

# Private Placement Lawyer – The Ultimate Guide

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Raising capital is an essential step for businesses seeking growth and expansion. While traditional avenues like bank loans and venture capital exist, private placements offer a compelling alternative for companies looking to raise funds from investors without the stringent registration requirements of a public offering.

Navigating the complex legal landscape of private placements requires the knowledge of an experienced attorney. In this guide, Dr. Nick Oberheiden, the founding partner of the national law firm Oberheiden P.C. and a leading private placement attorney, provides a comprehensive overview of private placement lawyers, their role, and why they are essential for a successful private offering.

## Why Use a Private Placement?

To help you understand how a private placement lawyer can aid you with these securities, you should first understand how a private placement can benefit your company. Private placements offer several advantages over public offerings:

- **Reduced Regulatory Burden:** Private placements are exempt from the registration requirements of the Securities Act of 1933, leading to lower costs and a faster fundraising process.
- **Greater Flexibility:** Companies have more flexibility in structuring the offering terms and negotiating with investors.
- **Confidentiality:** Private placements are not subject to the same public disclosure requirements as public offerings, maintaining greater confidentiality about the company's financials and strategies.
- **Access to Specialized Investors:** Private placements allow companies to target specific investors who may have industry expertise or strategic value beyond just financial investment.

## The Role of a Private Placement Lawyer

A private placement lawyer plays an important role in ensuring the legality and success of a private offering. Their responsibilities encompass a wide range of legal and strategic functions.

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## Advising on Exemptions

The cornerstone of a private placement is relying on an exemption from securities registration. The most common exemption is Regulation D under the Securities Act of 1933, which provides several rules, including:

- **Rule 504:** Allows for offerings up to \$10 million within a 12-month period, with limited solicitation and advertising restrictions.
- **Rule 506(b):** Allows for unlimited capital raising, but prohibits general solicitation and advertising, and allows for up to 35 non-accredited investors.
- **Rule 506(c):** Allows for general solicitation and advertising but requires all investors to be verified as accredited.

A private placement lawyer will analyze the company's needs and circumstances to determine the most suitable exemption.

## Drafting Offering Documents

Comprehensive and accurate offering documents are essential for attracting investors and mitigating legal risks. A [private placement memorandum lawyer](#) will draft and review key documents, including:

- **Private Placement Memorandum (PPM):** This document provides potential investors with detailed information about the company, its business plan, financial projections, management team, terms of the offering, and associated risks. The PPM is the cornerstone of disclosure in a private placement.
- **Subscription Agreement:** This legally binding contract outlines the terms of the investment, including the purchase price, number of securities purchased, representations and warranties, and other important provisions.
- **Investor Questionnaire:** This document helps the issuer verify investor accreditation status and gather necessary information for compliance purposes.

## Ensuring Compliance with Securities Laws

Private placement lawyers have in-depth knowledge about federal and state securities laws, including The Securities Act of 1933, the Securities Exchange Act of 1934, and related SEC rules and regulations.

Additionally, each state has its own securities laws ("Blue Sky Laws") that must be complied with when offering securities to residents of that state.

The lawyer ensures that the offering complies with all applicable regulations, minimizing the risk of legal challenges or regulatory penalties.

## Managing Investor Relations and Negotiations

Private placements often involve negotiations with potential investors. A skilled lawyer can help negotiate prospective investment key terms such as valuation, discounts, liquidation preferences, and other important investor rights.

They can also manage the process of responding to investor due diligence requests for information.

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The attorney can act as a liaison between the company and investors, ensuring clear and effective communication.

## Mitigating Legal Risks

Private placements carry inherent legal risk factors, such as:

- **Misrepresentation or Omission of Material Information:** Inaccurate or incomplete disclosures in the offering documents can lead to legal liability.
- **Improper Solicitation or General Advertising:** Violating the restrictions on general solicitation can jeopardize the exemption from registration.
- **Failure to Verify Accredited Investor Status:** Selling securities to non-accredited investors in reliance on an exemption that requires accredited investors can result in significant penalties.

A private placement lawyer helps mitigate these risks by ensuring compliance with all applicable regulations and preparing comprehensive and accurate offering documents.

## Post-Closing Compliance

The lawyer's role doesn't end with successful private placement. They can also assist with post-closing compliance matters, such as filing required notices with the Securities and Exchange Commission and state regulators. For example, Form D is a common filing required with the SEC.

They can also maintain accurate records of the offering. This includes investor information, financial statements, subscription agreements, and other relevant documents.

## Why You Need a Private Placement Lawyer

Engaging an experienced private placement lawyer is not just recommended, it's essential. Attempting to navigate the complexities of securities laws without legal counsel can expose the company and its officers to significant legal and financial risks.

A skilled lawyer provides invaluable knowledge in:

- **Structuring the offering correctly:** Choosing the right exemption and structuring the offering to comply with all applicable regulations.
- **Preparing comprehensive and accurate offering documents:** Minimizing the risk of legal challenges based on disclosure issues.
- **Negotiating favorable terms with investors:** Protecting the company's interests while fostering positive investor relations.
- **Mitigating legal and regulatory risks:** Preventing costly legal battles and regulatory penalties.

## Choosing the Right Private Placement Lawyer

When selecting a private placement lawyer, consider the following factors:

- **Experience in Securities Law and Private Placements:** Look for an attorney with a proven track record in handling private placement offerings and private equity funds.

- **Industry Knowledge:** Choose a lawyer with financial and business matters experience in your specific industry.
- **Reputation and References:** Seek referrals from other entrepreneurs, investors, or professionals.
- **Communication and Responsiveness:** Choose a lawyer who is accessible, responsive, and communicates clearly.
- **Fee Structure:** Understand the lawyer's fee structure upfront.

## Select the Right Private Placement Lawyer for Your Company

Private placements offer a valuable avenue for companies seeking to raise capital. However, the complex legal framework surrounding these offerings necessitates the knowledge of an experienced private placement lawyer. By engaging skilled legal counsel, companies can navigate the regulatory landscape, mitigate risks, and successfully raise the capital they need to grow and thrive.

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