

Business Development Companies



MAYER | BROWN

Financing Growth through Permanent Capital Vehicles

A **business development company** (“BDC”) is a closed-end investment company specifically designed to provide capital to, and invest in, small and middle-market companies in the United States. BDCs elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940, as amended (the “1940 Act”), and as a result benefit from pass-through tax treatment. Given the limited availability of traditional lenders and financing sources, BDCs are playing an ever-increasing role as an important source of liquidity to small and mid-sized companies that may not be able to otherwise obtain bank financing or do so at attractive levels.

“They are extremely responsive, very practical and really able to give you a real-world view of legal issues that can be very technical.”

– **Chambers USA** about our work with funds

As a result of their special designation under the 1940 Act, BDCs have greater flexibility than other types of registered investment funds to use leverage and engage in affiliate transactions with portfolio companies. Mayer Brown’s leading corporate & securities practice, combined with our knowledge of the 1940 Act, the Advisers Act and the tax considerations applicable to BDCs, make us a regular choice for private equity, investment advisers and other sponsors of BDCs and for the underwriters and placement agents to BDCs.

Mayer Brown has for decades been known as a leading firm advising issuers and underwriters on initial public offerings. Given the depth of our capital markets experience, we are a key partner for issuers transitioning to public ownership.

With our tax and investment management colleagues, we assist investment advisers, sponsors, management and boards of directors in structuring and forming their BDCs. We help to anticipate potential accounting, legal, tax and regulatory issues; plan the BDC’s financing and growth strategy; structure affiliate relationships; adopt the necessary compliance policies and procedures and, for the BDC’s investment adviser, policies designed to comply with the Advisers Act; advise on possible 1940 Act exemptive relief; draft securities offering disclosure; and assist with the BDC’s periodic public reporting obligations following its IPO.

We regularly represent issuers, underwriters, investment advisers and placement agents in all aspects of capital markets transactions, including advising on public (IPO and follow-on) and private offerings, including confidentially marketed public offerings, at-the-market offerings, shelf offerings, private placements and PIPE transactions. We also are one of the preeminent firms advising on debt and equity-linked issuances.

We advise clients on a full range of disclosure and regulatory matters relating to the federal securities laws, including the 1940 Act and the Advisers Act. We prepare registration documents, and help our clients in all phases of their operations, including disclosure, compliance, risk management, record keeping, and oversight by independent directors.

We also advise our BDC clients on industry best practices regarding compliance policies and procedures and other corporate governance practices. In addition, we provide practical advice on matters relating to capital structure, including compliance with the asset coverage test, the issuance of securities below net asset value, transactions with affiliates, the valuation of illiquid securities, reviewing and structuring management fees, and related matters.

“With strong teams in Chicago, New York and Charlotte, Mayer Brown is commended for its ‘responsiveness, client focus and subject matter experience’ as well as its ‘practical advice and top-notch legal knowledge.’”

– The **Legal 500 US** about our Lending Practice

Our banking and finance group and our restructuring, bankruptcy & insolvency group provide essential support for our BDC clients. Our banking and finance group, including our lending practice works closely with BDCs to negotiate and establish credit facilities. We also have extensive experience structuring and negotiating investments in BDC portfolio companies. This includes first and second lien loans, unitranche and other first out/last out loans, covenant-lite loans, PIK debt, subordinated loans, debtor-in-possession loans, high-yield debt securities, convertible debt, preferred equity and other mezzanine financings.

Our restructuring, bankruptcy & insolvency group advises BDCs and other lenders in connection with distressed investments, including restructurings, out-of-court workouts, foreclosures and bankruptcy proceedings.

Our tax department is an integral part of the Mayer Brown team advising BDCs. As such, the tax team focuses on creating the most tax efficient structure depending on the facts and circumstances of any particular BDC or company looking to become a BDC. Our tax department has significant experience with both private and public BDCs. In addition, members of our tax team have decades worth of experience with the taxation of regulated investment companies that are eligible for favorable tax treatment. This experience is of particular significance to public BDCs since they typically elect to be treated as regulated investment companies.

We Understand BDCs.

Our dedicated approach provides our BDC clients with expertise across all relevant practice areas.

Investor's Point of View.

Our deep experience protects our BDC clients and their middle market investors in a complex and ever-changing market.

Advocating for Reform.

We review and advise our BDC clients on legislative and regulatory reforms.

Market Research.

Our market database tracks industry best practices and new forms of equity and debt instruments used by BDCs.

Business-Minded Approach.

Our pragmatic and practical approach balances protecting our BDC clients' rights with helping to grow their business while also complying with securities law obligations.

Cost-Effective Advice.

Understanding our BDC clients' needs, growth strategy and market context helps us to provide timely responses in a cost-effective manner and separate our practice from our competitors.

“Accomplished advisers on the tax aspects of major transactions ... advises on the tax aspects of capital markets transactions. Offers notable cross-border experience.”

– **Chambers USA** about our corporate & finance tax work

“The ‘experienced and responsive’ team at Mayer Brown provides a ‘committed and client-oriented service’ and is able to ‘get quickly up to speed from a business perspective.’”

– **Legal 500 US** about our capital markets practice

COMPREHENSIVE ADVICE

Formation and Reorganization. Our corporate & securities and tax attorneys represent investment advisers, private equity and hedge fund sponsors and others in their BDC formation and reorganization transactions.

Capital Raising. Our corporate & securities practice represents BDCs and their underwriters in BDC IPOs and follow-on offerings, at-the-market (or “continuous”) offerings, debt offerings, shelf offerings, rights offerings, private placements, and PIPE transactions.

Public Disclosure and Corporate Governance Matters. We regularly advise our BDC clients on their public reporting obligations under the Exchange Act.

We work with our BDC clients on corporate governance matters, such as on matters relating to the composition of their boards of directors, the role of independent directors, and addressing activist investors.

Strategic Transactions and Joint Ventures. We counsel BDC boards of directors as well on strategic transactions, such as mergers, acquisitions, liquidations, replacement of advisers, and affiliate transactions. We also counsel BDCs in structuring, negotiating and establishing joint ventures.

Monitor BDC Legislative and Regulatory Changes. Advise our BDC clients on the impact of recent legislation relating to, among other things, leverage and asset coverage requirements.

Regulatory Matters. Our investment management, tax, and corporate & securities attorneys anticipate potential accounting, regulatory, reporting, tax, and compliance issues when representing BDCs on a full range of matters. We regularly advise BDCs on applications for exemptive relief related to co-investments, joint exits, joint restructurings, and SBIC leverage. We advise independent directors of BDCs on asset allocation policies, valuation issues, other potential conflicts of interest, sales below NAV and NAV calculations, and transactions with affiliated lenders.

Portfolio Investments. Our private credit group regularly represents BDCs in structuring and closing portfolio investments including first and second lien loans, unitranche, mezzanine financings and equity investments.

Financings. Our leveraged finance attorneys represent BDCs and lenders in portfolio securitization financings (including CLOs and similar arrangements), as well as in general bank financing arrangements and are experienced in the use of TRS, repos, securities lending and other structured transactions in such arrangements.

Bank Regulatory Advice. Our bank regulatory attorneys advise on the considerations arising under the Bank Holding Company Act, the Volcker Rule, and other banking laws and regulations, especially in connection with the formation of privately held or public BDCs affiliated with or sponsored by bank holding companies.

Private BDCs. We advise private equity sponsors and other investors in the formation of privately held BDCs that serve as permanent capital vehicles for strategic investments.