

# CROWDSPHERE LEGAL PROCESS

---

This document provides a brief overview of the key steps which are involved pre and post pitch and the service which Crowdsphere can provide. The services provided by Crowdsphere are corporate administration in nature, they are not a substitute for independent legal or tax advice.

## 1. Pre-Pitch Steps

We ask you to review your corporate documentation at an early stage to establish whether they are appropriate for crowdfunding. We have set out below some items for you to consider:

### 1.1 Is there a Shareholders' Agreement in place?

You should inform Crowdsphere in advance of pitching if you have a shareholders' agreement in place. The terms should be reviewed carefully with your professional advisers to establish:

- Is the shareholders' agreement appropriate for crowdfunding? Often shareholders' agreements are not compatible because they add a layer of complexity which is not appropriate or simple to operate for crowdfunding.
- If the shareholders' agreement will be terminated prior to crowdfunding, you may consider transferring certain key terms from the shareholders' agreement into the constitution (which will require you to formally amend your constitution or alternatively to adopt a new constitution).
- If the shareholders' agreement remains in place after crowdfunding:
  - You will need to consider whether the crowd is required to sign the shareholders' agreement or whether changes are required so that it does not apply to the crowd (directly or indirectly).
  - You will need to disclose a summary of the terms of the shareholders' agreement on the Pitch.
  - You will need to consider whether the shareholders' agreement conforms with any changes you have made to your constitution for crowdfunding.
  - You will need to consider whether the shareholders' agreement restricts the directors' authority to issue/allot the shares and any other restrictions which are inappropriate to crowdfunding.

If you have a shareholders' agreement you must seek advice prior to pitching on Crowdsphere to ensure that the terms of the agreement are compatible with crowd funding or, if not, whether the shareholders' agreement can be terminated or amended to ensure compatibility.

## 1.2 Existing constitution

You will need to check your existing constitution carefully to establish:

- Does the existing constitution differ materially from Crowdsphere's standard constitution? If it does, you will need to consider amending the constitution or disclosing differences to investors via the Pitch. We can assist you with this analysis.
- Are there any restrictions in the constitution on the directors' authority to issue and allot shares being offered to the crowd?
- Do pre-emption rights need to be waived before offering shares to the crowd? In most cases the standard pre-emptive rights for all existing shareholders under the Companies Act 1993 will apply to any new issue of shares, which will need to be waived.

Crowdsphere's standard model constitution include the following key terms, which are intended to provide an administratively appropriate approach to dealing with what may be a significant number of crowd shareholders:

- Pre-emption on issue;
- Pre-emption on transfer;
- Drag along and tag along;
- A choice of two types of shares: A Ordinary Shares (with full voting rights) and B Investment Shares (with no voting rights); an investee company may decide to offer either or both classes of shares to crowd investors;
- Both classes of shares will be equally entitled to dividends;
- Electronic communication provisions;
- Board representation for shareholders holding 25% or more of the A Ordinary Shares;
- De minimus dividend provisions (ie dividends will be retained until they reach a minimum payment amount per share); and
- No restrictive covenants or restrictions on selling or otherwise transferring their shares applying to crowd funding investors.

## 1.3 How Many Classes of Shares Does the Company Have?

If the Company has different share classes and rights prior to the Pitch, these may need to be adjusted prior to completion. The terms attaching to each class of shares will need to be disclosed to investors via the Pitch.

## 1.4 Changes to Share Numbers

You need to ensure there are sufficient shares so that each crowd investor has at least one share (you cannot issue fractional shares). This may require sub-division of shares prior to completion with crowd investors. In some cases it may also be necessary to issue additional shares to founders/existing shareholders.

There may also be complex calculations required depending on the existing shareholders and percentages offered to crowd investors. We can assist with share calculations. **Where you have external advisors, we will need to confirm your calculations prior to you approving the final numbers of shares to be issued.**

## 1.5 Takeovers Code

If the Company has (or will have after completing a crowdsourcing investment round) 50 or more shareholders who hold voting shares, then the Takeovers Code will apply to the Company. The Takeovers Code provides for restrictions on the way in which shares are able to be offered and sold by companies who fall within its scope.

For small companies there is an opt-out from certain provisions in the Takeovers Code in respect of capital raising. This allows directors to reduce the cost impact of the Takeovers Code.

We recommend that you obtain professional advice on the way in which you can structure the shareholdings in the Company in order to understand the impact of the Takeovers Code and the options for the Company.

## 1.6 You and Your Existing Stakeholders Should Consider Tax Matters

We cannot provide you with tax advice. Raising finance via crowdfunding may have tax implications for you, your existing shareholders/directors and your company. You should consult external tax advisors and we can assist you by recommending appropriate external firms in this regard.

## 1.7 Existing Shareholders Should Take Independent Professional Advice

It is important that each existing shareholder consults their own professional advisors, particularly where you are proposing to amend or terminate their existing shareholder rights or asking them to waive any rights.

## 2. Post Pitch Steps

### 2.1 Information We Need From You

In order for us to assist the Company, you will need to provide the following information:

- Company name
- Company's registered number
- Address of registered office
- Total share capital in the company
- Number of existing shareholders and the type of share which they own
- Names of the shareholders
- Names of the directors and their residential addresses

## **2.2 Documentation Process**

Following successful fundraising through Crowdsphere, we will assist you with documents and process to issue the shares promised to the Crowdsphere investors. An overview of the steps is detailed below:

### **2.2.1 Constitution**

Normally the Company will adopt a new Constitution, which is a publicly available document which sets out the rights and obligations of the shareholders and directors of the Company (in addition to the provisions of the Companies Act 1993)

Crowdsphere has prepared a standard form Constitution, designed specifically to deal with the multiple shareholders, and different classes of shares. We anticipate that the majority of Crowdsphere investee companies will issue two types of shares: A Ordinary Shares ("A Shares") with full voting rights, and B Investments Shares ("B Shares") with no voting rights, depending on the level of investment of each investor.

### **2.2.2 Special Resolution**

We can assist you with preparing a written Special Resolution of shareholders in order to adopt the new Constitution.

The special resolution must be circulated to all shareholders entitled to vote and requires signatures from a majority of at least 75% of the shareholders to vote in favour of the proposed resolution to change the Company's Constitution. It is also possible to pass a resolution via a meeting of shareholders in some cases.

### **2.2.3 Shareholder Pre-emption Rights**

We can assist you with preparing a deed of waiver in relation to any pre-emption rights of shareholders, prior to issuing shares to the crowd. Unanimous consent will be required from the existing shareholders.

If the Company has a significant number of existing shareholders, it may be problematic to obtain unanimity and if so, the Company will need to follow the statutory process, which can involve a 14 day delay.

Pre-emption is the right of first refusal for existing shareholders entitling them to be offered any shares in the Company before they are offered to third parties, to preserve their percentage shareholding in the Company.

### **2.2.4 Board Resolution**

We can assist you in preparing a written board resolution for directors to approve the issue of new shares to the crowd.

Unanimity of directors is required for a written resolution. Alternatively directors may hold a board meeting and vote on the decision.

### 2.2.5 Share Calculations

We can assist you to calculate the correct number of shares to be issued by the Company. It will also be necessary to calculate the correct number of shares to be issued by the Company to the crowd, and if necessary, how many shares to be issued to existing investors to match the correct percentages.

### 2.3. Seven-day email and Completion

After the Pitch has reached its target and has been closed, the Constitution will be circulated to investors for a seven (7) working day period. During this time, an Investor can withdraw their investment. At the end of this period, a schedule will be produced by Crowdsphere listing the investors and the total level of investment.

The documents will then be finalised, and signed. Once signed, we will confirm that the legal steps to issue the shares have been completed. You will then liaise with us in relation to the release of the subscription monies. The shares have been issued at this point, subject to receipt of the subscription monies from the investors

## 3. Company Filings and Record Keeping

There are several administrative steps that the Company must undertake after Completion, including:

- Special Resolution to change the Constitution and allot the new shares together with the new Constitution must be filed at Companies Office within 10 working days
- A notice of issue of shares must be filed online with the Companies Office within 10 working days of the allotment of shares
- A notice of shares must be filed online with the Companies Office within 10 working days, if the share calculations have involved the sub-division of shares
- Statutory Books of the Company which are kept at the registered office, must be updated to reflect the new register of shareholders and register of shares

**Please note that these post-completion steps are not handled by Crowdsphere and should be carried out by the Company.**

We suggest that the post completion steps are not undertaken until the subscription monies are received from investors as the documentation may need to be changed to reflect withdrawals or failed money transfers.

## 4. Crowdsphere Fees

Crowdsphere charges a fixed fee of \$1,250 plus GST to carry out the post-completion steps for the Company detailed above. The fixed fee covers the following work:

- Provision of a form of Constitution (based on the Crowdsphere template)
- Shareholders' Resolutions to adopt the new Constitution and authorise the directors of the Company to allot new shares
- Board Resolution to issue new shares

- Form of pre-emption waivers to be signed by existing shareholders
- Shareholders' agreement to terminate any existing shareholders' agreements (where required)

You may already have your own external professional advisors to undertake all of the above steps. In this case, we are still required to confirm your documents and share calculations for which Crowdsphere charges a fixed fee of \$250 plus GST.

If you require additional work not detailed above, we will discuss this with you. Depending on our view we may suggest you contact an external law firm or we may assist you directly. If we assist you directly there may be additional costs which we will agree with you in advance, depending on complexity. Examples of additional work includes:

- Appointing directors
- Reviewing the terms of an existing shareholders' agreement
- Drafting an appropriate shareholders' agreement (if required)
- Institutional/significant investors
- Significant advice on pre-emption rights
- Share transfers
- Employee share options, preference shares
- Review of Existing contracts and arrangements

## **5. Other Services**

On request, we can suggest external advisors, including lawyers and tax advisors. Please contact us for further information. Crowdsphere will not be liable to you in respect of any services provided by any external adviser.

### **PLEASE NOTE:**

The information in this note is intended to be general information and is not comprehensive. Crowdsphere Limited (trading as Crowdsphere) is unable to provide any financial, legal or tax advice and this document is not to be relied upon as such. We recommend that independent advice is taken from an appropriate professional in relation to the corporate documents of an investee company and the crowd funding process.