

Legal 500 Country Comparative Guides 2026

United States Venture Capital

Contributor

Wiggin and Dana LLP



Evan S. Kipperman

Partner | ekipperman@wiggin.com

This country-specific Q&A provides an overview of venture capital laws and regulations applicable in United States.

For a full list of jurisdictional Q&As visit legal500.com/guides

United States: Venture Capital

1. Are there specific legal requirements or preferences regarding the choice of entity and/or equity structure for early-stage businesses that are seeking venture capital funding in the jurisdiction?

The threshold question for most of our clients considering which type of entity to form is whether to organize as a limited liability company or a C corporation. Each structure has distinct advantages, most of which are tax-driven. For the vast majority of companies seeking venture capital investment, a C corporation is the preferred choice due to its compatibility with institutional investor requirements, including the ability to issue multiple classes of stock and accommodate tax-exempt and foreign investors without adverse pass-through consequences.

There are notable exceptions, however. Companies with platform technologies or portfolios of subsidiaries may find that the structural flexibility of an LLC outweighs the gravitational pull toward the C corporation form. Each situation is different, and the decision is nuanced making it typically the first substantive conversation we have with a startup company. At Wiggin and Dana, we have created a comparison chart available at wigginx.com that addresses the relative merits of C corporations, S corporations, LLCs, general partnerships, and public benefit corporations in the startup context.

2. What are the principal legal documents for a venture capital equity investment in the jurisdiction and are any of them publicly filed or otherwise available to the public?

Most venture capital transactions in which we are involved include the following principal documents: (i) a Stock Purchase Agreement, (ii) a Certificate of Incorporation, (iii) an Investors' Rights Agreement, (iv) a Voting Agreement, and (v) a Right of First Refusal and Co-Sale Agreement. We typically look to the Stock Purchase Agreement for the suite of ancillary documents that will be necessary to close the transaction, including officer's certificates, board and stockholder consents, intellectual property assignment agreements, and any documentation relating to founder employment or vesting arrangements.

Of these documents, only the Certificate of Incorporation is publicly filed. In Delaware – the jurisdiction of incorporation for the majority of venture-backed companies the certificate of incorporation is filed with the Secretary of State and is publicly available. The remaining transaction documents are typically kept confidential among the parties.

3. Is there a venture capital industry body in the jurisdiction and, if so, does it provide template investment documents? If so, how common is it to deviate from such templates and does this evolve as companies move from seed to larger rounds?

The National Venture Capital Association (NVCA) is the principal industry body that most practitioners in the venture capital space look to first. The NVCA offers a comprehensive suite of model legal documents, including forms of each of the principal documents for a priced equity financing: Stock Purchase Agreement, Certificate of Incorporation, Investors' Rights Agreement, Voting Agreement, and Right of First Refusal and Co-Sale Agreement. These forms are widely recognized as industry standard and serve as an excellent foundation for transaction documentation.

In addition to the NVCA forms, there are other widely used templates for earlier-stage and unpriced financings. Y Combinator's Simple Agreement for Future Equity (SAFE) is the dominant instrument for pre-seed and seed-stage financings, while the Angel Capital Association provides a form of convertible promissory note that we often use as a baseline for investments of this type.

With respect to the NVCA's forms for priced equity rounds, in our experience these serve as a jumping-off point and are often heavily negotiated, particularly in later-stage transactions where deal terms become more bespoke. This stands in contrast to instruments like the SAFE, which is rarely negotiated significantly-much of its appeal lies in its standardization and the efficiency it provides to both founders and investors at the earliest stages of company formation.

4. Are there any general merger control, anti-

trust/competition and/or foreign direct investment regimes applicable to venture capital investments in the jurisdiction?

There are several regulatory regimes potentially applicable to venture capital investments in the United States, including merger control, antitrust, and foreign direct investment frameworks.

The Hart-Scott-Rodino Antitrust Improvements Act requires parties to certain transactions meeting specified size thresholds to file notification with the Federal Trade Commission and Department of Justice and observe a waiting period before consummating the transaction. While most early-stage venture capital investments fall below the applicable thresholds, later-stage investments by larger funds may trigger filing requirements.

Compliance with the rules and regulations of the Securities and Exchange Commission underlies virtually every venture capital transaction, whether through reliance on exemptions from registration under the Securities Act of 1933 or compliance with anti-fraud provisions.

The regulatory regime we have encountered with increasing frequency in recent years is CFIUS the Committee on Foreign Investment in the United States. CFIUS has significantly increased its scrutiny over foreign investments in companies involved with controlled technologies, critical infrastructure, and sensitive personal data. With the substantial growth in foreign investment in the U.S. venture ecosystem over the past decade, CFIUS considerations are now at the forefront of our analysis in transactions involving foreign investors, particularly those from jurisdictions of concern (with respect to outbound investments, we are now considering implications under the Comprehensive Outbound Investment National Security (COINS) Act of 2025 as well).

5. What is the process, and internal approvals needed, for a company issuing shares to investors in the jurisdiction and are there any related taxes or notary (or other fees) payable?

The process for a company issuing shares to investors depends in large part on the nature of the securities offering and to whom the securities are being offered.

From an internal governance perspective, a company will almost always require board of directors' approval to offer and issue securities. In many – if not most –

situations, stockholder approval or consent will also be necessary, particularly where the issuance involves the creation of a new class or series of stock with rights, preferences, or privileges senior to existing classes. Additionally, lenders or other third parties may hold contractual rights to approve or consent to equity offerings, so we always conduct a thorough review of the company's governance documents and debt instruments when preparing for a financing.

In offering securities to investors, issuers must be mindful of both federal and state securities laws, which will often dictate to whom the offering may be made, how the offering is conducted, and what disclosure requirements apply. Offerings to accredited investors under Regulation D are the most common approach for venture capital financings. Many states require "blue sky" filings in connection with securities offerings, and these typically carry modest filing fees. At the federal level, Form D filings with the SEC are required following the first sale of securities in a Regulation D offering, though no filing fee is associated with this requirement.

6. How prevalent is participation from investors that are not venture capital funds, including angel investors, family offices, high net worth individuals, and corporate venture capital?

Participation from non-institutional investors is prevalent across the venture capital landscape, with different investor types tending to concentrate at different stages of company development.

Early-stage financings are typically bootstrapped or led by friends and family, angel investors, and high-net-worth individuals. Some smaller venture capital funds specialize in early-stage investing and will participate at the pre-seed and seed stages as well. Family offices, which have grown in sophistication and prominence as direct investors, are often positioned to write larger checks in later rounds as companies mature and require more substantial capital.

Corporate venture capital (CVC) has become an increasingly significant player within the venture capital ecosystem. Strategic corporate investors target startups whose products, services, or technologies may complement the corporation's existing business lines, growth strategy, or long-term objectives. CVC participation often brings benefits beyond capital, including industry expertise, partnership opportunities, and potential paths to acquisition-though founders must carefully weigh these advantages against considerations of strategic alignment and maintaining optionality for

future exits.

7. What is the typical investment period for a venture capital fund in the jurisdiction?

Traditionally, the typical venture capital fund has a life cycle of approximately ten years, though this can vary based on fund strategy and market conditions. The investment holding period for any particular portfolio company often varies based on the fund's investment thesis and stage focus.

A seed-stage fund investing in very early companies might hold a position for six to ten years as the company progresses through multiple financing rounds and ultimately achieves a liquidity event. In contrast, a crossover fund or late-stage growth equity investor is typically looking for a relatively compressed timeline to exit, often targeting liquidity within one to three years through an initial public offering or strategic acquisition. The recent slowdown in IPO activity and M&A volume has extended holding periods for many funds beyond their original expectations, leading to increased use of secondary transactions and continuation vehicles as alternative liquidity mechanisms.

8. What are the key investment terms which a venture investor looks for in the jurisdiction including representations and warranties, class of share, board representation (and observers), voting and other control rights, redemption rights, anti-dilution protection and information rights?

Investment terms in a venture capital transaction can typically be categorized into two broad groups: economic terms and control terms.

Economic Terms. Key economic terms include: (i) dividends, which in venture financings are typically non-cumulative and payable only when and if declared by the board; (ii) liquidation preferences, which determine the priority and amount of distributions to preferred stockholders upon a sale, merger, or liquidation of the company; and (iii) anti-dilution protection, most commonly in the form of weighted-average anti-dilution adjustments that protect investors against dilution from future down-round financings.

Control Terms. Key control terms include: (i) board representation, with investors typically receiving the right to designate one or more directors and often board

observer rights as well; (ii) protective provisions or minority consent rights, which require investor approval for specified significant corporate actions such as amendments to the charter, changes in authorized share capital, the incurrence of indebtedness, or the sale of the company; and (iii) voting agreements that establish the composition of the board and ensure investor nominees are elected.

Hybrid and Other Rights. Certain terms have both economic and control dimensions, including: redemption rights (allowing investors to require the company to repurchase their shares after a specified period), rights of first offer/preemptive rights (providing investors the opportunity to participate in future financings), co-sale rights (allowing investors to participate in founder stock sales), drag-along rights (enabling a majority to compel all stockholders to participate in a sale), and registration rights (providing investors the ability to require the company to register their shares for public sale). Information rights, including the right to receive annual and quarterly financial statements, are standard features of venture financings as well.

9. What are the key features of the liability regime (e.g. monetary damages vs. compensatory capital increase) that apply to venture capital investments in the jurisdiction?

Venture capital investors typically secure indemnification rights with respect to the representations and warranties made by the company in the investment documentation. The Stock Purchase Agreement will customarily include representations regarding corporate organization, capitalization, intellectual property ownership, material contracts, litigation, and compliance with laws, among other matters. Breaches of these representations may give rise to claims for monetary damages.

As a practical matter, however, once investors have funded their investment, pursuing litigation against a portfolio company is rarely a desirable course of action. Such litigation would effectively involve suing oneself, consuming company resources that might otherwise be deployed toward growth and potentially damaging the company's reputation and relationships.

Instead, sophisticated investors rely on the control rights negotiated as part of their investment-protective provisions, board representation, and information rights-to monitor the company's affairs, influence management decisions, and course-correct when necessary. In distressed situations, investors may use these control mechanisms to effect management changes, pursue

strategic alternatives, or structure transactions designed to preserve or recover value. The practical leverage provided by these control rights often proves more valuable than contractual indemnification claims in protecting investor interests.

10. How common are arrangement/ monitoring fees for investors in the jurisdiction?

Most venture capital funds and professional special purpose vehicles charge management fees and carried interest to their limited partners as compensation for fund management. However, it is relatively uncommon to see portfolio companies paying management fees, monitoring fees, or transaction fees directly to their venture capital investors—a practice more frequently associated with private equity transactions.

To the extent that fees or compensation flow from portfolio companies to investor-affiliated individuals, the most common form involves equity compensation to investor-designated directors. Directors appointed by investors to serve on a company's board of directors may in some cases receive stock option grants or other equity awards consistent with the company's director compensation practices. Such arrangements align the interests of investor-appointed directors with those of the company and its other stockholders, while providing appropriate recognition for the time and expertise these directors contribute to the company's governance and strategic direction.

11. Are founders and senior management typically subject to restrictive covenants following ceasing to be an employee and/or shareholder and, if so, what is their general scope and duration?

The enforceability and prevalence of restrictive covenants varies significantly by jurisdiction, making this one of the most geographically dependent deal terms in venture capital practice.

California's well-established public policy against non-compete agreements has shaped investor expectations on the West Coast, where restrictive covenants such as non-competes are highly unusual and rarely requested. Investors accustomed to the California ecosystem generally do not expect or seek post-employment non-competition restrictions.

On the East Coast, by contrast, non-compete provisions are much more common and in early-stage investments

are quite typical. Founders and senior management may be asked to agree to non-competition periods ranging from one to two years following termination of employment. Massachusetts-based companies, however, represent a notable exception to the East Coast norm—recent legislative reforms have limited the enforceability of non-competes in Massachusetts, leading companies in that jurisdiction to rely more heavily on alternative restrictive covenants such as non-solicitation of employees, non-solicitation of customers, and confidentiality obligations.

Regardless of jurisdiction, confidentiality and non-disclosure obligations are nearly universal, as are at least some restrictions on the solicitation of the company's employees, customers, and business relationships.

12. How are employees typically incentivised in venture capital backed companies (e.g. share options or other equity-based incentives)?

Employees of venture-backed companies are, first and foremost, employees entitled to at least minimum wage under applicable law. Cash compensation remains the baseline for all employees. With that said, employees in venture-backed companies typically accept compensation packages that may be below market rates relative to comparable positions at established corporations, with the difference balanced by upside potential in the form of equity-based incentives.

The structure of equity compensation often depends on the company's stage and valuation. At the earliest stages, when valuations are low, companies may issue restricted stock directly to employees. The low fair market value at grant minimizes the tax burden on the recipient, and the straightforward ownership structure aligns employee and company interests.

As valuations rise, stock options become a more tax-efficient vehicle for employee compensation. Options allow employees to defer taxation until exercise and, if structured as incentive stock options (ISOs), may qualify for favorable capital gains treatment upon a qualifying disposition. Companies typically establish equity incentive plans that reserve a pool of shares for employee grants, with the size of the pool negotiated with investors as part of each financing round.

For companies organized as limited liability companies taxed as partnerships, profits interests offer an additional form of equity-based compensation not available in the C corporation context. Profits interests can be structured to provide employees with a share of future appreciation

without current tax liability at grant, making them an attractive tool for LLC-structured companies seeking to incentivize key personnel.

13. What are the most commonly used vesting/good and bad leaver provisions that apply to founders/ senior management in venture capital backed companies?

The most common consequence for any departing employee whether founder, senior management, or otherwise is the forfeiture of unvested equity. Standard vesting schedules typically provide for four-year vesting with a one-year cliff, meaning that employees earn 25% of their equity grant after one year of service, with the remainder vesting monthly or quarterly over the subsequent three years. Upon departure, unvested shares or options are forfeited.

Some founders or senior management will negotiate for acceleration rights that accelerate vesting upon certain triggering events. Single-trigger acceleration upon a change of control, or double-trigger acceleration upon termination without cause or resignation for good reason following a change of control, are the most commonly negotiated variations. However, acceleration provisions are not standard and must be specifically negotiated.

On the company and investor side, some venture-backed companies include repurchase rights that allow the company to buy back vested shares from departing employees at fair market value or, in certain "bad leaver" scenarios (such as termination for cause), at the lower of fair market value or original cost. These provisions are more common in earlier-stage companies and provide a mechanism for the company to consolidate its cap table following employee departures.

Severance packages baked into employment agreements are less common at early-stage companies, where resources are constrained and investors are reluctant to see capital deployed for departing employees. As companies become more established and better capitalized, however, severance arrangements for senior executives become more commonplace and are often necessary to attract experienced talent from larger organizations.

14. What have been the main areas of negotiation between investors, founders, and the company in the investment documentation, over the last 24

months?

Over the last 24 months, we have observed a gradual recalibration of expectations between investors and founders with respect to valuation. Following the valuation corrections of 2022 and 2023, there appears to be more of a meeting of the minds when it comes to pricing, with both sides operating from more realistic assumptions about growth trajectories and exit timelines.

The more active areas of negotiation have shifted toward deal structure and downside protection. Investors have increasingly sought enhanced structural protections to mitigate risk in an uncertain market environment. This trend manifests in several ways: greater emphasis on liquidation preference structures, including in some cases participating preferred or multiple liquidation preferences; more robust anti-dilution provisions, with some investors pushing for full ratchet anti-dilution in particularly uncertain situations; and increased focus on milestone-based tranching or structured financings that tie funding to the achievement of specified operational or financial benchmarks.

Founders, for their part, have pushed back on terms that they view as overly punitive or misaligned with long-term company building. The negotiation dynamic remains relationship-driven, with experienced investors and founders typically finding common ground on structures that appropriately balance risk and reward.

15. How prevalent is the use of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction?

The use of convertible instruments whether in the form of convertible debt or Simple Agreement for Future Equity (SAFE) is extremely common in the U.S. venture ecosystem, particularly for companies bridging toward a specific milestone or event. That event might be a priced equity financing, an acquisition, or the achievement of a revenue threshold or other business objective that will support a more favorable valuation.

At the earliest stages of company formation, convertible instruments have become the dominant form of financing. The SAFE, developed by Y Combinator, has achieved broad adoption for pre-seed and seed-stage financings due to its simplicity, founder-friendly terms, and the efficiency it provides to both parties. Convertible promissory notes remain in use as well, particularly with investors who prefer the additional protections that debt-like features provide.

For later-stage companies, convertible notes are commonly used as bridge financing between priced equity rounds, providing the company with capital to extend runway while deferring valuation discussions until a subsequent financing.

16. What are the customary terms of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction and are there standard form documents?

Convertible Debt. Like conventional debt, a convertible note involves the investor providing cash to the company in exchange for a promissory note that accrues interest at a stated rate and has a defined maturity date. However, unlike conventional debt, the parties generally do not expect the company to repay the loan in cash. Instead, the note provides that the principal – and typically accrued interest will convert into equity (usually preferred stock) upon a future qualifying financing, typically at a discount to the price paid by new investors or subject to a valuation cap, or both.

The conversion mechanics are central to the convertible note structure. To trigger conversion, the parties typically negotiate a minimum fundraising threshold (often called a “qualified financing”) that the company must achieve. The maturity date and qualified financing threshold establish benchmarks for when the equity financing should occur and the expected sophistication of the investor base. If the company fails to reach a qualified financing before maturity, the note may become due and payable, potentially exposing founders to default consequences similar to those associated with conventional debt.

SAFES. The SAFE refers to a specific form document developed by Y Combinator in the 2010s, designed to create a simple, standardized instrument that balances founder and investor interests while enabling quick, efficient transactions.

Like convertible debt, a SAFE is a convertible instrument through which an investor provides capital at closing in exchange for the right to receive shares at a future financing. SAFEs also typically include a valuation cap, a discount, or both. However, the SAFE is generally not considered a debt instrument—there is no obligation for the company to repay the investment, no interest accrues, and there is no maturity date. The absence of debt-like features removes timing pressure on the company with respect to its next financing.

This does not mean SAFE holders have no recourse if the company never reaches a qualifying financing. In the event of an acquisition or dissolution, SAFE holders are generally entitled to recover their investment amount, or in some cases a multiple thereof, before distributions to common stockholders.

Standard form documents are widely available for both instruments. Y Combinator publishes its SAFE forms (including post-money and pre-money variants) on its website, and the forms are used with minimal modification across the industry. For convertible notes, the Angel Capital Association publishes a template form that we often use, though these tend to be more heavily negotiated than SAFEs.

17. How prevalent is the use of venture or growth debt as an alternative or supplement to equity fundraisings or other debt financing in the last 24 months?

The venture debt market experienced significant disruption following the collapse of Silicon Valley Bank in early 2023, as SVB had been a dominant player in the space. However, the market has since stabilized with the reemergence of the SVB brand under new ownership, the entry of new lenders, and the expansion of existing players seeking to fill the void.

We have seen an uptick in venture debt activity over the past 12 to 18 months as the market has normalized. The key characteristic of venture debt, as the question suggests, is that it functions as a supplement to rather than a replacement for equity financing. Venture lenders typically require that a company has recently closed or be in the process of closing an equity round with reputable institutional investors, as the equity cushion and investor validation are central to the lender's underwriting thesis.

Venture debt can be an attractive tool for companies seeking to extend runway, finance specific capital expenditures or working capital needs, or minimize dilution between equity rounds. However, it introduces obligations and covenants that require careful management, and founders should approach venture debt with a clear understanding of the risks and requirements involved.

18. What are the customary terms of venture or growth debt in the jurisdiction and are there standard form documents?

The hallmarks of venture debts include interest rates that

are typically higher than conventional bank lending (reflecting the risk profile of venture-backed borrowers), warrant coverage that provides the lender with equity upside, and covenant packages that are less administratively burdensome than traditional bank facilities but may carry more severe consequences for breach.

Interest rates on venture debt facilities are often structured as a spread over a reference rate and may include an end-of-term payment or exit fee. Warrant coverage – typically ranging from 5% to 20% of the facility amount gives the lender the right to purchase equity at a specified price, aligning the lender's interests with the company's success.

Covenants in venture debt facilities tend to focus on liquidity and milestone requirements rather than the detailed financial ratio covenants common in traditional lending. However, the remedies available to venture lenders upon default can be severe, including acceleration of the outstanding balance and enforcement against the company's assets.

There are no universally adopted standard form documents for venture debt in the way that SAFEs have standardized early-stage convertible financings. Each lender has its own form of loan agreement, and the terms are negotiated on a deal-by-deal basis.

19. What are the current market trends for venture capital in the jurisdiction (including the exits of venture backed companies) and do you see this changing in the next year?

Initial public offerings have reemerged as a potential exit path for venture-backed companies, though activity remains well below the levels seen in 2020 and 2021. The IPO window has opened selectively for companies with strong fundamentals, clear paths to profitability, and compelling growth narratives, but the broad-based IPO market of the earlier period has not returned.

As a result, we are seeing more venture-backed companies exploring strategic sale transactions as an alternative to pursuing later-stage financing rounds. For many founders and investors, a well-structured acquisition can provide liquidity and a successful outcome without the execution risk and public market exposure associated with an IPO. The M&A market for venture-backed companies has been active, with strategic acquirers seeking to add technology capabilities, talent, and market position.

These trends are not uniform across sectors. Companies operating in the artificial intelligence space continue to attract significant investor interest and command premium valuations, with both financing and exit activity remaining robust. The AI sector has been somewhat insulated from the broader market dynamics affecting other technology verticals.

Looking ahead, we are cautiously optimistic that market conditions will continue to improve, though the pace and trajectory of recovery remain uncertain and subject to macroeconomic factors beyond the control of any individual market participant.

20. Are any developments anticipated in the next 12 months, including any proposed legislative reforms that are relevant for venture capital investors in the jurisdiction?

We are monitoring several developments that may affect the venture capital landscape over the coming year.

Antitrust and Competition Policy. The antitrust enforcement environment remains active, with continued scrutiny of transactions involving large technology platforms and potential implications for venture-backed exits. The Federal Trade Commission and Department of Justice have signaled ongoing attention to competitive dynamics in the technology sector, which may affect deal timelines and structuring for certain transactions.

International Trade and Foreign Investment. Developments in international trade policy, including tariffs, export controls, and restrictions on foreign investment, continue to create uncertainty for companies with global operations or supply chains. CFIUS review remains a significant consideration for transactions involving foreign investors, particularly those from jurisdictions of concern. Geopolitical tensions and ongoing global conflicts add additional complexity to cross-border investment activity.

Qualified Small Business Stock. We are hopeful that recent legislative proposals to expand the benefits available under the Qualified Small Business Stock (QSBS) provisions of the Internal Revenue Code will be utilized to begin to provide meaningful incentives for early-stage investment. The QSBS exclusion, which allows qualifying shareholders to exclude gain on the sale of qualified small business stock from federal income tax (subject to limitations), is a significant driver of angel and early-stage investment activity. Expansion of these benefits could provide additional stimulus to the early-stage ecosystem.

Overall, we are seeing healthy deal activity and remain cautiously optimistic about the near-term outlook for venture capital investment and exits. As always, the

market will be shaped by factors both within and beyond the control of individual participants, and flexibility and adaptability will remain essential attributes for founders and investors alike.

Contributors

Evan S. Kipperman
Partner

ekipperman@wiggin.com

