

## Resource

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As a GC or any level of legal hire in a startup company, you'll probably have a few questions regarding the landscape of the company you joined -- and taking in all that information can be overwhelming. You may be keen to wrap your arms around ideas like the different corporate concerns and considerations of startups compared to other types of companies, how the startup landscape affects corporate governance, and who are the major players in your organization and the VC environment in which your company operates.

To begin, you may want to start with some key initial understanding of your company and its place in the VC landscape. The following questions can be a good jumping-off point.

These guides will seek to provide a framework for understanding the answers to those questions and from a bird's-eye view, the legal landscape and players you'll likely be interacting with.

Click below to further explore each topic.

# What is my company's corporate structure?

One of the first things you'll want to get a handle on is the corporate structure of the company you've joined or are helping get off the ground. Two immediate questions may come to mind that we'll focus on here: first, what type of entity is this, and second, what is its capital structure?

Understanding the answer to both of these questions is a foundational element to further understand, assess and advise on issues that will undoubtedly arise during your tenure. For example, your corporate governance needs will in part be guided by the statutory and case law around the management responsibilities and stockholder rights applicable to the company, and your corporate development and fundraising efforts will be directly impacted by not just market factors but also existing the existing capital structure. The result is that accurately and efficiently assessing your company's legal strategies will require an understanding of this landscape.

## Entity Structures

### *What type of company did I join?*

Chances are if your company is VC-backed, your company is a Delaware corporation. While some companies will choose other jurisdictions or structures for their own reasons, the Delaware corporation, or "C-Corp" is the most common structure for companies intending to raise venture capital funding for reasons set out below.

The term "Delaware corporation" can be broken down into its parts, with each word referring to an important aspect of your company that VC investors will be looking for: "Delaware" refers to the jurisdiction in which the company is organized, and "corporation" refers to the type of entity that was formed, a "c-corporation" (as opposed to say, a partnership or LLC, for example).

In both cases, these two words are the ones VC investors most want to see in potential target companies. From a jurisdiction point of view, Delaware has historically had the most company-friendly, robust and predictable set of laws governing companies. For structure purposes, corporations (as opposed to say, LLCs or partnerships) are generally the only type of entity that most VC funds will invest in given stockholder and tax rules (for example, being taxes as an owner of a pass-through entity) to which they or their investors are subject.

Companies can be incorporated elsewhere, but for the purpose of this article we'll assume that you've joined a Delaware corporation. There are some initial steps that you'll want to take:

- Review your documents: This includes your Certificate of Incorporation, and if your company has already raised capital from any preferred stock investors, any stockholder agreements.
- Nail down the state of Delaware's corporate reporting and tax requirements: Familiarize yourself with Delaware's corporate reporting and tax requirements, as you'll have at least annual franchise taxes to pay and an annual report to be filed with the state.
- Get acquainted with the DGCL: As in-house counsel, you'll also want to familiarize yourself with the Delaware General Corporations Law (DGCL), which is the key set of governing laws dealing with corporations organized in Delaware.

Your corporate structure might also include subsidiaries or affiliate organizations, and you'll want to be clear on the structure of those as well. For example, a subsidiary formed as an LLC will have other structural and legal considerations, so you'll want to get up to speed on any related companies.

Your Gunderson team will always be able to provide guidance and expertise on the corporate structure of your company and walk you through any questions. We are experts in startup structuring and your governing documents (we may have even written them!), so reach out to your Gunderson team at any time with your questions or just to walk through your structure to get better acquainted.

## Capital Structure

### ***How has the company been funded, and who owns what?***

The next place to get up to speed is your capitalization table, or simply, the "cap table." The cap table will answer the question of "who owns what?" and tells a story about the founding and financing journey of the company.

At a basic level, a cap table is a ledger detailing the ownership of your company's securities: founders' shares will be listed alongside any other common stock issued and any shares of preferred stock issued to investors. If employees have been granted options, those will be shown, too. Other securities like warrants to purchase stock will appear to the extent they exist, and your cap table may also show the amount and terms of any convertible debt or SAFEs (a "Simple

Agreement for Future Equity,” which are covered in other sections in these resources) that have been issued.

Cap tables can contain a significant amount of detail, or be provided in a summary format. The level of detail may change as a company capitalization gets more complicated, and more detail becomes necessary, either for diligence matters, or simply for accounting or tax purposes.

In any case, as a company’s in-house lawyer, the cap table will most likely come within your purview. Whether that’s because you’re charged with managing the cap table or simply because you’re helping lead the diligence process for a new round of financing, you’ll need to know your cap table inside and out.

As a side note: a consideration for in-house counsel will be how and where to manage your cap table. Will you keep this internally? Ask your Gunderson team to maintain the cap table? Or choose to use a third-party cap table management system? Third-party cap table management platforms have become increasingly common, with some investors requiring their use in order to more easily view and track their investments.

No matter what approach you choose, your Gunderson team can always answer any questions you may have on your cap table, assist with any updates, or provide guidance and assistance when working with an outside vendor. Don’t hesitate to get in touch with your Gunderson team on any cap table questions or issues and we’ll walk you through everything that you need to know.

## A Note on Cap Table Management Platforms

Cap table management has historically been the purview of a company directly, generally with the assistance of its outside counsel. Gunderson handles the management of cap tables for thousands of our company clients, and will almost always be involved in the creation of the company’s initial and early stage cap tables. We’re always available to assist with any cap table issues our clients have and are happy to manage your formal cap table ledger.

However, over the last few years, the use of online platforms has grown exponentially. As companies grow, and especially when VC funds, institutional investors or other large investors are brought into the company through a fundraising process and want insight into the cap table, the ability for the company, its counsel, investors and board members to easily view the cap table can be invaluable. Reach out to your Gunderson team to discuss whether an online third party cap table management platform might be a good fit for your

company, and we're happy to discuss the landscape of providers and the pros and cons of each, and to help guide you through the set-up process.

Note: While we have extensive experience supporting clients on many of these platforms, Gunderson itself is not affiliated with, nor does it specifically endorse (or receive any benefits from our clients using) any single third-party cap table management platform or system.

## Who are the key players in and around my company?

An important set of information to understand at the outset of joining a company as a GC or other in-house lawyer is the set of your company's major players and what roles they all play. Knowing both the insiders and outsiders that you'll come across in your job may prove valuable in determining the best approach to prioritizing where to focus your energy and understanding key elements of the business.

The sections below provide an overview of the various key players that you're likely to interact with and some background and tips on how to navigate their specific needs.

### The Team: Executives and Other Employees

This goes without saying! Your executive team might be your closest colleagues as a GC -- they will likely be the people running the departments that you work with day to day (sales, marketing, product, etc.) and will almost certainly be key players in connection with large corporate transactions like venture or debt financings (corporate development, investor relations, finance, etc.). Your other teammates may be your points of contact for certain work streams, or they may just become great friends and coworkers.

In many cases, your colleagues at all levels will also be “option holders” (or in some cases, typically at later-stage companies, holders of restricted stock units or “RSUs”) if your company uses equity as part of its compensation packages.

While not technically owners of the company, option holders have an interest in the company and may eventually become stockholders. You may want to get your arms around the company's equity strategies, and develop an understanding of the company's stock plan, plan documents, and the universe of stock option holders. In addition, the company's option plan and the company's capitalization table will inevitably be reviewed as part of the due diligence process in corporate transactions—so being up to date on who holds these securities can be an important part of those transactions.

In your role as in-house counsel, it's likely you'll field various questions from your coworkers about their options: from vesting and the terms of the option plan, to the value of the company and the price of shares, etc. You may find it useful to formulate a plan with your executive team on how to respond to these questions as they come up—especially if things like the valuation and share pricing are not



intended to be widely discussed; and there should be proper disclaimers given if you choose to engage in any valuation conversation.

Don't hesitate to reach out to your Gunderson team to better understand your option plan and the universe of your company's option holders. We're also happy to help formulate a plan on how to best respond to option holder inquiries as well, including how your and the company's responses may differ depending on who's asking the questions, be they a member of the C-Suite or your newest junior hire.

## A Note on Employee Equity Strategies

Understanding the company's strategy regarding equity grants will help you understand and plan for options-related (or RSU related) issues. For example, does the company intend to grant equity to all employees and contractors, or only to a certain subset (e.g., those at a certain seniority level)? Will equity be granted only once per employee at the time of hire, or does the company plan to use compensation features like equity refresh grants or bonus grants for future retention purposes?

Being aware of employee equity matters including what percentage of the company's equity has been reserved for compensation use, how and when the company intends to issue equity to employees, and how to track various securities compliance level issues may all be items that fall under your purview. Even if these issues don't fall under your purview, understanding these questions and how to answer them can all add significant value to your team as it pursues its growth and employee retention goals.

Reach out to your Gunderson team to discuss any questions around how to track and manage your company's option pool and how to plan for future grants. We're available to provide any assistance and planning support that you might need.

## The Board of Directors

While being familiar with the Board may seem obvious (especially if your role includes attending Board meetings), GCs and other in-house team members working with the Board will want to be clear on the details of each board seat and the director filling it.

For example: How is each member of the Board appointed: are they elected by the Common stockholders, designated by preferred stockholders, or voted on by all? Are they "independent" directors (not affiliated with any owner of the company)? What is their relationship to the founders, and, does any board member have any specific conflicts that need to be addressed? With respect to

the directors elected by preferred stockholders, you'll also want to be clear on which stockholders they may be affiliated with and how they've obtained their seat.

Review the company's charter and bylaws to understand the composition of the Board, as well as the company's voting agreement (if there is one) to review how each seat is appointed. It may also be important to understand how each director may be replaced and how each seat is filled in the event of a vacancy, as well as being aware of any potential conflicts of interest that could arise when the company is dealing with any of the directors' affiliates or their (or their VC firm's) other portfolio companies.

Your Gunderson team can assist you with everything related to your company's Board, as they are our client! We take pride in being active partners with our Boards—including attending your Board meetings free of charge—and in helping you successfully navigate everything from Board administration to the most complex board-level questions. Don't hesitate to reach out to your Gunderson attorney team with any questions regarding the Board and all of its related issues.

## Board Observers

Alongside the Board of Directors, an additional set of people to keep in mind are Board observers. These individuals are typically representatives of an investor that either led a financing round or were otherwise a large investor in the company (such investor may or may not also have the right to appoint an actual board member). These observers are granted rights to attend board meetings in a non-voting (hence "observer") capacity. They are also generally given the right to receive all correspondence and any prepared materials sent to the company's directors.

Unlike Board members, these individuals can be excluded from attending certain sensitive parts of meetings or seeing certain materials or correspondence under certain circumstances. Those circumstances will almost always include instances when the attorney-client privilege needs to be preserved, and in many cases will also cover certain matters of confidentiality and conflicts of interest. You should review any board observer provisions to be up to speed on what each observer is entitled to and which restrictions or exclusion provisions are in place.

## The Stockholder Base: Large Stockholders and Founder Affiliates



You already know that you'll need to be intimately familiar with your company's cap table for any number of reasons. One such reason is that every company will eventually need their stockholders to approve certain corporate actions, and/or be required to provide certain stockholders with notice of certain actions, so having a handle on who makes up your stockholder base is paramount.

Generally, in addition to the founders, you'll want to at least acquaint yourself with the key contacts at the company's largest preferred stockholders. In many cases, these stockholders will be venture capital funds and will have the right to appoint a board member, but you may also work with the financial, analytical and/or legal contacts at such VC funds as well. If your company also has founders or cofounders who have departed the company, you'll want to understand their ongoing relationship to the company as well, as they may have large holdings of common stock. For example, did they leave on good terms? Are they in touch with the company, or each other? Who is the best person to communicate with them if the relationship is fraught? Getting your arms around these questions will avoid any potential relationship level issues arising between the company and its stockholders.

Further, having a good working relationship with a wide range of the company's stockholders can prove valuable as you'll need to develop any number of cohorts to reach out to in order to approve transactions and sign off on corporate actions. This may be a limited set of preferred stockholders, or include various levels of preferred and common holders alike. You'll also likely field questions on any number of issues from your stockholder base, from the mundane to the complex. Your Gunderson team will always be on call to assist with these items, but you'll likely be the first person questions are directed to—so having an understanding of their investment and their holdings will prove valuable.

Reach out to your Gunderson team with any questions regarding your stockholders, handling investor communications or to assist with handling inbound questions. We'll be able to make sure you are armed with the information you need to approach any situation.

## Outside Counsel

As in-house counsel, you'll be asked to handle all types of legal issues facing your company; but no one does this entirely alone. Your outside counsel, whether Gunderson for general corporate matters and corporate transactions, or industry focused counsel like business litigators, immigration lawyers and regulatory counsel, will be integral parts of a successful legal operation. Developing trusted relationships with these contacts will help you to quickly attack any particularly

sticky legal issues that might arise, or simply to get a sanity check on approaches to new issues.

Gunderson will always be available to handle your legal needs as well as introduce you to any matter-specific counsel you may need. We keep a vast network of attorneys and other business professionals and vendors that we're happy to introduce you to in order to meet your company's goals and needs. Feel free to reach out to your Gunderson team with any questions and we will help get you the answers you need to feel confident in providing your own counsel to your client.

## Legal Operations and Vendors

Consider these additional contacts for your legal operation: your legal services/legal tech vendors and your incident or crisis response teams.

### Legal Services/Legal Tech Vendors

The size of your company will likely determine how robust the set of outside vendors your legal operation may require or desire. For larger organizations, this may include, for example:

- an insurance broker to keep up with an appropriately sized and scoped insurance portfolio (like D&O insurance);
- a contract management vendor to securely house important documents;
- an outsourced contract counsel (for small legal tasks not requiring a full outside counsel relationship);
- a third party cap table manager;
- valuation firms for your capital valuation needs; and/or
- translation providers if your company works with international partners.

Smaller organizations may only need a simple document management provider (like Dropbox or Box.com) and may choose to use a cap table management platform, but not need much else. In any case, having good relationships with your contacts at these vendors will make your life easier when you need to put them into action.

## Crisis Response Team

Consider your company's needs for potential "crisis response" teams: an unfortunate reality for any business, not just startups, is the chance that an incident may arise that requires an immediate company response, be it internal or even public facing. When thinking through this potential scenario, you'll want to determine what kinds of incidents might arise for your business. You will want a roster of key contacts who you can immediately reach out to in the event a crisis or incident arises.

For example, your Gunderson team will almost certainly be involved, but who else should be involved? This will depend on the type of incident that you are responding to: a data breach may require additional outside counsel and IT security contacts, a reputational issue may need "PR" and communications expertise, etc. As your company grows, and depending on the industry and profile of the company, you may want to have multiple response teams who can assist the company if an incident were to occur. Keep these folks in the loop and speak with them from time to time to make sure you're on the same page regarding your needs and expectations are if an incident were to arise.

Your Gunderson attorneys can provide valuable insight on how to think through how best to supplement your legal operation with these kinds of service providers. We can connect you with experts who can help you put an effective crisis response plan in place, and help you manage and respond to incidents of all types.

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## Related resources

[Intro to Financing and the Venture Capital Ecosystem](#)

## Intro to Financing and the Venture Capital Ecosystem

Types of investors providing capital to startups, basic terminology regarding the structure and focus of venture capital investors and an overview of basic types of venture capital financings.

## Preparing for a Venture Financing

Tips and insights on ways to prepare for an upcoming equity financing.

## Featured Insights

### FIRM NEWS

Gunderson Dettmer Launches Catalyze: An Exclusive Community Platform Built to Support and Empower Companies Throughout the Startup Journey

### INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

### CLIENT NEWS

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

### RESOURCE

Example Pre-Seed Due Diligence Checklist

### RESOURCE

6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)

### INSIGHTS

Ryan Purcell Guest-Authors “6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)” for Not Another CEO

### INSIGHTS

Client Insight: Quarterly Employment Law Update – Summer 2025

### INSIGHTS

## INSIGHTS

Private Market Liquidity: A Review of Tender Offers

## INSIGHTS

Client Insight: Eighth Circuit Vacates FTC's "Click-to-Cancel" Rule

## INSIGHTS

Client Insight: One, Big, Beautiful Bill Enactment: Impacts To Qualified Small Business Stock

## INSIGHTS

Client Insight: "Click to Cancel" Amendments to the FTC Negative Option Rule and California's Automatic Renewal Law

## FIRM NEWS

Gunderson Dettmer Practice Areas and Partners Recognized by Chambers USA 2025 Guide