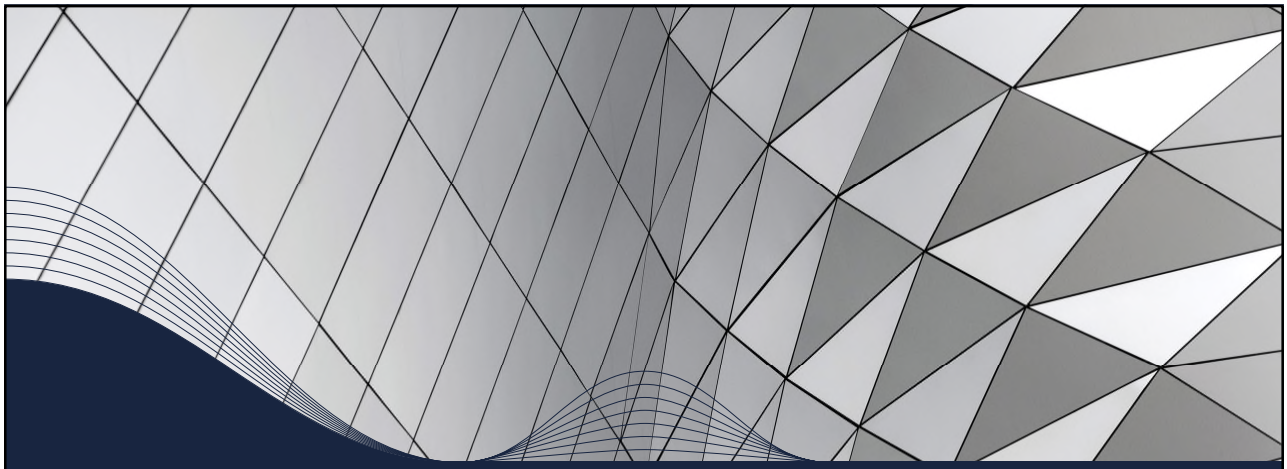

Legal Mentor Network Bootcamp

Introduction to transactional practices and basic deal structures

DLA PIPER

Legal Mentor Network

1

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Corporate

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Corporate Partner: Shehzad K. Huda

- Shehzad Huda is a member of the firm's Diversity & Inclusion Committee and National Leadership Group for Emerging Growth and Venture Capital Practice. He represents venture capitalists, corporate venture capitalists, emerging funds and emerging growth companies in various industries including ESG, technology, biotechnology, health-tech, CPG and food & beverage.
- His practice encompasses a wide range of corporate and securities laws, with a primary focus on venture capital, equity and debt financings, strategic partnerships, collaborations, mergers and acquisitions and corporate governance.
- Venture Capital Fund Clients: HIG, Endeavour Vision Fund, Elysian Park Ventures, Counterpart Ventures, SJF Ventures, Goldfinch, Upfront, Wavemaker, Sante Ventures, Sorenson Capital, TVC and others.
- Select Corporate Venture Capital Clients:

Coca-Cola, SoftBank, M12, Qualcomm Ventures, CVS Health, Yamaha, Nike, Quidel, Novartis

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Partner (San Diego)
LinkedIn

Education
University of Southern California J.D.

Georgetown University M.S.

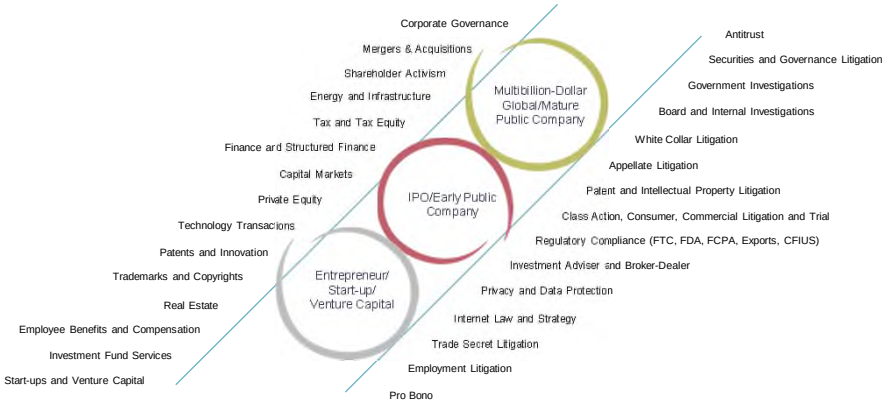
University of California at Irvine B.S.

Admissions
California

4

4

The Business Model



Startups - Formation

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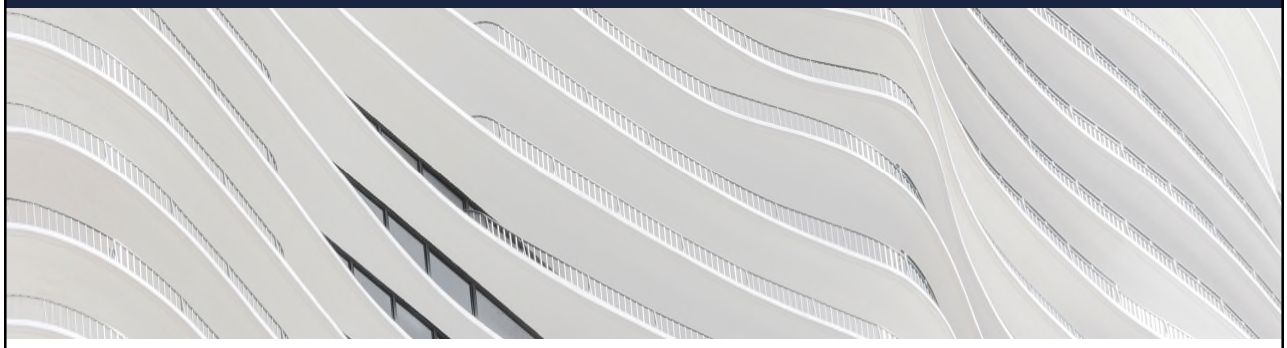
Formation Process

- Incorporation
- Founder stock matters
- Assignment of assets and IP
- Employee matters
- Basic third-party agreements
- Securities filings & qualifications

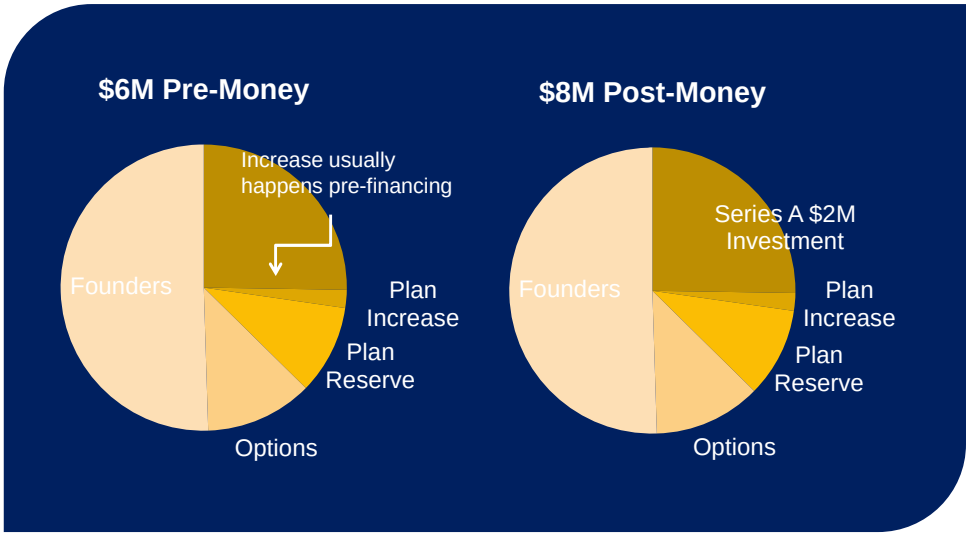
Startups/Venture Capital - Fundraises



Three Main Options

Clause	Convertible note	SAFE	Priced Equity
Valuation cap	Sometimes	Sometimes	⊘
Discount	Sometimes	Sometimes	⊘
Interest rate	✓	⊘	⊘
Maturity date	✓	⊘	⊘
Pro-rata rights	Sometimes	Sometimes	✓
Most Favored Nation	Sometimes	Sometimes	✓
Liquidation Preference	✓	✓	✓

Priced Equity Round – How the Pie Gets Split



Mergers & Acquisitions

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Three Main Structures

	Stock Sale	Asset Sale	Merger (RTM)
Description	Buyer acquires all outstanding stock of Target directly from Target's stockholders	Buyer only acquires the assets, rights, and liabilities it identifies and agrees to acquire and assume	Buyer merges a subsidiary with the Target and the Target survives the merger
Pros	• Simple • Avoid anti-assignment clauses	• More flexibility – not paying for unwanted assets and less risk of assuming unknown liabilities	• Avoid anti-assignment clauses • Do not need all stockholders to consent
Cons	• Takes everything Target has "as is" (including unknown or undisclosed liabilities) • Each stockholder needs to agree	• More complex documentation - need to identify and document each asset and liability • Run the risk of missing an important contract or asset • Requires more consents – triggers anti assignment clauses.	• Takes everything Target has "as is" (including unknown or undisclosed liabilities)

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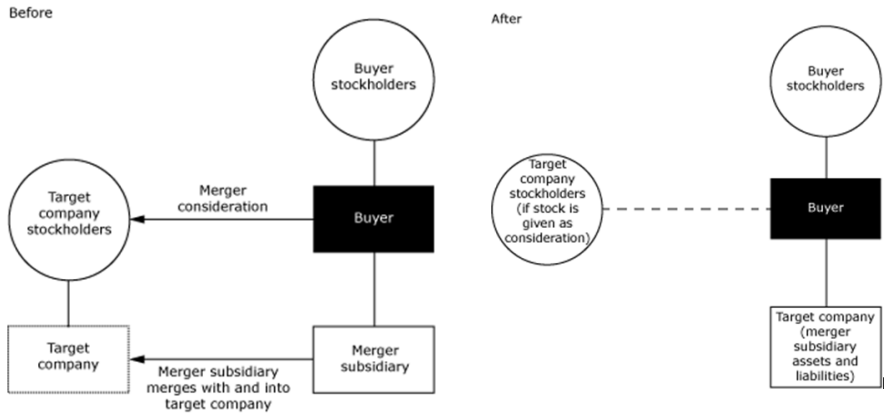
Reverse Triangular Merger



Debt Finance

DLA PIPER

Finance Partner: Tonya Gauff

- Tonya Gauff is an experienced finance lawyer representing a broad range of clients in negotiating various debt transactions.
- Her finance practice includes assisting public and private borrowers, lenders, investors, financial institutions, real estate investment trusts and private equity sponsors and their portfolio companies in structuring and negotiating secured and unsecured senior, mezzanine, first lien and second-lien, and subordinated financings, leveraged buyouts, dividend recapitalizations, workouts, acquisition financings, private debt offerings and general working capital credit facilities. Tonya also has extensive experience negotiating and documenting domestic and international subscription-backed credit facilities.
- Tonya is certified public accountant licensed in Illinois.

Tonya Gauff
Partner (Chicago)
LinkedIn

Education
Northwestern University J.D.

University of Texas MPA

Dillard University B.A.

Admissions
Illinois

Debt Finance Transactions

Purpose of Debt Finance

Finance Transaction: a borrowing of money with an obligation to repay at a future date.

- Borrower Perspective:
  - A company (i.e., the Borrower) may need to borrow money to:
    - Provide general working capital to solve long-term or short-term cash flow problems,
    - Fund a particular acquisition or on-going acquisitions,
    - Fund a particular investment,
    - Solve a financial emergency,
    - Distribute funds to its equityholders,
    - Pay specified expenses, and so on.
  - Borrower wants to know how much it can borrow and how fast it can obtain the financing.
- Lender Perspective: A Lender provides loans to Borrower to make a return on such funds in the form of interest and fee payments from the Borrower. In addition, a typical Lender wants to build a long-lasting relationship with the Borrower to provide other bank products to the Borrower and for the Borrower to continuously come back to the Lender for financing.

Debt Finance Transactions

Type of Financings

- Borrower Perspective: Borrower's need for funding or purpose of the borrowing will dictate the type of credit facility the Borrower requests from a Lender.

- Lender Perspective: The Lender will determine the type and structure of financing the Lender will provide to the Borrower by conducting analysis (i.e., underwriting) of the size and creditworthiness of the Borrower, the amount of money the Borrower is requesting, and the Borrower's ability to pay back principal, interest and fees that will be due under the financing.
  - Cash Flow Loans: Lender's underwriting analyzes the amount of loan and the Borrower's credit history, cash flow, etc.
  - Asset Based Loans: Loans are secured by Borrower's assets, typically inventory, accounts receivable (A/R), and/or other assets as collateral. Lender's underwriting analyzes the value of the collateral and the Borrower's ability to generate profits and income from its assets.

Debt Finance Transactions

Common Types of Financings and Financing Structures

Common Types of Financings	Common Financing Structures
• Leveraged loans: term loans, revolving loans, bridge loans • Asset-based financing • Venture debt • Hybrid loans • Acquisition financings; leveraged buyouts • Mezzanine and "second-lien" debt • Real estate loans • ESOP loans • Public and 144A debt financings (including high-yield and convertible debt) • Debtor-in-possession financings • Incremental loans • Swingline loans • Letter-of-Credit facility • Delayed draws • Green/Social loans • Sustainability-linked loans	• Secured or Unsecured • Bilateral credit facility • Syndicated credit facilities • Multiple tranche facilities • Senior ABLs with Mezzanine financings • Loan participations and assignments • Debtor-in-possession financing • Early stage/venture-backed company financings • Capital call bridge facilities • Co-invest facilities • Net asset value facility

Debt Finance Transactions

Typical Debt Features

	Leveraged loans		Bonds		
Debt Type	**Revolver**	**Term Loan A (Bank Debt); Term Loan B/C/D (Institutional)**	**Senior secured**	**Senior unsecured**	**Subordinated**
Lender	Institutional investors & banks		Institutional investors		
Coupon	Floating, i.e. LIBOR + 300 bps		Fixed, i.e. 8.00% coupon paid semi-annual		
Cash/PIK interest	Cash interest				Cash or PIK
Interest rate	Lowest <----------> Highest				
Principal repayment schedule	None	Some principal amortization	Bullet at end of term		
Secured/ unsecured	Secured (1st and 2nd liens)			Unsecured	
Priority in bankruptcy	Highest <----------> Lowest				
Term	3-5 years	5-7 years	5-10 years		
Covenants	Mostly incurrence ("covenant lite"); Some maintenance (strictest)		Incurrence		
Call protection	No			Yes	

Debt Finance Transactions

Structuring the Transaction

- Hypothetical Scenario:
  - Borrower Perspective: A Borrower would like to purchase a group of restaurants by purchasing the equityowner of each restaurant location. After the purchase, the Borrower will need cash on hand to assist with funding working capital for each location.
  - Lender Perspective: To determine if the Borrower is creditworthy, the Lender will need to consider the post-acquisition structure of the Borrower, the financial statements of the target entities, particularly focusing on the grouped earnings before income, tax, depreciation, and amortization (EBITDA), the equityowners of the sponsor and their overall equity and debt positions, and other factors/indicators.
  - Likely Structure:
    - Secured credit facility, secured against all assets of the Borrower and all of the acquired equityowners.
    - Term Loan provided at closing to fund the acquisition.
    - Revolving Credit Facility to fund general working capital needs post-acquisition.
    - Incremental Loan(s) and/or Delayed Draw Term Loan to fund future acquisition and agreed upon purposes.

Debt Finance Transactions

Structuring the Transaction

- Hypothetical Scenario:
  - Borrower Perspective: A Borrower wants to borrow against its dividends and distributions he/she expects to receive in a fund.
  - Lender Perspective: The Lender will need to verify the Borrower's equity ownership in the fund, review the organizational documents of the fund to determine if the Borrower is entitled to dividends and distributions and the likely value of those dividends and distributions, the purpose of the fund and its term, and determine the creditworthiness of the Borrower and fund.
  - Likely Structure:
    - Secured credit facility, secured against Borrower's future dividends and distributions and/or equity ownership in the fund.
    - Partner loan based on a borrowing base of received dividends and distributions up to a certain amount.

Takeaways

- If you are interested in finance and developing a practice representing Borrowers and/or Lenders, please consider:
- In Law School:
  - Take Secured Transactions/Uniform Commercial Code, Structuring Financial Transactions, Understanding and Reading Financial Statements, Corporate Governance and Corporate Finance classes.
  - Complete an externship or summer internship at a financial institution, corporation, private equity firm, asset or real estate investment management firm, or an insurance provider.
  - If working as a summer associate at law firm, request to be staffed on as many finance, real estate, private equity, and fund related transactions as possible.

Private Equity

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Private Equity Partner: Jason Juall

- Jason Juall is a corporate and private equity attorney with a practice focused on counseling private equity firms and public and private companies on domestic and international transactions and corporate matters.
- Jason focuses primarily on domestic and international mergers, acquisitions, divestitures and recapitalizations, public and private offerings of equity securities, venture capital investments and financings, joint ventures and other complex business transactions.
- Jason has represented corporations, private equity firms and sellers in connection with more than 50 transactions for aggregate consideration exceeding US$6 billion in the last five years alone. The industries involved in Jason's recent transactions include cloud services, cybersecurity, data centers, data security, dental, education, healthcare, identity protection, insurance and subrogation, IT and managed services, retail and revenue cycle management.

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Education
University of Florida J.D.

University of Connecticut B.A.

Admissions
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24

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What Is Private Equity?

Overview

- Generally, private equity entails the representation of private investment firms in connection with their investments in, and sales of, businesses (referred to as “portfolio companies”).
  - Private equity firms employ sophisticated investment professionals and make investments through private equity funds that are sponsored by private equity firm to make investments.
  - A private equity fund is an investment vehicle typically owned by sophisticated investors, such as pension funds, retirement plans, insurance companies, other large companies, high net worth individuals, family offices, etc.
  - Private equity is focused on making control investments, and typically (although not always) utilizes third-party debt or other leverage.

What Is Unique About Private Equity?

Key practice characteristics

- Private equity is typically distinguished from general M&A.
- Private equity investment professionals are not typically involved in the day-to-day decision making.
  - Hiring and retention of talented management teams is critically important.
  - In general M&A, retention of the management team at the target company may not be as important.
- Private equity funds do not typically invest directly into their portfolio companies.
  - Seek to limit liability
  - Use of acquisition structures
    - Can be very complex
    - Make up of funds investing
    - Location of the portfolio company
  - Input from tax structuring advisors is typically necessary

What Is Unique About Private Equity? (cont.)

Key practice characteristics

- Private equity firms often “roll up” businesses in a specific industry or set of complementary industries.
  - Legal due diligence often needs to focus on existing issues and limitations on future growth
- Private equity firms typically hold their portfolio company investments for 3 to 5 years.
  - Goal to ensure a profitable exit for their investors
    - Important dynamic
    - View through a lens towards an ultimate sale

Practicing Private Equity as a junior associate

Life of a junior associate: common assignments

Legal due diligence	Closing documents	Ancillary agreements	Acquisition structure
• Leads a team of subject matter specialists • Drafts a due diligence memorandum and/or disclosure schedules	• Tracks and coordinates closing documents • Prepares and keeps updated a “closing checklist” • coordinates collecting signatures • Assembles executed documents in connection with signing and closing	• Drafts and negotiates ancillary agreements • Prepares and negotiates certificates and other straightforward ancillary documents to be executed in connection with the acquisition or sale	• Forms the acquisition structure • Helps to draft the formation and governance documents for entities in the structure, and coordinates formation with paralegals and service companies

Restructuring

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Restructuring Partner: Oksana Koltko Rosaluk

- Oksana Koltko Rosaluk concentrates her practice on corporate restructuring and has been actively involved in numerous complex restructuring matters on behalf of the firm's clients. Oksana's work includes out-of-court corporate restructurings, domestic and foreign wind-downs, all aspects of in-court large and complex chapter 11 and chapter 15 debtor representation, including asset sales, confirmation of chapter 11 plans of reorganization and liquidation, resolution of claims and prosecution and defense of adversary proceedings, and bankruptcy-related litigation.
- Oksana's experience also includes engaging with clients during initial periods of financial distress, attending board meetings to discuss potential strategies, such as new money infusion, out-of-court workout strategies with secured lenders and potential in-court restructurings, researching procedural and substantive legal issues, preparing memoranda, transaction documents and court pleadings, as necessary, to effectuate and consummate restructuring, and attending court hearings and presenting motions and arguments to the court.
- Oksana is a leader in her field with recent recognitions from *INSOL International*: The Next 40 Rising Star award and *American Bankruptcy Institute*: 40 under 40 Honor of the Inaugural Class.

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Education
University of Illinois Chicago School of Law J.D.

Ivan Franko National University of Lviv
(International Relations)

Admissions
Illinois

30

30

What Is a Restructuring Practice?

Key characteristics

- Restructuring is anything and everything dealing with distress or near-distress (*i.e.*, special situations):
  - High debt
  - Distressed assets
  - Upside-down (or soon to be) balance sheet
  - Liquidity challenges
  - Inability to collect on trade debt
  - Supply chain disruption
  - Foreign insolvency orders
- Restructuring as a practice is incredibly general, as restructuring lawyers are problem solvers of every issue that a company faces or may face.
  - May be the same thing as “Bankruptcy” practice, but not always.
  - May be transaction-heavy, litigation-heavy or a combination of both.
  - Sector-agnostic, but economic trends may sway it into a particular sector during certain times.
  - Can be local, regional, national or cross-border practice.

Constituency

- Companies *(in and out of court)*
- Foreign Representatives *(in court)*
- Official Committees of Unsecured Creditors *(in court)*
- Ad Hoc Committees *(typically in court)*
- Lenders *(in and out of court)*
- Debtor in Possession Lenders *(in court)*
- Acquirers of distressed assets *(in and out of court)*
- Landlords *(in and out of court)*
- Trade Creditors *(in and out of court)*
- Equity holders *(in and out of court)*
- Investors/Plan Sponsors *(in and out of court)*
- PE-type Sponsors *(in and out of court)*
- Agencies *(typically in court)*
- Municipalities *(typically in court)*
- Foreign sovereigns *(typically in court)*

Restructuring "Subpractices

- Out-of-Court Restructuring
  - Sales
  - Spin-offs
  - Refinancings
  - Amendments
- In-Court Federal Proceedings
  - Chapter 11 Reorganizations
  - Chapter 11 Going Concern Liquidations
  - Chapter 7 Liquidations
  - Chapter 15 Recognitions
- State Remedies
  - Foreclosures
  - UCC sales
  - Wind-downs
  - Assignment for the Benefit of Creditors

Out-of-Court Restructuring

Company Side

- Out-of-court restructuring (also sometimes referred to as work-outs) is an important tool for restructuring a distressed company.
- While there is no definitive legal definition available, generally speaking, a work-out is a process where a debtor, which is experiencing or which will imminently experience financial difficulties, negotiates relief in the form of contractual amendments or waivers from creditors without any judicial intervention.
- Out-of-court restructurings can occur in different forms, such as resetting of financial covenants, rescheduling payment obligations, converting accrued interest into repayable principal, an out of court asset or stock sale, converting debt into equity, capital infusion, spin-off or sale.
- In general terms, the focus of modern out-of-court restructurings is on 'rescue culture' by preserving the debtor-entity rather than requiring its liquidation or a lengthy and expensive in-court procedure.
- ***May require M&A, finance, litigation, employment, environmental and other expertise.***

Chapter 11 In-Court Restructuring

Company Side

- ***Employed only if (i) out-of-court efforts fail or (ii) an in-court process is strategically beneficial.***
- ***Code and Rule based.***
- Debtor's counsel is responsible for every aspect of the case and must deal with every issue facing the company.
- As part of this process, debtor's counsel must dive deeply in the business and affairs of the debtor to understand every facet of its operations, including, but not limited to:
  - Insurance coverage, especially for D&Os, premium financing arrangements, tail policies
  - Employee benefits, wages, labor law restrictions, WARN Act violations, key employee retention
  - Bank accounts, cash management practices, operational revenue generation
  - Vendor arrangements, shipping logistics, operations management, bailee engagement
  - Financial statements, capitalization and debt structure, restrictions on indebtedness
  - Tax obligations, utilities management, real estate holdings
- *Lots of publicity! Thus, planning and messaging is key (often engage a public relations firm).*
- *Debtor's counsel often brings specialized lawyers (real estate, tax, employment, government contracting, etc.). Teams are large and cross-practice and often cross-office and cross-border.*
- *Debtor's counsel works side-by-side with the C-Suite, Board of Directors, Independent Restructuring Committees, Investment Bankers, Financial Advisors, Outside Restructuring Officers and PR Firms.*
- *Very lucrative area of practice, but challenging business development.*

Representative Client Engagement Revenue

Client	Restructuring Billings	Total Attorney Billers
Client 1	$12,000,000	132 Lawyers; 42 Restructuring
Client 2	$11,788,533	73 Lawyers; 12 Restructuring
Client 3	$9,995,684	43 Lawyers; 12 Restructuring
Client 4	$7,970,115	66 Lawyers; 19 Restructuring
Client 5	$3,998,550	83 Lawyers; 12 Restructuring
Client 6	$3,675,646	41 Lawyers; 5 Restructuring
Client 7	$2,679,355	35 Lawyers; 13 Restructuring
Client 8	$2,414,477	45 Lawyers;13 Restructuring
Client 9	$1,016,269	20 Lawyers; 5 Restructuring

Representative Matters

Debtors' Counsel in Chapter 11 Cases

Intervention Energy Holdings, LLC
Debtors Counsel in Recent Chapter 11 Proceedings to **Intervention Energy Holdings, LLC**

IMRIS Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **IMRIS Inc.**

Katy Industries, Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **Katy Industries, Inc.**

L.K. Bennett U.S.A., Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **L.K. Bennett U.S.A., Inc.**

EYP
Debtors Counsel in Recent Chapter 11 Proceedings to **EYP**

Montco Offshore, Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **Montco Offshore, Inc.**

Montgomery Ward Holding Corp.
Debtors Counsel in Recent Chapter 11 Proceedings to **Montgomery Ward Holding Corp.**

New Cotai Holdings, LLC
Debtors Counsel in Recent Chapter 11 Proceedings to **New Cotai Holdings, LLC**

Otsuka America Pharmaceutical, Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **Otsuka America Pharmaceutical, Inc.**

PHI, Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **PHI, Inc.**

Abengoa/Abeinsa
Debtors Counsel in Recent Chapter 11 Proceedings to **Abengoa/Abeinsa**

Promise Healthcare Group
Debtors Counsel in Recent Chapter 11 Proceedings to **Promise Healthcare Group**

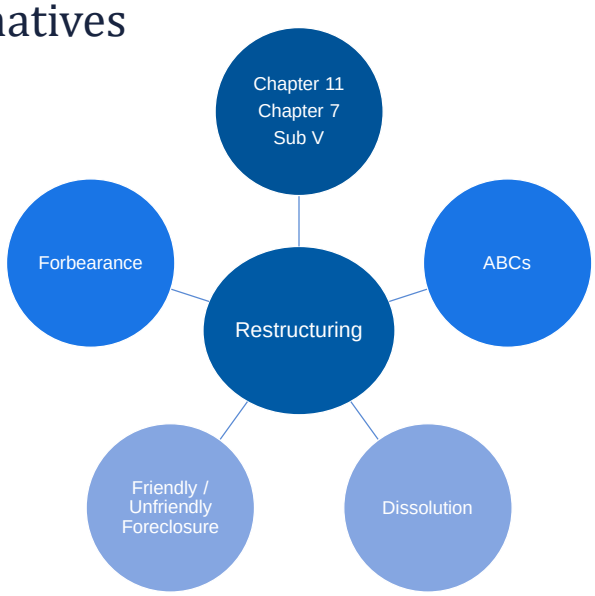
PJ Finance Company
Debtors Counsel in Recent Chapter 11 Proceedings to **PJ Finance Company**

REVA Medical, Inc.
Debtors Counsel in Recent Chapter 11 Proceedings to **REVA Medical, Inc.**

Rupari Food Services
Debtors Counsel in Recent Chapter 11 Proceedings to **Rupari Food Services**

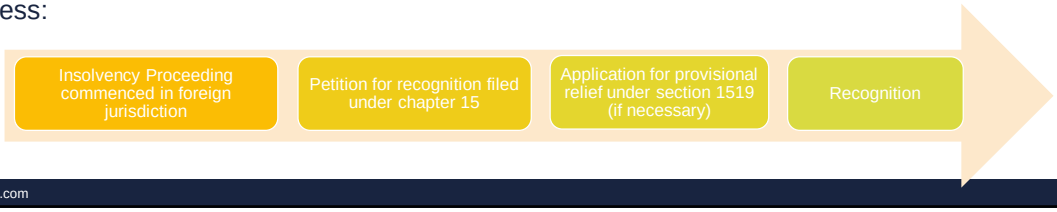
Other Restructuring Alternatives

- Restructuring lawyers have an ever-expanding toolbelt to assist distressed entities to restructure.
- Some of these options arise from state law, whereas some are solely creatures of federal bankruptcy law.
- There is no one-size-fits-all for a distressed entity; rather, restructuring lawyers always must evaluate which restructuring option is available, feasible, and which will ultimately achieve the client's restructuring goals in the ***most effective, efficient and value-accretive manner.***



Chapter 15

- ***Chapter 15 proceedings entail representations of "foreign representatives," in large part, to give effect to orders issued in a foreign jurisdiction by a foreign bankruptcy court within the United States.***
- Relatively new law.
- Purpose:
  - Encourage global cooperation among courts in multinational restructurings
  - Provide greater legal certainty for trade and investment
  - Facilitate fair and efficient administration of cross-border insolvencies
  - Protect and maximize value
  - Protect interest of all creditors and parties in interest
- Process:



Sales and Acquisitions Under Section 363 of the Bankruptcy Code ("363 Sale")

- Restructuring counsel may represent debtor-sellers and nondebtor-buyers (including stalking horse buyers and credit bidders) in 363 Sales. The associated responsibilities vary significantly depending on which constituency one represents.
- A 363 sale is public (i.e., subject to a public auction). Key benefit: assets are sold free and clear of all liens and incumbrances (subject to certain exceptions).
- ***The representation requires substantial knowledge of M&A.***
- In 363 sales, debtor always tries to elicit competitive bidding by signing up a "stalking horse bidder" (which creates a guaranteed floor for the purchase price in exchange for granting the stalking horse bidder certain bid protections).
- The **timeline for a 363 Sale** depends on many factors (e.g., the debtor's liquidity profile and/or other operational concerns, the extent to which the assets to be sold have been marketed prepetition, whether the secured lenders support the proposed timeline, negotiated milestones set forth in a stalking horse purchase agreement (if any), approval of secured lenders, etc.), but stage-wise typically looks as follows:

Official Committee of Unsecured Creditors

- An official committee of unsecured creditors is a group of unsecured creditors selected by the United States Trustee (the "U.S. Trustee") most often among the group of the largest (by amount of unsecured debt owed to them by the Debtor) to represent the interests of all unsecured creditors in a Chapter 11 case.
- Generally, within ten days of the Petition Date, an official committee of unsecured creditors (the "Committee") will be formed.
  - The Committee is a statutory body that has a fiduciary duty to all creditors.
  - The Committee will range from between 3 – 7 unsecured creditors who are not insiders.
- While the Committee does not assume any operational or management responsibility, it will have the right to retain professionals, review the debtors' business decisions and appear in Court.
  - Often, in liquidation cases, the Committee will assume responsibility for resolving claims and commencing litigation (especially D&O litigation) following confirmation of the plan.
  - As a party in interest, a committee may be heard on any issue in the bankruptcy case.

➢ ***This work is often litigation-heavy.***

Counsel to Lenders – Debtor-in-Possession Financing

➢ In a chapter 11 in-court setting, financing that a debtor may obtain following the commencement of its bankruptcy case is called "debtor-in-possession (or DIP) financing."

- The Bankruptcy Code permits a DIP (or trustee) to obtain credit or incur debt if it meets certain conditions.
- It can be either unsecured or secured.
- Often mirrors the complexity of pre-petition capital structures and may involve split-lien financings and intercreditor agreements.
- Typical facility types include:
  - Funding on term sheets
  - Credit agreements
  - Term loans
  - Revolving credit facilities
  - Note purchase agreements
  - Letter of Credit facilities

➢ ***This representation largely involves a pure financing practice coupled with litigation, if necessary, and knowledge of bankruptcy process and DIP-related provisions.***

Individual Creditor and Equity Holder Representation

- In addition to representing the Unsecured Creditors Committee, a restructuring lawyer may also represent individual creditors, individual equity holders or an equity committee.
- As with most areas of bankruptcy, the representation of creditors and equity holders involves aspects that are both transactional and litigation in nature.
- The focus is on preserving and enforcing their claim by filing a proof of claim and advocating for their interests by objecting to certain of the Debtors' first bankruptcy motions (or preserving ownership in a debtor).
- Creditors also interested in increasing the pool of assets available for distribution to creditors by reducing administrative costs to the estate during the bankruptcy case, preserving litigation claims in a sale and ensuring that the creditors' interests are adequately protected in all bankruptcy filings. At this point, the creditors' interests diverge from the equity holders, as unsecured creditors seek, at a minimum, to be paid prior to any distribution to equity.

➢ ***For this reason, the day-to-day work varies quite a bit in representing creditors and equity holders, with some days being in court at hearings, some days being in negotiations with Debtors' counsel and some days reviewing filings and drafting objections or proofs of claim/proofs of interest.***

Tax

DLA PIPER

Tax Partner: Frank Mugabi

- Frank Mugabi focuses on the tax aspects of private equity, partnerships and other joint venture arrangements, cross-border mergers and acquisitions, transactions under Chapter XI of the US Bankruptcy Code, and oil & gas transactions (including unitizations and other sharing arrangements, joint operating agreements, as well as master limited partnerships).
- Frank also represents sponsors, underwriters, and issuers in connection with initial public offerings, including initial public offerings by blank check companies for the purpose of effecting a merger or business combination. Frank also advises institutional investors investing in private equity funds, as well as advises sponsors of collateralized loan obligations (CLOs). Additionally, Frank advises on a wide range of international tax matters for clients in various industries, including repatriation planning, foreign tax credit planning, and Pillar 2 planning.

Frank Mugabi
Partner (New York)
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Education
Harvard School of Law LLM.

Makerere University, LLB (Law)

Admissions
New York

Practicing Tax

- We work with our clients on a variety of transactions and planning opportunities to ensure they are paying the correct amount of taxes.
- Why choose a career in tax law?
  - Where there is money changing hands, someone will be paying taxes
    - Tax lawyers will always have a seat at the negotiation table
    - Often tax will be one of the main drivers of a deal
  - Recession proof
    - “In this world, nothing is certain except death and taxes” – Benjamin Franklin
  - No matter what the state of the economy is, people will always need someone to advise them on the tax consequences of their business operations

What is Transactional Tax?

Standard transaction structures

- Common transaction structures
  - Taxable sales - If taxpayer has attributes such as losses that can offset gain on sale they may use either an:
    - Asset Sale, or
    - Stock Sale
  - Tax free
    - Reorganizations - If certain statutory and judicial requirements are met, companies can merge or reorganize their organizational structure on a tax-free basis
      - Acquisitive - merger of two entities for any number of reasons
        - Increased revenue
        - Improving financial performance
        - Economies of scale
      - Divisive – separation of business entities
        - Spinoffs/ Split-ups - Taking one company forming two or more on a tax-free basis
          - Abandoning certain businesses
          - Changing strategies

Real world examples

Where might you see some of the examples shared

- Madison Square Garden – Spinoff of live entertainment business
  - Madison Square Garden Entertainment Corp. has announced that it's moving ahead with a spin-off of its live entertainment business. That means investors will receive shares in a company holding the Sphere on the Las Vegas Strip, and potentially, Tao Group.
- Microsoft acquisition of Actvision Blizzard Inc.
  - In January of this 2022, Microsoft acquired the world's largest video game maker for $95 per share, in an all-cash transaction valued at $68.7 billion, suggesting to many that this was the beginning of a new phase for the gaming industry.
- WarnerMedia and Discovery
  - In April 2022, AT&T's WarnerMedia completed a merger that for just over $85 billion in an attempt to become a vertically integrated media conglomerate), and have it merge with Discovery, Inc. to form a new publicly-traded company.

Building a Tax practice

Getting started

- Similar in the way that you would develop any other practice
- Develop an area of expertise
  - Many different areas of focus
    - Partnership
    - Corporate
    - M&A
    - International
- Develop a client base and become a trusted advisor

Real Estate

DLA PIPER

Real Estate Partner: Thanos Matthai

- Thanos focuses on commercial real estate acquisitions, dispositions, joint ventures, financing and leasing.
- His experience includes representing buyers and sellers of office properties, multifamily properties, industrial properties, shopping centers and mixed-use projects and representing institutional investors and developer partners in joint venture transactions. Thanos also represents borrowers in primary and secondary financing for all assets types and represents landlords in leasing office, retail and industrial spaces.

Thanos Matthai
Partner (Boston)
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Education
Boston University J.D.

Boston University B.S.

Admissions
Massachusetts, New York

Practicing Real Estate

Industry snapshot

- At a high level, real estate law involves dealing with rights in real estate. It's a dynamic practice of law that is affected by everything going on in the world today that you may read about.
- Real estate is everything around us. It is where you live, work and play. It involves the streets you drive on, the shopping centers and restaurants you visit and the home you live in.
- Real estate is tangible, and everyone knows what it is.
- Globally, the value of real estate (estimated $326.5 trillion) is higher than the value of all global equities and debt securities combined, *Savills*.

Common forms of Real Estate

- Industrial / Warehouse / Logistics
- Office
- Retail
- Data Center
- Life Science / Lab
- Multifamily
- Single family
- Self-Storage
- Student Housing
- Senior Living

Real Estate market influences

Market influences shift client needs and how we respond

- Inflation and rising interest rates
- Remote work / working from home
- Proptech and other technology (e.g., air filtration upgrades during the pandemic)
- Life sciences
- Electrification / ESG / electric vehicles
- Crowdfunding
- Cryptocurrency
- Metaverse

Real Estate Investors and Representative Clients

- Individuals
- Developers
- Operators
- Insurance companies
- Investment funds (including private REITs)
- Publicly-traded REITs
- Pension funds
- Endowments
- Sovereign wealth funds

What does it mean to be a Real Estate lawyer?

Three core areas where real estate lawyers focus

1. Transactions (Acquisitions / Sales / Financing)
2. Development / Land Use
3. Leasing

The following fields are important to all three of these core areas:

- Joint Ventures
- Finance
- Construction

Representative US Real Estate Clients

We represent many of the world's leading real estate companies, investors and well-known corporations.

Real Estate transactions

Acquisitions / Sales / Financing

- Lender advancing funds for a building that doesn't yet exist
- Buying, selling and financing properties across the United States and the world
- Negotiate purchase and sale documents and loan documents
- Buyer / lender performs due diligence of the properties
  - Title and survey
  - Zoning
  - Leases, service contracts, financials
- Property condition reports and environmental assessments
- Conditions precedent to closing
- Closing

Real Estate transactions

Development / Land Use

- "Dirt lawyer"
- Land assembly
- Zoning review
- Design and planning (master planning)
- Permits and entitlements
- Negotiations with stakeholders, municipalities, development authorities, etc.
- Construction and finance

Real Estate transactions

Leasing

- Leases create value
- Long-term document to manage a long-term relationship
- Negotiate the lease
- Understanding how space fits within the building
- Construction work / build out
- Financing and lender rights

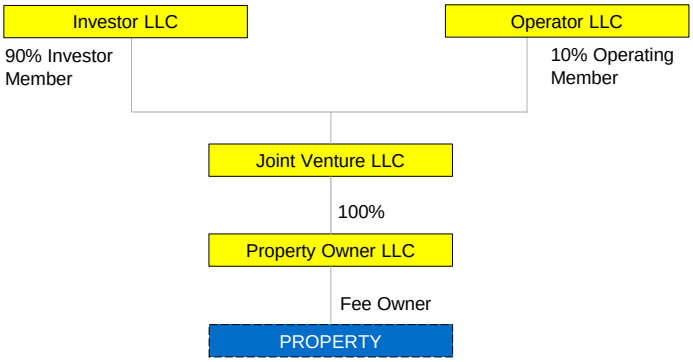
Real Estate transactions

Joint Ventures

- Investing with one or more partners
- Acquisition of a stabilized building or development of new project
- Usually, an operator or developer who contributes a small amount of capital and manages or develops the project and an investor who contributes a large amount of capital but has limited management rights
- Joint venture documentation is complicated and long-term
  - Capital contributions and distributions
  - Management and decision-making
  - Exit rights

Real Estate transactions

Common joint venture structure



Real Estate transactions

Financing

- Borrowing to acquire or develop real estate
- Secured (typically mortgage financing) vs. unsecured financing
- Loan documentation is long term
  - Lender restrictions on borrower's rights to operate, manage and lease the property
- Construction financing
  - Lender advancing funds for a building that doesn't yet exist

Real Estate transactions

Construction

- Negotiating contracts with general contractor, architect, engineer and others
- May be for ground up construction but also for build out of a tenant space
- Completion requirements and timing
- Responsibility for delays
- Unforeseen issues and force majeure
- Cost and timing for changes
- Payment requirements and understanding lien laws

Questions?