

When Does a Private Equity Portfolio Company Need a General Counsel?

The general counsel plays an often-underappreciated role in helping portfolio companies drive value. Whether navigating complex ownership dynamics, human capital considerations, regulatory hurdles, acquisitions, divestitures and/or exit strategies, the general counsel can play a strategic role at the leadership table.

Still, at many portfolio companies, the general counsel is not a member of the executive leadership team. Many portfolio companies do not have a general counsel at all, opting instead to leverage junior or adjacent resources, or, more frequently, outsourcing legal work to outside counsel. Since private equity firms are focused on value creation, often within a compressed time frame, it is unsurprising that sponsors often think of CEOs, CFOs and COOs as more critical recruits than general counsel.

We believe this is starting to change. As private equity expands — the industry had \$4.1 trillion in assets under management in 2020, according to Preqin, which estimated that it would more than double in size to \$9 trillion by 2025 — Spencer Stuart's Legal, Compliance & Regulatory Practice has seen an increase in demand for recruiting general counsel to portfolio companies. More of our private equity clients are recognizing the impact a general counsel can have in creating value and mitigating material risk in the often fast-paced, dynamic, multifaceted context of portfolio companies.



To learn more about the general counsel position at portfolio companies, we recently spoke with clients and candidates who are leaders across the industry, including current and former portfolio company general counsel, leading law firm practitioners who serve private equity, and chief talent officers at private equity firms. Our conversations yielded insights about the position at portfolio companies, including:

- » **The business considerations that trigger the need for an experienced general counsel**, including IPO readiness and exit strategy considerations; regulatory, risk and compliance headwinds; ownership and employee base complexity; and downsizing/upscaling plans
- » **The key attributes, experience and qualities a general counsel needs** to be successful in a portfolio company context

Below we look at these findings in depth.

When does a portfolio company need to recruit a general counsel?

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ADAM ROSMAN
EVP AND
GENERAL COUNSEL,
ONEMAIN FINANCIAL

Our conversations and our work in the industry point to several specific situations where a general counsel can play a critical role for portfolio companies.

When you plan to go public. When a private equity-owned company plans for an IPO, the general counsel can play a central role in navigating through the process as well as setting up the securities compliance and governance infrastructure required post-IPO.

A general counsel can add tremendous value by quarterbacking the project management process a company must undertake to go public, including working closely with finance and treasury on preparing disclosure documentation and managing the transaction; working closely with HR on executive compensation matters, including structuring and disclosure; and coordinating with investor relations, bankers, outside counsel and many other internal and external stakeholders.

Once the company goes public, the general counsel can play a critical role in standing up public company governance and securities compliance, including managing the routine corporate disclosure process, serving as secretary to the board, onboarding and recruiting new board members and managing a number of other critical tasks that only an inside resource closely aligned to the C-suite can do seamlessly and efficiently.

“There is a ton of important coordination work inside the company that outside counsel simply cannot do,” said OneMain Financial EVP and General Counsel Adam Rosman. He previously held the general counsel position at First Data Corporation, leading all aspects of that company's \$2.8 billion IPO in 2015. “Putting all the pieces together — getting everyone to work together, driving the calendar and ensuring execution — that is a general counsel's job.”

When you are in a complex industry. In heavily regulated and/or IP-heavy industries, like financial services, media and entertainment, healthcare and transportation, the general counsel is a key player on business-critical issues, playing both an offensive and defensive role. For example, in sectors like media, entertainment and fashion, the general counsel is indispensable for ensuring the protection of intellectual property and driving monetization strategies. In industries with heavy government oversight, a general counsel with a strong regulatory background and sector knowledge can help mitigate and navigate risks and enable business growth.

“The aviation sector has obviously had to adjust to a tremendous amount of urgent regulatory and government policy change as we have navigated the pandemic,” said EVP, General Counsel and Corporate Secretary Angela Avery of WestJet, a Canadian airline owned by Onex Corporation. Avery oversees regulatory and governmental affairs in addition to the legal function. “Frankly, what’s been the most helpful is my previous experience working [as assistant general counsel] for TC Energy. There, I lived in the tariffed world. With so much of aviation heavily regulated, that experience has been invaluable.”

When you plan for scaling up, scaling down or carving out. Many portfolio companies operate with a focus on the exit. Before that exit, many face value optimization challenges that can include organic or inorganic (roll-up) growth, shedding of non-core assets and talent downsizing, or special carveouts.

“If growth is the strategy, then clearly you need a general counsel who can play a major M&A role at the company — to enable the growth story and help the company achieve its business strategy.”

JAY DUBINER
CHIEF LEGAL OFFICER,
AUTHENTIC BRANDS GROUP

Workforce downsizing comes with legal complexity, often implicating tricky employment law and severance/termination issues that may require careful handling by a general counsel with litigation and employment law expertise. On the other hand, some private equity-owned companies grow rapidly through M&A, which provides its own distinctive legal needs where a general counsel with an M&A toolkit and corporate development acumen can prove invaluable.

“If growth is the strategy, then clearly you need a general counsel who can play a major M&A role at the company — to enable the growth story and help the company achieve its business strategy,” said Authentic Brands Group Chief Legal Officer Jay Dubiner. ABG is owned primarily by private equity firms BlackRock, General Atlantic and Leonard Green & Partners. “At ABG, since I’ve been here we’ve made many acquisitions — some big, some small, some relatively simple, but most quite complex. Add in the fact that we are a company with a huge intellectual property focus, and the general counsel position is a critically important role here like it would be in any IP-rich company.”

When you have multiple sponsors. Portfolio companies owned by multiple private equity firms are increasingly common, and they require a general counsel with high emotional intelligence who can juggle the various personalities and incentives at play, in addition to the legal considerations attendant to dispersed ownership.

“You have your fiduciary obligations to each private equity owner, and when you have those inter-investor conflicts, it can be tricky to navigate,” said Chief Legal Officer Lucinda Treat of VICE Media Group, which is owned by a variety of corporate and private equity players, each with minority stakes. “I have always tried to look at it like, ‘I am going to see this from their point of view and understand what they want.’ Then I will determine, ‘How do I bridge the narrative and the advice to get everyone closer in alignment?’”

The attributes of a successful portfolio company general counsel

General counsel at portfolio companies have a uniquely challenging role. From our experience, they need to be change agents with exceptional leadership and executive communication skills — while also possessing business acumen and a hands-on orientation focused on value creation and business enablement, whether offensive or defensive.

Here are some of the key attributes:

“If you can ground your conversation in data, then you’ll know you will be heard.”

LUCINDA TREAT
CHIEF LEGAL OFFICER,
VICE MEDIA GROUP

“I think there has to be a bias to action, not waiting to be told what to do. There is an expectation, perhaps unique to PE-backed companies, that they want somebody who is going to be a self-starter on a wide breadth of issues.”

ZACH GREEN
EXECUTIVE VICE PRESIDENT
AND CHIEF LEGAL OFFICER,
NEOVIA LOGISTICS

- » **Business acumen.** Private equity owners are looking for bottom-line results, and they expect the same from their general counsel. “If you’re a lawyer and you go in there and you start speaking in abstract ideas, that isn’t going to work,” Lucinda Treat said. “If you can ground your conversation in data, then you’ll know you will be heard.”
- » **Executive communication.** Private equity firms almost always make important changes to the business. The general counsel will need to be adept at managing the often-delicate conversations he/she will be privy to and have the confidence and gravitas to simplify issues and speak in practical, non-political terms. “Rather than arm waving about a legal issue, you will be a lot more successful if you can go in and explain, ‘OK, this is what this means for us,’” said Angela Avery. “If you quantify the impacts, you will be much more successful.” Or, as Adam Rosman explains, “You have to support the CEO’s relationship with the private equity owner, and yet do it in a way that also establishes your own independent relationship. This is an ongoing balance and a challenge of the job.”
- » **Breadth and hands-on orientation.** The legal function, like others inside of PE-backed companies, will likely be smaller than you might find in a large public company. The successful general counsel needs to be a quick study and be adept at mastering a broad portfolio, often with minimal resources. A wide range of skills including M&A, litigation, employment, regulatory and IP will often be relevant, depending on the context. “I think the general counsel needs to be able to lead on whatever the issue is,” says Neovia Logistics EVP and Chief Legal Officer Zach Green. “I think there has to be a bias to action, not waiting to be told what to do. There is an expectation, perhaps unique to PE-backed companies, that they want somebody who is going to be a self-starter on a wide breadth of issues.”

Conclusion

In dozens of assignments with private equity firms over the last few years, Spencer Stuart's Legal, Compliance & Regulatory Practice — all former practicing attorneys, with firsthand understanding of the demands of legal roles today — has helped find strong general counsel to address portfolio companies' unique needs. And as private equity continues to expand its impact across the globe, these general counsel will be key players in creating value and the best outcomes for portfolio companies and their private equity owners.



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