

MERGERS AND ACQUISITIONS

Sheppard, Mullin, Richter & Hampton LLP represents domestic and international buyers and sellers of public and private companies on their merger and acquisition activities. On the sell side, our clients range from entrepreneurs and family owned businesses to equity sponsors and large multinational corporations. On the buy side, we advise both financial and strategic buyers. The firm represents clients in:

- Buying and selling private companies through stock or asset acquisitions, recapitalizations and other transaction structures
- Buying and selling public companies including tender offers and going private transactions
- Divestitures, including as a result of industry consolidation, deregulation and changing economic climates
- Purchase and sale of distressed companies, both in and out of bankruptcy
- Spin offs requiring expertise with respect to the payment of dividends, board of directors responsibilities, tax considerations and the like

We have executed transactions across a diverse range of industries including aerospace and defense, financial services, healthcare, technology, entertainment, electronics, telecommunications, food and beverage, retail, and transportation, among many others. At the core of our M&A practice are seasoned, corporate attorneys with the practical experience to structure, negotiate and close even the most complicated transactions.

In addition to negotiating and documenting a transaction from the letter of intent through closing, Sheppard Mullin plays an active role in pre-acquisition planning, including estate planning for our individually or family owned clients, tax planning and working with management and other company advisors to help better position a client for a sale. Our attorneys also assist in developing a due diligence strategy which focuses on the key value drivers for the business, as well as clearly defines the due diligence functions performed by all of the deal participants.

Obviously, it is our goal to protect our client's legal interests in connection with a transaction. However, it is also our goal to facilitate our client's fundamental business interest of getting the deal done by providing practical and, where necessary, innovative legal advice.

Corporate Restructurings

Sheppard Mullin attorneys structure and execute transactions involving distressed businesses. Our comprehensive background in traditional M&A and bankruptcy allows us to provide valuable insight and leadership toward the successful closure of these transactions. We have successfully led our clients through the complete range of restructuring approaches, including:

- Operational restructuring
- Financings (equity, debt, mezzanine and other hybrid structures)
- Sale or merger outside of bankruptcy
- Foreclosure sale by secured lenders
- Out of court workouts
- Assignments for the Benefit of Creditors
- Chapter 11—Section 363 asset sales
- Auctions

Our expertise includes an understanding of successor liability, cash flow, multi-levels of creditors, business and economic conditions, tax planning, creditors' rights, labor law, ERISA statutes, intellectual property, environmental liability, real estate and leasing, among others.

Going Private Transactions

The firm has represented clients involved in going private transactions in a variety of capacities, including representing the management team or large shareholder seeking to take the company private, representing the special

committee of the board of directors appointed to represent other shareholders in the transaction, representation of lenders in leveraged buyout transactions and representing the company which is the subject of the going private transaction. Our counsel has ranged from advising on the feasibility of the transaction to structuring and closing the deal.

Our understanding of capital markets and deal structures has allowed us to evaluate, negotiate, structure and close these complex transactions. We are able to call on, as necessary, the firm's other resources, including our Labor and Employment attorneys to assist the newly private company to provide employee incentives and our Banking and Finance lawyers to help structure and negotiate the terms of the debt financing the transaction.

Recapitalizations

The recapitalization of a business is a vehicle for owners to create liquidity without losing operational control. Our attorneys understand all aspects of a recapitalization, which can be effected through many different deal structures, including:

- Sale of preferred stock or convertible debt with proceeds used to purchase equity
- Debt for equity swaps
- Equity for debt swaps
- Calls of convertible securities with forced conversion

Sheppard Mullin has executed recapitalizations from both sides of the table, including representing the company and investors, as well as lenders and equity sponsors. Our experience spans transactions involving ESOPs, which require a considerable amount of regulatory expertise, and troubled companies, where we can call upon our deep insolvency capability. We also work with our Banking and Finance lawyers, who have represented numerous financial institutions and borrowers, to successfully execute these deals.

Spin Offs and Divestitures

Sheppard Mullin assists clients in structuring and negotiating divestitures and spin offs. These transactions include the taxable sale of portions of a business entity or a subsidiary to financial or strategic buyers, as well as the distribution of a subsidiary to a corporation's existing shareholders as a tax free spin off under the Internal Revenue Code. We have advised divesting and divested companies, strategic and financial purchasers and other parties to these transactions.

In addition to the full range of matters typically present in any merger and acquisition transaction, including antitrust, labor, intellectual property, real estate, environmental and tax, our attorneys understand the issues that must be covered in a spin off or divestiture, ranging from terms of separation, shareholder and debt holder rights to corporate governance issues and parent corporation responsibilities.

Cross Border M&A

We combine our firm's extensive experience in domestic negotiated, unsolicited, public and private acquisitions, strategic, private equity and venture capital investments and joint ventures with an understanding of the special issues often involved in cross border transactions to effectively represent our clients' interests in these often complex transactions. Our cross border transactional clients include not only U.S. companies and individuals engaged in international transactions, but also companies and individuals from all major European and Asian countries, jurisdictions throughout North and South America, as well as Australia and South Africa.

Our attorneys have handled acquisitions and divestitures of U.S. businesses by foreign clients or U.S. subsidiaries through stock, asset and other transaction structures, as well as acquisitions and divestitures by U.S. clients of foreign companies, whether directly or through their foreign subsidiaries.

Tax

A core competency of the firm's Tax attorneys is involvement in both domestic and international mergers and acquisitions. We have assisted in analyzing and structuring the form of the transaction, prepared legal opinions addressing the tax consequences of the transaction and assisted with SEC materials and proxy statements. Our attorneys have advised on all types of taxable and tax deferred sales, acquisitions and reorganizations, including:

- Traditional asset conveyances, exchanges of stock for stock or assets and forward or reverse subsidiary mergers
- Synthetic transfers using LLCs and disregarded and hybrid entities
- Recapitalizations, including domestication of foreign corporations, conversions and reformation as an LLC electing corporate status
- Holding company formations for regulatory, acquisition and estate planning reasons
- Spin offs, including planning under anti-"Morris Trust" tax regulations

Successfully navigating the complex tax consequences infused into every manner of transaction requires deep and broad expertise. Our Tax attorneys counsel clients in organizing and establishing entities, as well as assist and represent clients in structuring, negotiating and documenting these transactions.