

RAISING CAPITAL THROUGH PRIVATE PLACEMENTS EXEMPTION CHART

January 2023

This is the Appendix 1 Securities Act Exemption Chart from our “Raising Capital through Private Placements: Deal Points” advisory, January 2023 in standalone form for convenience. The full “Raising Capital” advisory is available at [Kurtin PLLC Raising Capital](#) or <https://www.lexology.com/contributors/kurtin-llc>.

Type of Offering	Aggregate Offering Price Limitation	Issuer & Investor Requirements	Limitations on Manner of Offering	SEC and State Filing Requirements	Limitations on Resales	Information Requirements
Regulation D Rule 506	None.	Rule 506(b): unlimited Accredited Investors and up to 35 non-accredited investors permitted. Rule 506(c): all purchasers must be Accredited Investors.	Rule 506(b): No general solicitation or advertising permitted; Rule 148 “Test-the-Waters” and “Demo Day” activity permitted. Rule 506(c): General solicitation and advertising permitted if all purchasers are Accredited Investors.	SEC: File Form D not later than 15 days after first sale. No ongoing reporting. State: Exempt as “Covered Securities” pursuant to Securities Act s. 18.	Restricted Securities that can only be sold if registered or with a resale exemption.	No information requirements for only Accredited Investors; if any non-accredited investors are sold to under Rule 506(b), must furnish a PPM per Rule 502 and Form 1-A.
Regulation D Rule 504	\$10 million within prior 12 months.	No requirements.	No general solicitation or advertising permitted (with certain state law-based exceptions); “Test-the-Waters” and “Demo Day” activity permitted.	SEC: File Form D not later than 15 days after first sale. No ongoing reporting. State: Must comply with state law by registration or exemption.	Restricted Securities. (state law exceptions)	No specific information requirements.

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Regulation A Tier 1	\$20 million in prior 12 months, but no more than \$6 million by selling security holders.	Only available to U.S. and Cdn. cos., not available to investment cos. required to register by the ICA and "blank check" cos.	Rule 148 "Testing the waters" permitted before filing Form 1-A. Sales permitted after Form 1-A qualified.	SEC: File Form 1-A, any sales material and Form 2-A report of sales and use of proceeds.	None; freely resalable.	File detailed Form 1-A offering statement pursuant to with the SEC, along with any sales material and Form 2-A report of sales and use of proceeds.
Tier 2 (Reg. A+)	\$75 million in prior 12 months, but no more than \$22.5 million by selling security holders.	No requirements for Tier 1 investors; Tier 2 restrictions on investment limits by non-accredited investors unless offering is listed on national exchange upon qualification.		Tier 1: No ongoing reporting. Tier 2: Ongoing Reporting. State: Tier 1: Must comply with state law. Tier 2: Exempt from state law requirements as "Covered Securities."		
Rule 701	Greater of \$1 million in prior 12 months, or 15% of Issuer's total assets, or 15% of Issuer's outstanding securities of the same class.	Not available to Issuer Exchange Act reporting cos. or investment cos. Investors must be officers, directors, employees or consultants in stock purchase or award, stock option plan, or employment agreement. No other investor sophistication requirements.	Limited to offerings to officers, directors, employees and consultants of Issuer as compensation, for example, in a stock purchase or award, stock option plan, or as part of an individual employment agreement.	SEC: None. State: Must comply with state law.	Restricted Securities.	Benefit or option plan or contract must be provided. No specific information requirements unless more than \$10 million in securities are offered in a 12 month period.

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Securities Act section 4(a)(2)	None.	All investors must meet sophistication and access to information test.	No general solicitation or advertising.	SEC: None. State: Must comply with state law.	Restricted Securities.	Must comply with state law.
Securities Act section 4(a)(6) and Regulation Crowdfunding	\$5 million within prior 12 months.	Issuer must be a U.S. company. Not available to Issuer Exchange Act reporting cos. or investment cos. Issuer must use registered broker-dealer or funding portal. Investors may invest greater of amount calculated by annual income or net worth.	No general solicitation or advertising except as expressly provided. "Test-the-Waters" activity similar to pre-filing under Reg. A is permitted.	SEC: File Offering Statement on Form C. Ongoing reporting. State: Exempt as "Covered Securities."	Restricted Securities for one year.	None.
Securities Act section 3(a)(11) and Rules 147 and 147A	None.	Rule 147: Issuer and investors must be residents of the same state or territory. Rule 147A: Issuer need not be organized or managed in-state.	Must comply with state law. General solicitation permitted.	SEC: None. State: Must comply with state law.	Securities are restricted from resale to non-residents of the state or territory for six months.	Must comply with state law.

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Regulation S	None.	Issuer, investor and transaction must fall into one of three categories set forth in Regulation S Rule 903.	Regulation S is technically not an exemption to Securities Act registration requirements. No directed selling efforts into U.S. market.	SEC: None, provided that Issuer is not an Exchange Act reporting company. State: Must comply with state law.	Restricted Securities as per Rules 903, 904 and 905.	None.
Rules 801 and 802	None.	Issuers must be “foreign private Issuers,” as defined in Securities Act Regulation C. Investors must be non-U.S. holders, U.S. holders may hold no more than 10%.	None other than regulations governing rights offerings, exchange offerings or business combinations as the case may be.	SEC: If information statement furnished, it must be filed on Form CB; if Form CB is filed, Form F-X must also be filed. State: Must comply with state law.	Restricted Securities. For Rule 801, transfers of rights by U.S. holders must be in accordance with Regulation S.	Optional; use activates filing requirements.
Regulation CE Rule 1001	\$5,000,000.	Issuer must be California business entity or non-California corporation with majority California attributes. Investors must be California “Qualified Purchasers.”	Compliance with California Corporations Code section 25102(n). “Testing the waters” activity is permitted by written communication containing required information.	SEC: None. State: Must comply with California law.	Restricted Securities.	For all sales to natural person Qualified Purchasers, a disclosure document containing the information required by Regulation D must be furnished.

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