

## → Bankruptcy and Restructuring

Lenders must deal with problem credits, manufacturers must deal with insolvent customers and suppliers and businesses of all types must structure their relationships to mitigate the consequences of a bankruptcy. Financial distress also provides acquisition opportunities for those in a position to capitalize on them. Reflecting the reality of business, the Bankruptcy and Restructuring practice of Sheppard Mullin has been a key element of the firm's practice since its founding. We have the resources to respond to the time sensitivity of financial crises and the depth to provide whatever size team is required. And, as part of a large, broad based commercial law firm, we are able to draw on all of the resources necessary to solve the multidisciplinary problems presented by U.S. and cross-border business insolvencies, including ERISA, FCC, FDA, intellectual property, labor, mergers and acquisitions, real estate, securities and tax.

We represent our clients in all types of regional, national and cross-border insolvency matters, ranging in size and complexity from out of court loan workouts and financial restructurings to bankruptcy proceedings in multiple jurisdictions, creditors' rights litigation and distressed acquisitions. Our clients span a wide ranging spectrum, including secured lenders, debtors, bank groups, ad hoc and official creditors' committees, indenture trustees, loan servicers, equity holders, real property and equipment lessors, bankruptcy trustees and buyers.

### **Workouts and Bankruptcies**

The restructuring and resolution of commercial credit transactions requires a distinctive blend of legal skill and industry knowledge. The attorneys at Sheppard Mullin strive to understand the client's business objectives, devise creative alternatives and then execute the client's plan. Our expertise in assisting clients spans the entire band of constituents in commercial credit and lending transactions. Our attorneys regularly represent major banks and other commercial real estate lenders in real estate loan workouts, state court receivership and bankruptcy proceedings. Underlying projects include office buildings, hotels, industrial, single and multifamily residential projects, agricultural and raw land. We also assist by acting as a resource in planning foreclosures and the disposition of properties.

Our attorneys evaluate and enforce equipment leases and loans secured by equipment, accounts receivable, inventory and chattel paper. We represent equipment lessors and lenders with regard to restructuring, recovering or disposing of assets ranging from certificated aircraft, maritime assets, railcars, daily rental fleets of vehicles, telephone and television systems, furniture, fixtures and equipment for businesses. Challenges we have handled range from the representation of lenders in the bankruptcies of major airlines and retailers to the enforcement of creditors' rights.

### **Bond and Indenture Trustees**

Sheppard Mullin has extensive corporate trust experience in the representation of indenture trustees in connection with bond transactions. Although some of this work has entailed the review of documents at the origination stage, most of our corporate trust work on behalf of indenture trustees has focused on the representation of the trustee in connection with defaulted bond transactions. Our familiarity with applicable fiduciary and tax rules, as well as our firm's long standing expertise in the field of creditors' rights, secured

transactions and insolvency matters has allowed us to effectively represent bond trustees.

Among the bond default matters handled by our firm have been numerous defaults involving Chapter 11 bankruptcy proceedings, Chapter 9 municipal bankruptcies and insurance company insolvency/rehabilitation proceedings, as well as numerous revenue bond defaults involving real estate projects throughout the United States, retirement, assisted living and nursing homes, hospitals, failed savings and loan associations and waste disposal facilities, among other projects. These matters have included restructurings and modifications of bond transactions in negotiated workouts, implementation and exercise of remedies and complex litigation.

## **Creditors' Rights and Provisional Remedies**

Sheppard Mullin attorneys work daily to develop solutions for creditors that create and preserve value. Provisional remedies are time sensitive and offer tactical advantages in resolving a dispute. Our attorneys move quickly to identify the right opportunity and implement the appropriate remedy based on the client's needs. Our success has ranged from obtaining writs of attachment in both state and federal proceedings to the appointment of receivers to preserve collateral to recovering indebtedness from both primary obligors and guarantors. We are regularly retained by financial institutions on receivership matters. Our attorneys have been successful in obtaining receivers for a diverse cross section of businesses and properties including commercial and industrial sites, hotels, golf courses and apartment complexes. Our guidance of the receivership process, beginning with evaluating state and local laws and ending in the ultimate disposition of the property, has provided our clients with prompt results and savings.

## **Lender Liability**

Sheppard Mullin is a recognized leader in the defense of lender liability matters. We have successfully resolved some of the largest and most complicated lender liability matters and defended multi million dollar claims before the courts and in arbitration proceedings. We have represented lenders in a vast array of matters, including breach of contract involving breach of commitment to fund or renew loans, oral commitments and good faith and fair dealing, as well as bad faith and breach of fiduciary duty. Our Financial Institutions Litigation attorneys also maintain substantial expertise in litigation involving fraud and misrepresentation, negligent loan processing and administration and fraudulent or preferential transfers.

## **Bankruptcy Litigation**

The firm's attorneys represent clients in all aspects of litigation in Bankruptcy Court. Our attorneys have handled a wide range of issues presented in the bankruptcy litigation process that have ranged from disputes over cash collateral and debtor in possession financings to "363 sale" transactions and the confirmation of reorganization plans to relief from the automatic stay and preference recovery and fraudulent transfer actions, among many others.

Our attorneys also represent clients on bankruptcy appeals in the district courts, before the Bankruptcy Appellate Panel and the Circuit Courts of Appeal. Our proven track record and deep expertise in bankruptcy related appellate matters has allowed us to offer the best possible solutions to our clients.

## DIP Financings

Many organizations that file bankruptcy come out of the process as healthy, feasible businesses. Because bankruptcy should not necessarily be considered a failure or automatically assumed that the organization is headed towards liquidation, part of the turn-around planning process includes the option of DIP financing. Sheppard Mullin negotiates, documents and closes DIP financings subject to the Bankruptcy Code and Chapter 11 requirements. We have advised clients on the structuring, negotiation and documentation of DIP financings. Our expertise in both lending and bankruptcy law has allowed the firm to assist clients in these complex loans.