

→ Debtor in Possession (DIP) Financing

Many companies that file for protection under the federal bankruptcy laws do not end up in a rapid liquidation. Some achieve a successful reorganization over several months or a few years and emerge from the bankruptcy process as healthy and viable businesses. Others sell their assets in their bankruptcy proceedings in an orderly, well advertised auction sale process under Section 363 of the Federal Bankruptcy Code (a "363 Sale") that often yields more of a "going concern" value than a distressed liquidation value.

To achieve either a successful reorganization or a successful 363 Sale, companies in bankruptcy need interim financing. Such financing, known as "debtor in possession" or "DIP" financing, requires bankruptcy court approval and must be pursued in a manner that is reasonably satisfactory to all of the various constituencies in the bankruptcy proceedings, such as the official creditors' committee, the debtor, the lender and the United States Trustee.

DIP financing transactions are a complex hybrid of secured commercial loan and bankruptcy litigation elements. As such, to be handled effectively, they require a legal team consisting of experienced commercial finance lawyers and insolvency and creditors' rights lawyers. Sheppard Mullin's experienced DIP financing lawyers have successfully represented debtors, secured lenders and creditors' committees in DIP financing transactions involving companies from a broad range of industries, including aerospace, agriculture, retail, manufacturing, healthcare, oil and gas and high technology. Sheppard Mullin has also represented purchasers of assets in 363 Sales as providers of DIP financing to their sellers prior to the sale.

Many businesses today choose to file for federal bankruptcy protection in Delaware. Sheppard Mullin's DIP financing experience is not limited to California bankruptcy cases. With the assistance of a broad group of affiliated law firms, our attorneys have had considerable success in DIP financing transactions in Delaware and numerous other jurisdictions throughout the country.