

CROWDFUNDING PRIVATE EQUITY IN KENTUCKY

One of the most difficult tasks in the launching of any business is the acquisition of capital. Jumping on the bandwagon of modern technology in 2012, Congress passed the Jumpstart Our Businesses Act, a set of reforms that included updates to securities laws in the areas of solicitations and crowdfunding. Under this law, the SEC was supposed to promulgate regulations that would allow businesses to crowdfund private equity in amounts up to \$1 million per 12-month cycle; those regulations are still forthcoming, promised by October of 2015. Rather than wait for the SEC, states have moved forward with plans of their own, with Kentucky recently enacting an even more generous version of private equity crowdfunding laws. Kentucky just handed small business owners a new way to court investors, and any commercial venture in need of funds should take notice.

The requirements for any small business to take advantage of this funding are relatively simple. The business must be organized under the laws of, authorized to do business in and actually doing business in the commonwealth of Kentucky. This crowdfunding of private equity is essentially an offering of securities, and the offering must comply with a federal exemption for intrastate securities offerings - a major limitation on this source of funding. The exemption allows for offerings that only take place within the state, using only state residents as funding sources. Each of these residents can only provide \$10,000 unless she or he is an accredited investor. Accredited investors are defined under federal law and meet certain income, net worth or entity criteria; these investors are considered to be more savvy and risk-tolerant, and there is no limitation on their investments up to the annual cap.

Kentucky's rules differ from the JOBS Act regulations in one key way: if a company completes a financial audit of its most recent year and can provide to each purchaser an opinion letter and documentation that it complies with generally accepted accounting principles, the company can crowdfund up to two million dollars in a twelve month period. If the company cannot provide those financials, it can raise up to a million dollars in a twelve month period. This limitation is for the aggregate amount of all securities sold in reliance on the federal exemption for intrastate offerings, not just for a specific instance of crowdfunding.

Each company must obtain from a prospective purchaser proof in the form of a driver's license, voter registration or property tax record of a principal residence that he or she is

a resident of Kentucky. In return the company must provide a fairly lengthy disclosure document to each purchaser at the time of the offering that contains a description of the company, officers/members/functionaries/owners and contact info; the terms and conditions of the offering; restrictions on transferring the securities; disclosures of any anticipated future offerings that could dilute the securities offered; pending legal or regulatory actions; web sites that will be used to make the offering; current financial statements; and any other material information.



The crowdfund offering must be made exclusively through a web crowdfunding portal that is registered with the state to conduct such offerings and complies with its own list of strictures.

There is a danger inherent in this type of undertaking in that what may begin as a sincere attempt on the part of a friend or family member to help a fledgling entrepreneur may result in a significant loss of that investment when the enterprise fails. Crowdfunding investors do not have regulations and strictures to ensure that they are savvy and knowledgeable in the investments, so those who invest in such platforms should take diligent steps to educate themselves about the investment made, the company seeking the equity and the entrepreneur(s) individually.

In effect, Kentucky has opened the floodgates to small businesses to raise private equity in a very broad manner. While the restriction on residency can be problematic, this hindrance is a small price to pay for the ability to seek out new classes of investors. These investors may now come from a grassroots effort to court friends, neighbors and family to support business efforts in the local community.

