ClearSky
SOLAR INVESTMENTS

Background to this submission

ClearSky Solar Investments Ltd is a not for profit social enterprise that has been established to provide a mechanism to allow members of the community to invest in commercial solar PV installations.

The capital cost of the installation is met by raising capital from community investors. The end-user then pays for the electricity the panels produce for a defined number of years, after which ownership of the panels is transferred to the end user. Over the term of the investment investors get their capital paid back and a profit component. Typically the IRR is 8% or more.

ClearSky is an intermediary/issuer as defined in the discussion paper. We set up trusts with up to 20 investors to raise capital for projects of up to $200,000 in value. Registered users (who must confirm their commitment to the growth of renewable energy in Australia before getting accepted) are given access to investment opportunities on our website

In establishing ClearSky, which is a CSEF, we have had to operate within the Corporations Act as it currently stands and this has highlighted to us where changes should be made. These suggested changes, which we have incorporated into the framework of questions in the CAMAC discussion paper constitute this submission.

Which Option do we prefer?

Our preference is for Option 4 – making amendments, targeted for CSEF, to the existing regulatory structure to reduce the entrance barriers (the need for a FSL and an expensive-to-produce prospectus) specifically when the CSEF involves a not-for-profit organisation that is seeking to raise funds from individuals who are committed to a cause the not-for-profit is promoting.

There is a much diminished need to protect investors where 'a good cause' is involved. The border line between philanthropy and investment is not clear cut in these circumstances. The biggest concern of investors may not be the risk of losing their money, but having the social benefit that they were seeking to promote not eventuate. Just as philanthropists take personal responsibility for doing due diligence on any of the charities they support one could expect that investors in social enterprises would do the same.

We consider first the liberalisation that is needed to section 708 of the Corporations Act which sets out the characteristics of offers that do not need disclosure

The two issues that we need to be considered are

1. What conditions would the social enterprise CSEF capital raising program need to meet in order to qualify for the liberalised exemptions
2. What the liberalisation would involve

We would argue that the following conditions for the liberalisation of the Section 708 exemption would open up opportunities for raising capital for projects with a positive social benefit without 'opening the flood gates' or exposing finance-naive to excessive risks

To qualify for the exemption

- the social enterprise intermediary/issuer should be a registered on ACNC
- Less than $2 million was being raised
- At any one time 80% of the equity would be in the hands of no more than 20 investors (this would address the point made in the discussion paper that too many investors reduces vigilance)
- There were less than 100 investors in total
- The capital was being raised for a project with a social benefit that was aligned to the intermediary/issuer's mission
- The offer would be accessible only to individuals who had confirmed their commitment to the mission of the intermediary/issuer, by registering on a website set up for this purpose.

The liberalisation we would recommend for intermediary/issuers that met the above conditions would be

- No restriction on adverting to the public at large the existence or the website where one could register and get access to offers
- No restriction is advertising, in general terms, the type of offers that were available to registered users once they had registered on the website.

Furthermore there should be no restriction how many trusts that complied with the above conditions that a social enterprise intermediary/issuer could have on their books.

It would clearly be in the interests of intermediary/issuers to have a disclosure document for each investment. There is no need to regulate the content or have a formal registration of the document however. A government issued check list of the items that should be covered would help investors do their own due diligence.

What follows is our answers to specific questions

Question 3: In the case proprietary companies such as trusts set up by social enterprises meeting the conditions outlined above, it should be permitted to advertise to the public the fact the offers can be found on a website that they are able to sign on to. It should also be permissible to advertise the general characteristics of these offers.

Question 4 (i) Social enterprises should be included

Question 4 (ii) Units in trusts should be included

Question 4 (iii) No ceiling on the aggregate of funds raised by the intermediary/issuer, although individual offers should each have a ceiling of $2 million

Question 4 (iv) Checklists of what should be included in the disclosure for intermediary/issuers and what investors should look for should be provided by the appropriate authority but self-regulation should be used

Question 4 (v) See answer to Q3

Question 4(vii) A unit holder in a trust should be able to sell their units to an existing unit holder.

Question 5 Social enterprises meeting the conditions outlined above should not be required to have a licence but on-line training courses should be made available.

Question 6(i)(a) Social enterprise intermediary/issuers should be registered with the ACNC

Question 6(i)(b) It should be the responsibility of the social enterprise to demonstrate that it has the necessary capability in response to an audit, but there should be up front assessment and registration process

Question 6(i)(c) The appropriate authority should provide a model which intermediary/issuers can use to bench mark their own performance, but no regulation

Question 6(i)(d) Not if the intermediary is a social enterprise

Question 6(ii) Provision needs to be made for the case where the intermediary is a social enterprise which has set up proprietary company issuers.

Question 6(iii)(a) No investor screening should be required when the intermediary/issuer is a social enterprise

Question 6(iii)(d) See answers to Question 3 above. There should be no restrictions to social enterprises encouraging members of the public to register on their website. It should be permissible to advertise in general terms what the social benefit of the offers are and what the benefit is to investors.

Question 6 (iii)(i) see answer to Question 4(iv) above. Full disclosure should strongly encouraged but not mandated

Question 8 (i) Individuals only

Question 8 (iii) An upper limit of $200,000 would not cause us any problem if it was thought necessary to have an upper limit.

Question 8(iv) We would have no objection if the application form for units had the risks listed with a space for the investor to sign in acknowledgement

Finally we would recommend that CAMAC consults with the Centre for Social Innovation and Research at UNSW before making its final recommednations