the issue of debentures is to be used; and
  - (b) the rights and liabilities attaching to the debentures; and
  - (c) the financial position of the co-operative; and
  - (d) the interests of the directors of the co-operative in the issue of the debentures; and
  - (e) compensation or consideration to be paid to officers or members of the co-operative in connection with the issue of debentures; and
  - (f) other matters the Registrar directs.
- Whilst not stated in the CNL, there is likely to be a requirement for a restriction on transfer so that they may only be transferred to another member or employee.

### ***Debenture and CCU offers to the public***

- A public offer is governed by the same requirements for a public offer of securities under Chapter 6D of the *Corporations Act*. The Chapter 6D requirements are drafted into the CNL and the relevant State or Territory Registrar is the regulating authority.
- These offers are bound by a time limit and target amount.
- A CCU is an interest in the capital of the co-operative but it is not share capital. Because co-operative shares have a fixed price, any asset value in excess of the value of total shares on issue would be the co-operative's capital.
- Debentures and CCUs can be offered as secured instruments or unsecured.

## **Why is it good to open up investment in co-operatives?**

Co-operatives are a class of social enterprise. They are a means for individuals or small businesses to collaborate to achieve something better than they could achieve on their own. Some co-operatives are comparatively closed because they appear to restrict who can be a member, but their adherence to co-operative principles and their democratic governance model delivers broader social benefits to their local communities. For more 'open' co-operatives, the social benefit is more far reaching. They enable all kinds of groups to combine to do good things in their community through operating a business.

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