

STARTUP LEGAL PLAYBOOK • 3 MIN READ

Startup funding checklist: legal to-dos to make your investors happy

AUTHORS



**Torys' Emerging Companies and VC
Group**

Read this if: you're looking for ways make the fundraising process go more smoothly

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Diligence is a key part of building a startup, especially when it comes to fundraising. For your potential investors, it's an opportunity to gain further confidence in your company by verifying the information you shared and covering off any red flags.

On your end, you can make the process go more smoothly by asking yourself the following legal questions about your startup before you set out to fundraise.

Does my startup have the correct legal structure?

- Is it federally or provincially incorporated?
- Are there director residency requirements that impact the company?

Who owns my startup's IP?

- Has all the IP been assigned to the company?
- Does anyone (such as co-founders or employees) have a claim to the IP?
- Is all the necessary paperwork in place?

Has all equity been correctly issued and properly documented?

- Is there clear documentation showing the issuance of founder shares (i.e., a share purchase agreement, payment for shares, board consent)?
- Is there any issue of “promised equity” with shares that have not been issued?
- Have all option grants been issued correctly?
 - Consider whether you have a formal equity incentive plan in place, board consents approving each grant, option agreements signed, applicable exemptions under securities laws utilized (in the jurisdiction where the recipient resides), and tax analyses completed, in addition to other technical aspects involved in granting stock options.

Do I have a pro forma cap table ready for review?

- Have I modelled out what company ownership will look like *after* the financing round closes?
- Does the pro forma cap table account for conversions triggered by [SAFEs](#) or [convertible notes](#)?
- Has promised equity been modelled as “outstanding” for pro forma cap table purposes?

Are we complying with all applicable employment laws?

- Are my people considered employees or contractors?
- Do my employment agreements and service agreements clearly show the nature of my workers’ relationship with the company?

Are we complying with the necessary securities laws?

- If I have had earlier rounds of financing, did the equity that was issued meet a valid securities law exemption (e.g., private issuer exemption, accredited investor (45-106), or friends and family exemption)?
- Do I have proof of past compliance to satisfy my investors?

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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→ [View our Startup terms glossary.](#)

Learn the ins and outs of the commonly used terms in the startup and VC ecosystem.

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