

Client Alert

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Securities Regulation

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RAISING ARIZONA: Intrastate Crowdfunding

On April 2, 2015, Arizona Governor Ducey signed an important new "intrastate crowdfunding" law that provides additional capital-raising tools to entrepreneurs and angel investors in Arizona. The new law allows Arizona companies to raise up to \$1M, with unaudited financial statements, from friends, family and others, including non-accredited investors. The \$1M limit increases to \$2.5M for companies with audited financials. The new law clears a path for crowdfunding deals inside Arizona starting July 3, 2015. Broader interstate crowdfunding deals are still not allowed, unless and until the SEC passes the long awaited rules under the federal Jumpstart our Business Startups (JOBS) Act. Even if the SEC ultimately issues interstate crowdfunding rules, the new Arizona law is likely to provide a simpler path to capital for some Arizona companies.

Why should entrepreneurial start-ups consider Arizona intrastate crowdfunding?

- An unlimited number of Arizona investors may participate. Non-accredited investors are each limited to \$10,000, with no dollar limitation on accredited investors.
- Amounts invested by officers, directors, partners, and 10% owners are not included in the \$1M or \$2.5M caps on total offering size.
- General solicitation is allowed by limited notice, directing potential investors to a special website ("Crowdfunding Website") operated by an Arizona third party.
- Arizona agencies have indicated a desire to serve as the Crowdfunding Website operator without cost, avoiding broker/dealer registration, and to partner with Arizona escrow agents.
- Compliance is relatively simple, requiring a private placement memorandum and notice-filing with the Corporation Commission, which Arizona regulators have indicated will not trigger burdensome regulatory review.

What hurdles exist?

- The company or "issuer" must be organized and have its principal place of business in Arizona.
- The issuer must be "doing business" in Arizona, which means at least 80% of:
 - Gross revenues must be derived in Arizona during the most recent fiscal year or most recent 6-month period from that date, whichever is closer in time to the offering;
 - Assets must be located in Arizona in the most recent semi-annual fiscal year; and
 - Net proceeds from the offering must be intended for use in connection with the operation of its business.
- Offers and sales may be made only to Arizona residents (evidenced by driver's license, voter registration or property tax bill).
- All proceeds must be held by independent escrow agent, with receipt of at least 80% of target capital amount required to break escrow.
- During the offering period and 9 months thereafter, re-sales can be made only to Arizona residents (thereafter, re-sales are subject to federal and state securities laws).
- The issuer must provide quarterly financial reports through the Crowdfunding Website.

**JOBS ACT
ALTERNATIVES:**

- General solicitation of an unlimited amount in a private offering only to accredited investors under SEC Rule 506(c).
- Offering cleared by the SEC of up to \$50 million to non-accredited and accredited investors that permits resales by existing stockholders under new Regulation A+ (mini public offering)

The new Arizona law is not for everyone, and will likely be most useful for companies seeking relatively small investments that don't expect to be raising large amounts later. When it comes time to raise more substantial capital, future angels, venture capitalists and private equity groups might find an Arizona-formed entity and a capital structure composed of numerous small, unsophisticated stockholders undesirable. The good news is that an issuer can later easily change its domicile to Delaware, which is favored by sophisticated investors for its well-developed corporate law, and potentially raise substantial capital for the new entity. Also, the JOBS Act recently increased the number of stockholders triggering SEC registration to 2,000, making an issuer's number of stockholders less important later to sophisticated investors.

If the new law doesn't fit a particular client's needs, Osborn Maledon can assist companies with raising capital through the tried and true private offering methods that have been around for decades, and under other relatively recent capital raising alternatives provided by the JOBS Act (see side panel).

We are happy to answer questions and assist you in meeting your capital raising objectives.

The new Arizona statute (HB2591/SB1450) can be found [here](#) and the Arizona Senate Fact Sheet can be found [here](#).

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