

## → Aerospace, Defense & Government Services

Sheppard Mullin serves clients in the aerospace and defense (A&D) industry, including defense and civilian agency contractors, manned and unmanned aircraft manufacturers, satellite manufacturers and owner/operators, airlines, and airports, as well as suppliers at all tiers of goods and services to A&D businesses.

- Our clients include domestic and foreign companies, and cover the spectrum from established global A&D companies to growing middle market businesses to emerging companies, as well as some of the most active private equity firms investing in the A&D industry.
- Our lawyers have deep sector knowledge that can be brought to bear in regulatory, transactional, and complex litigation matters. Many of our lawyers have served in government and understand the A&D market from both sides of the transaction, contract, or dispute.
- Our work involves day to day legal support for the ongoing operations of these businesses in connection with such matters as government contracts (see the description of our “Government Contracts, Investigations & International Trade” Practice Group), supplier arrangements, and satellite leasing as well as broader and more general legal support in areas such as intellectual property, real estate, and employment and labor.
- Our M&A and private equity attorneys have worked on some of the most notable recent middle market transactions in the A&D industry. We provide a unique confluence of deep transactional experience and specialized expertise in the areas of government contracting; export controls and trade sanctions; and foreign ownership, control and influence, including deep expertise in the recently revised CFIUS process.

In sum, we understand the unique business and legal challenges faced by clients in the A&D industry and that is why clients turn to us when a thorough appreciation of the industry is required to come to grips with issues quickly and efficiently and deliver valuable advice and solutions in real time.

### Government Contracts

We have decades of experience representing major aerospace and defense companies that do business with the federal government, including DOD and all civilian agencies. Our attorneys are experienced in a wide variety of government contract issues and disputes. We have successfully advocated our client’s position on a variety of challenges, including cost and cost accounting challenges and audits; claims development and litigation before boards of contract appeals, the Court of Federal Claims, and the Court of Appeals for the Federal Circuit; rights in technical data and computer software; “buy national” restrictions; cyber security; terminations; bid protests; teaming agreements; subcontract disputes, litigation, and arbitration; civil and criminal False Claims Act investigations and litigation; and antitrust and intellectual property claims as applied to defense, electronics, aerospace, transportation and other industry enterprises.

Our team has deep and broad capability conducting assessments of corporate compliance programs intended to satisfy required statutory and regulatory mandates. We have a sizeable background in performing internal investigations related to possible violations of the maze federal statutes and regulations that permeate the A&D space.

Our lawyers have published a six part series on Government-wide and DOD-peculiar cyber security compliance, the definitive book on GSA's Multiple Award Schedule Program, and a Cloud Computing guidebook.

We also have extensive experience representing entities in the transportation sector and other industries in administrative and judicial challenges to federal and state agency decisions, rulemakings and investigations. And we have, on multiple occasions, successfully challenged user fees that have been unlawfully imposed by the federal government.

## Corporate

Our corporate attorneys are deeply experienced in M&A and private equity transactions, early and later stage venture financings, SEC compliance, public offerings, and corporate joint venture and other strategic alliance arrangements. Because of our diverse client base, our experience ranges from structuring and executing complicated domestic and multinational transactions, preparing commercial agreements to address unique business arrangements, and advising smaller and emerging clients on the full spectrum of business matters.

Our M&A and private equity practices are among the most active transactional practices in the A&D industry throughout the United States and overseas and includes a savvy and talented group of attorneys with deep sector experience and relationships. We have advised our clients on all forms of M&A transactions, leveraged buyouts, management buyouts, recapitalizations and other corporate restructurings. Our attorneys have been involved in transactions which have been both friendly and hostile, have advised both foreign and domestic participants on cross-border transactions and have utilized a myriad of acquisition structures and forms of consideration to help accomplish our clients' goals. We have also been engaged on numerous occasions to serve as special counsel to boards of directors and to independent director committees.

We have published a 10-part series on M&A issues that are unique to the government contracts market, and a book that explains and charts, using understandable English and easily read flow charts, the reformulated CFIUS process. Our combination of skills in the transactional world allows us to provide broad, in-depth, economical support to assist our clients in achieving their objectives.

## Trade Control Compliance

Firms in the aerospace and defense industries are typically subject to a range of export control laws that materially affect their business operations and international sales. The movement of goods and information across borders – whether as finished products, parts and components, demonstration models, or selling aids is subject to an intricate web of regulations promulgated by United States agencies. We assist our clients to understand and address their most vexing trade controls issues. We advise clients on complying with U.S. export controls under the ITAR and the EAR, especially complicated issues involving technology transfers. We counsel clients on complying with U.S. sanctions regulations, which evolve frequently in connection with U.S. foreign policy directives. We work with clients to understand their obligations under the byzantine anti-boycott rules, and under the many facets of U.S. import law. And we assist clients with their toughest issues under the FCPA, the U.S. anti-corruption law that is being enforced more aggressively now than ever before.

## Litigation

Our attorneys handle a range of complex litigation and arbitration matters for aerospace and defense firms in both state and federal court. In this connection, we have represented clients in matters involving both state and federal agencies. We have also represented clients with respect to complex government and commercial contract disputes, including bid disputes, contingent payment claims, liquidated damages claims, back charge and change order claims, construction defect claims, bond claims, and insurance coverage disputes. Our experience in such matters can often help bring about early and successful settlement of disputes. But if litigation is necessary, you can count on our experienced trial attorneys to vigorously represent your interests.

## Antitrust & Competition

With global EU competition and regulatory resources, our EU team in Brussels has more than 30 years of experience representing players in the aerospace and aviation industries, including aerospace companies, airlines, airline caterers, aircraft lessors, global delivery systems companies (computer reservation systems), and global travel agencies. We have advised on cartels, follow-on litigation, mergers, State aid, and compliance issues, as well as on any EU aviation regulatory issues. We are advising and advised clients such as Airbus, Korean Air, United Airlines, Sabena/Brussels Airlines, Cyprus Airways, Olympic Airways, DHL, FedEx, El Al, Gulfstream, Atlas Air, 3Seasons, Ethiopian Airlines, the Hellenic Republic, EUTELSAT, the European Satellite Operators Association, Sabre, CWT (CarlsonWagonLitTravel).

- EU and National Aviation Regulatory – We advise non-EU and EU airlines on EU regulatory issues, including open skies agreements, passenger rights, safety issues, frequent flier programs, noise limitation regulations, ground-handling services, traffic rights, EU designation clauses, slots allocations.
- State Aid – We have an elite EU State aid practice and we assist Member States, beneficiaries and third parties in any State aid issues. We represented airlines, airline manufacturers and satellite operators with the State financing of the research and development of an innovative aircraft, with aid regime to compensate the losses incurred as a result of terrorist attacks, with the development of broadband networks, with a privatization process, from the design of the process to its notification and approval by the European Commission.
- EU Competition Investigations (Cartels) – We are representing a leading global travel management company in connection with the Commission's investigation into airline ticket distribution. We successfully acted for major airlines in the EU air cargo investigation, leading to the abandonment of the case and successfully defended them in standalone damages action in airline contribution proceedings before the English courts. We represented airlines in the EU SkyTeam alliance investigation. We advised an aerospace company on competition and IP issues raised by R&D cooperation agreements between French aerospace industry members.
- Merger Control – We advised a major aircraft manufacturer and a satellite manufacturer on a joint venture to build a satellite constellation and acted in high profile worldwide merger operations in the aviation and travel industry under the EU, U.S. merger rules and beyond. We represented airlines, services suppliers and major corporate airline customers on a variety of transactions as well as handled all EU issues raised by the privatization process of an European satellite provider.
- Compliance – We advise the air transport industry on any EU competition and regulatory compliance issues such as a global lessor of aircrafts in relation to a competition compliance workshop to the company's European management, sales and business development teams at their EU headquarters.

## Finance

Because the infusion of capital is one of the pillars of success for many businesses, all industries are dependent upon the lender/borrower relationship. However, not all industries are the same, and many require very specific knowledge of specialized laws, deal structures and the like. In addition to our broad and deep general financing skill, Sheppard Mullin offers finance and lending attorneys with expertise in the aerospace and defense industry. We represent the interests of business borrowers in financial transactions including the following:

- Syndicated bank loans for large public (or private) company clients
- Acquisition financing for strategic acquisitions by corporate clients
- Acquisition financing for financial acquisitions by private equity clients
- Working capital loans for corporate borrowers
- Public or private note/bond issues
- Leveraged recap transactions
- Asset based financing for working capital and acquisitions
- Seller financing in M&A transactions
- Bridge loans to major customer/supplier or other business partner
- Letter of credit transactions
- Distressed company sales through Article 9 public and private foreclosure sales or Chapter 11 or assignment for the benefit of creditor proceedings
- Lead or local counsel in multi-jurisdiction transactions including cross-border transactions
- Opinion letter work under California, New York, D.C. and Illinois law

Our knowledge of market customs and practices, together with their experience representing all sides of financing transactions, allows us to effectively assist clients in structuring and negotiating complex debt deals. Our understanding of very specific and specialized needs of the aerospace and defense industry allows us to provide clients with a resourceful and economical approach to avoiding pitfalls, resolving challenges, capitalizing on opportunities and thus, successfully closing the transaction at hand. We zealously represent our borrower/issuer clients while preserving a solid and productive relationship with the lenders and underwriters on the other side of the transactions.

## Intellectual Property

Our work in the aerospace and defense industries includes drafting and prosecuting comprehensive patent applications, evaluating and rendering opinions about existing and prospective patent portfolios, and defending and enforcing patents in court. In the age of employee raiding and sophisticated industrial espionage, we also work with clients to safeguard proprietary information and protect trade secrets. We also defend clients against overzealous claims alleging such violations. Our attorneys have obtained restraining orders and injunctions protecting our clients' rights and have successfully defended similar actions brought by our clients' adversaries. We also secure and enforce new product names, and negotiate contracts, licenses, export agreements, and technology transfer agreements. We understand the government's hunger for its contractors' intellectual property and we know how to maximize protection of that IP from government overreach and misappropriation

and infringement by others.

## Labor and Employment

Our team has expertise in all matters affecting the workplace, including wage and hour, class and collective actions, discrimination, harassment, retaliation, employment agreements, executive compensation, layoffs, and ERISA. Additionally, our immigration and international labor practices provide global organizations with support within the US and abroad. With our knowledge and commitment to service, our clients view us as an extension of their in-house legal departments.

## Employee Benefits and Executive Compensation

Our team works with both public and privately held companies who are faced with creating compensation programs for employees and executives in order to attract and retain crucial talent. Many employers have learned that to effectively grow their companies, they must find ways to compensate employees that contribute to the overall success of the company. We draft stock option and compensation plans, assist employers in establishing procedures for administering stock compensation plans and advise employers regarding stock compensation plan compliance. We also assist employers in developing tailored bonus and commission plans that are based on rewards for contribution and increased revenue of an organization. We advise on all aspects of qualified and nonqualified retirement plan and employee benefits matters including defined contribution and benefit plans, profit sharing and 401(k) plans, supplemental executive retirement plans ("SERPs"), and employee Stock Ownership Plans ("ESOPs"). We understand how these benefits are treated by the government, from a cost accounting perspective, under government contracts and we actively work with our clients in contesting audit results that seek to disallow such costs.

## Real Estate

Our team has extensive experience in the representation of clients in real property leasing, and purchase and sale transactions. We negotiate and document real property acquisitions and dispositions, and regularly assist our clients in conducting the "due diligence" investigations required for purchase and sale transactions. This work includes investigations regarding the environmental and physical condition of real property and improvements, lease review, comprehensive review of all related title, land use, zoning issues and contractual obligations.

We also represent both landlords and tenants in commercial leasing transactions. We negotiate and prepare special purpose high rise ground leases for urban high rise buildings, corporate headquarters, campuses and free standing retail facilities. We also negotiate leases with the United States General Services Administration, as well as with many state and local government agencies.

We counsel clients in connection with site assessments prior to purchasing, selling, leasing or lending secured by real property. We also negotiate and document remediation activities, both with private parties and with governmental authorities. We represent clients in connection with CERCLA enforcement actions, clean-up and abatement orders, underground storage tank regulation, removal and remediation of hazardous substances, hazardous waste storage and transportation, the permitting of facilities which handle or store hazardous waste and private contamination litigation. We have also represented clients in proceedings before the Air Quality Management District Boards and have counseled clients with respect to asbestos removal procedures and

asbestos related injury and abatement cases.

## Tax

We assist clients in structuring transactions and planning business affairs in order to reduce income, sales, transfer, property and other taxes. Our goal is to help our clients achieve their business objectives with practical and effective tax reduction planning. We have also handle tax related matters in state and federal courts and before the United States Tax Court.

## Matters

- Represented Aerojet Rocketdyne in its acquisition of 3D Material Technologies
- Represented Endeavor Robotic Holdings, Inc. in its merger with an affiliate of FLIR Systems, Inc.
- Represented Supplier Management Solutions, LLC in its sale to TRIGO Group
- Represented Polaris Alpha, LLC in its acquisition of Solidyn Solutions, LLC
- Represented Fralock in the sale of its equity to Arsenal Capital Partners
- Represented Giga-Tronics in a private placement of common stock
- Represented Qual-Pro Corporation in the sale of all of its stock to SFO Tech Inc.
- Represented Arlington Capital Partners in the acquisition of Tex-Tech Industries, Inc.
- Represented Carbon by Design, Inc. and Carbon by Design, L.P. in their sale to an entity formed by Heico Corporation
- Represented Wencor, LLC in its acquisition of Accessory Technologies Corporation.
- Represented Arlington Capital Partners in the acquisition of Kreisler Manufacturing Corporation
- Represented Shultz Steel Company in its sale to Precision Castparts Corp., a division of Berkshire Hathaway Inc.
- Represented Arlington Capital Partners in its acquisition of the defense and security business of iRobot Corp.
- Represented Arlington Capital Partners in its purchase of Fulton Bellows, LLC
- Represented Federal Resources Supply Company in connection with a management buyout and sale of minority interest to Alaris USA Inc
- Represented Cubic Corporation (NYSE: CUB) in its acquisition of DTECH LABS, Inc.
- Represented Aerojet Rocketdyne of DE, Inc. in its sale of solar energy business assets to SolarReserve, LLC
- Represented Astrotech Corporation (NASDAQ: ASTC) in the sale of assets to Lockheed Martin Corporation