



FOGEL & POTAMIANOS LLP

# 2025 GC CHECKLIST

**The Law Firm That  
Makes Things Happen.**

# Risk Reduction, Strategy & Cost

- Every business decision invites risk into the organization. A checklist helps company leadership accurately catalog, assess, and reduce their risk exposure.
- Regular, focused, and strategic meetings help companies become proactive rather than reactive.
- Preventive law is less expensive than paying for cleanup.

## RISK FACTORS

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### 90 Factors

- F&P has identified 90 risk factors for privately held middle market companies. To this end, we recommend a periodic, standing meeting to cover the following topics and upcoming plans on the horizon.

## CORPORATE GOVERNANCE

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- Corporate Structure
- Corporate Organizational Chart (showing ownership, subsidiaries, affiliates)
- Complete Corporate Governance History from Inception to Current (certificates, bylaws, organizational documents, board minutes)
- Board - governance, composition, and refreshment
- Board Minutes and Records – risk reduction for Section 220 demands

- Flow of Information to Board – finding submaterial problems before they become material
- Annual Director and Officer Questionnaire (conflict of interest)

## **EQUITY**

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- Complete and Updated Cap Table
- Complete List of Options & Warrants
- Equity Plans
- 409A Valuations
- SEC Exemption Compliance & Filings
- Cap Table Management & Strategy
- End of Year Investor Update (Live or Letter)
- Company Option Pool

## **COMPLIANCE & CONTRACTS**

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- Compliance – prevent, detect, remedy
- Negotiation of Agreements and Partnerships
- Vendor/Supplier Agreements – list of fully executed copies of agreements, termination, consents required

- Form Agreements
- Office Leases
- Insurance Coverage – cybersecurity, D&O, business interruption
- Regulatory Issues – import/export, product safety, CBP, tariffs, etc.
- CPA
- Managing Outside Counsel
- Assignment Clauses - include assignment clauses in agreements which permit assignment in the event of a reorganization, merger, or control sale.
- Corporate Transparency Act
- Tariffs, Supply Chains & Duty Mitigation Strategies

## **CAPITAL MARKETS, LIQUIDITY, & FINANCING**

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- Private Equity
- Convertible Notes
- SAFE Notes
- Debt, Lines of Credit
- Current UCC Filings
- Asset Sales

- CFO
- Process to Monitor Negative Cash flow
- Liquidity Strategy – preserve cash, extend liquidity runway
- Alternative Strategies – Chapter 11 for reset of balance sheet and restructure of operations
- BK 11 Subchapter 5 – less than \$7.5MM in debt.
- Security Registry and Tracking
- Guarantees and Credit Parties
- Disaster Loan/PPP Compliance
- Financial Controls & Checks
- Secondary Sale Process

## **M&A**

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- Acquisition Strategy / Divestiture Strategy
- Acquisition Target List
- Partnership Exploration
- Current Discussions / NDAs
- LOIs
- Due Diligence

- Closings
- Board M&A Subcommittee Participation
- Due Diligence Preparation – e.g. third party consents for change of control
- Choice of Law Considerations - e.g. Delaware is contractarian, meaning deal is what it is on paper in front of judges.
- Hart-Scott Rodino Antitrust Improvements Act (HSR Act) - premerger notification responsibilities to FTC.

## **INTELLECTUAL PROPERTY**

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- Company IP Document List (owner, filing, registration, date, matter covered)
- Branding Strategy
- Trademark Portfolio Strategy – national & international
- Patent Portfolio Strategy – national & international
- Copyrights
- Trade Secrets
- Licensing Strategies
- NDAs
- Creators and Contractors – fully executed IP/copyright assignment

- Potential Infringing Competitors
- Infringement Exposure
- Active Policing of Intellectual Property
- 3rd Party Licenses – track licensing, restrictions, and obligations (e.g. open-source software, software, etc.).

## **EMPLOYMENT**

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- Executive Employment Agreements
- Defining Culture and HR Policies & Procedures
- Furlough/Layoff/Force Reduction Strategy
- Employment Policies– employee handbook, supporting policies/forms, offer letters, incentive compensation plan, NDA/confidentiality, arbitration agreement, separation (severance) agreements, injury and illness prevention, etc.
- Classification
- Payroll Compliance
- Remote Working Compliance
- Return to Work Policies
- Safety Policies
- Coordination of Outside Employment Counsel

## LITIGATION RISK

- COVID - OSHA, CAL/OSHA, penalties, criminal liability
- Employees - harassment, WC, FMLA, rest periods, overtime, employee/IC classification, retaliation, whistleblower, accommodation, Private Attorney General Act (PAGA)
- Breach of Contract - clients, vendors, partners
- Cybersecurity - 2 factor authentication and employee training. Do you have information security policies, and are you doing it?
- Categories of Personal Information - how processed, stored, shared, and protected
- Internal Policies and Procedures for Privacy and Data
- Current Privacy Regulations- CCPA, GDPR, FTC Section 5, ePrivacy Directive, COPPA, Gramm-Leach Biley Act (GLBA), HIPAA, California Privacy Rights Act (CPRA) - 2023, Virginia Consumer Data Privacy Act (VCDPA) - 2023, Colorado Privacy Act (ColoPA) - 2023, Utah Consumer Privacy Act (UCPA) - 2023, Connecticut Public Act No. 22-15 - 2023, Quebec's Bill 64 PR Crisis Strategy, UK, India, Australia, Canada
- Disaster Recovery Plans and Technology
- Litigation Bench Strength
- Risk Exposure for New Litigation Trends - class actions and consumer protection, proposed FTC ban on noncompetes, consumer data protection, AI and intellectual property disputes, regulatory investigations, ADA website compliance.





*Thank You*

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