

Food & Agribusiness



OUR FOOD & AGRIBUSINESS PRACTICE

Mayer Brown is a global law firm with roots in the American Midwest. As a result, food and agriculture has been one of our core offerings for more than 100 years. Our Food & Agribusiness team regularly represents a broad range of financial institutions, commodity producers, traders and corporations, from input through retail, and is well-qualified to address the challenges that arise in the food and agricultural sector.

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Above and beyond our industry understanding, we recognize that practice style is critical to the success of our clients in the food and agribusiness sector. We have a long track record of providing creative advice without “overlawyering” and of obtaining buy-in from clients and their customers in a cooperative, low-key manner. We set out below some of the key areas in which we can be of assistance to clients in this sector.

Agrifinance

With more than 200 finance lawyers, Mayer Brown has one of the largest banking and finance practices in the world. We represent most of the world’s largest banks, both domestic and international. The majority of the firm’s 100 largest clients include leading commercial and investment

banks, insurance companies, leasing companies and asset-based lenders.

Our financing experience covers the full range of agribusiness activities, including input supply, processing, value-added manufacturing, wholesale distribution and retail. We have also worked on financings involving the full range of agricultural commodities, including grain, sugar, coffee, dairy, chicken, beef, pork, seafood, soybeans, fruits and vegetables, as well as cotton, oilseeds and forest products. This experience includes working with borrowers operating on both a cooperative and noncooperative basis.

Our lending experience with agricultural companies includes cash flow loans, asset-based loans (ABL) and “borrowing base” loans with limited ABL dominion and control concepts.

Our ABL and borrowing base deal experience includes establishing eligibility criteria for those assets forming a part of the borrowing base (both domestic and pre-export finance) and standards for imposing appropriate reserves for such matters as PACA liens, non-performance, landlord liens and the like.

Many of our deals involve detailed lock-box and cash concentration mechanics that provide lenders control over cash receipts. We have substantial experience with the management of security interests in a variety of commodities. This includes detailed knowledge as to taking security interests with respect to in-transit agricultural products, whether being shipped by train, truck, barge or international oceangoing vessel. Work in this area has included the treatment of tangible bills of lading and warehouse receipts, both negotiable and non-negotiable, as well as electronic bills of lading and warehouse receipts, which are increasingly the norm in grain, cotton and other commodities. In the last few years, our real estate attorneys have filed hundreds of mortgages in connection with our agrifinance deals and have extensive knowledge of the unique issues arising from securing rural real estate and processing facilities.

Our Agrifinance practice is global in scope, having closed transactions in the United States and countries throughout Europe, Asia, and Central and South America. We are one of the leading law firms in the world for cross-border lending and have substantial experience in structuring cross-border financings.

Derivatives

Whether a matter involves equity and index derivatives, derivatives-linked securities, fund-linked derivatives, commodity-linked derivatives, structured products or other exotic derivatives, our lawyers have experience across all the credit, equity and commodity asset classes. Our team understands the hedging strategies commonly

employed for agricultural commodities and how they can be managed as part of larger capital markets financing. Our team has experience across all of the major documentation platforms, including ISDA, FOA, EFET and specific commodity trading documentation, such as for the Zeebrugge Hub and Forward Freight Association.

Corporate and Capital Markets

Mayer Brown represents many of the largest food and agricultural companies in the world. We regularly represent issuers, underwriters, placement agents and selling shareholders in a wide variety of equity capital markets transactions, including public offerings and private placements, stock exchange listings, rights offerings, open offers, offerings of depositary receipts, private investments in public equities, spinoffs, exchange offers, capital reorganizations, share buy-backs and de-mergers. In addition, we regularly advise corporate issuers in connection with debt regulation B issuances that are listed on the major UK, other European, Asian and US exchanges.

Mergers & Acquisitions and Antitrust

Our M&A practice regularly advises food industry and agriculture clients around the world on M&A transactions, including investments, joint ventures, divestitures, management and other buyouts, and reorganizations. We routinely handle transactions ranging in size and complexity from multibillion dollar, cross-border transactions to mid-sized and smaller transactions within a single national or regional market.

We have substantial experience advising food and agricultural companies in antitrust and competition issues around the world. Our antitrust and competition lawyers are a critical component of our ability to provide a full range of services to our M&A clients, and they enable us to provide “one-stop” advice in connection with complex, multi-jurisdictional M&A matters.

Government and Global Trade

With long-standing relationships with policymakers in capitals around the world, attorneys in our government and global trade group assist multinational companies in identifying promising foreign markets and developing entry strategies that overcome market obstacles. We work closely with bilateral, regional and multilateral institutions, including the World Trade Organization, the World Customs Organization, the European Union, the Asia-Pacific Economic Cooperation forum and the Organization for Economic Cooperation and Development, to address unfair or illegal trade barriers, build international business coalitions and promote business-friendly trade practices.

Among the internationally recognized attorneys on our team are a former United States Secretary of Commerce, two former United States Trade Representatives, a former European Union Ambassador to the United States and a former Member of the United States Congress, as well as former senior United States trade negotiators and senior trade officials. Such credentials give us the kind of credibility with senior government officials that can help clients open markets, comply with trade laws and resolve trade disputes.

Food Industry False Advertising

The food and beverage industry is currently facing a tidal wave of class actions lawsuits attacking food labeling and advertising. Our nationally recognized false advertising practice is at the forefront in this area and has a successful track record in defending

against such claims. We accomplish this by creating a unified strategy to handle copycat class actions or private claims piggybacking on a government investigation. We also regularly advise our clients on how to minimize exposure to future false advertising claims.

Litigation/Dispute Resolution

Our litigation and dispute resolution teams have substantial experience in handling complex-high-stakes litigation matters for agribusiness client around the world. We also advise on systems and controls to combat corporate corruption and comply with the relevant legislation, including the US FCPA and the UK Bribery Act, and conduct internal investigations into allegations of corruption for our clients.

Restructuring, Bankruptcy & Insolvency

The global reach of our restructuring, bankruptcy and insolvency team, together with our extensive knowledge regarding PACA lien and other lien perfection and priority issues, enable us to efficiently represent clients in financially distressed agricultural-related situations. We have extensive bankruptcy experience with respect to cash collateral and adequate protection motions, debtor-in-possession financings, exit financings, adversary proceedings and contested plan confirmation hearings, should a consensual resolution not prove practicable. We have also represented successful purchasers of food and agribusiness assets via Section 363 sales in bankruptcy.

Representative Matters

Finance

- **Allens Inc.** Represented the administrative agent and lead arranger in a \$235 million senior secured credit facility to Allens Inc., a family-owned and operated vegetable packaging company.
- **Archer Daniels Midland.** Represented the deal manager in Archer Daniels Midland's fixed price tender offer to purchase \$500 million of debentures.
- **Bahia Specialty Cellulose.** Represented the lead arrangers on a \$470 million pre-export financing for Bahia Specialty Cellulose S.A., the Brazilian pulp maker. *Trade & Forfaiting Review* named this transaction Deal of the Year 2010 for its innovative structure, which combined both pre-export financing and project financing features.
- **Bunge Limited.** Represented the administrative agent in a \$700 million unified, global trade receivables securitization for Bunge Limited. This deal won *Trade & Forfaiting Review's* Deal of the Year 2011.
- **Farmers Cooperative.** Represented the administrative agent in the refinancing of an \$805 million term and revolving credit facility to Farmers Cooperative Company, the largest farmer-owned agriculture cooperative in Iowa.
- **Growmark.** Represented the administrative agents in a \$600 million revolving credit facility for Growmark, Inc., with assets of the borrower being secured on a ratable basis with \$200 million of private placement notes held by a syndicate of insurance companies.
- **Holsum Bakery de Puerto Rico, Inc.** Represented the administrative agent in a \$178 million first, second and third lien and mezzanine financing to the largest bakery in Puerto Rico.
- **Land O' Lakes.** Represented the administrative agent in a \$1.15 billion senior secured credit facility and *pro rata* private placement of notes.
- **Mercon Coffee Corporation.** Represented the administrative agent in a \$240 million financing with security in various European countries and Vietnam.
- **Multigrain S.A.** Represented the borrower in a \$500 million senior secured export finance facility.
- **Ocean Spray Cranberries, Inc.** Represented the administrative agent in \$900 million of various term and revolving credit facilities.
- **Oil Seed and Animal Feed Production.** Represented CPM Holdings, a supplier of process equipment used for oilseed processing and animal feed production, as issuer of \$200 million in notes.
- **Purina Mills.** Represented the administrative agent in an \$800 million senior secured financing and restructuring.
- **Pilgrim's Pride Corporation.** Represented the administrative agent in a \$1.85 billion asset-based financing that was entered into in connection with Pilgrim's exit from a Chapter 11 bankruptcy proceeding. This transaction was featured as the lead article in *The Deal*.
- **Rayonier Inc.** Represented the underwriter in the issuance of \$325 million of senior notes to Rayonier Inc., a global forest products company.

- **Southwest Cheese Company, LLC.** Represented the administrative agent in a \$205 million term and revolving loan, secured by, among other things, an industrial bond issuance of the City of Clovis, New Mexico.
- **Sucden Americas Corporation.** Represented the administrative agent in a \$200 million domestic and export financing secured by sugar assets located in several South and Central American countries. This deal was named 2010 Deal of the Year by *Trade Finance* magazine.
- **SUPERVALU.** Represented the administrative agent in the financing for the \$17.4 billion purchase of Albertson's grocery and drug stores.
- **Wells Timberland REIT.** Represented the administrative agent in a \$450 million first lien, second lien and mezzanine financing for 300,000 acres of timberland.
- **Weyerhaeuser Forest Products.** Represented the lender in a \$50 million letter of credit facility.
- **Cargill Crop Nutrition.** Represented Cargill in the combination of Cargill Crop Nutrition and IMC Global Inc. to create The Mosaic Company, a producer of phosphate and potash crop nutrients.
- **Cargill Inc.** Represented Cargill on the AUD 870 million acquisition from Agrium Inc. of grain marketing, trading and distribution assets.
- **Cargill Inc.** Represented Cargill in its acquisition of Degussa Food Ingredients.
- **Dow AgroSciences.** Represented Dow AgroSciences on the acquisition of the soybean production assets of Renze Hybrids, Inc.
- **Dow AgroSciences Divestitures.** Represented Dow AgroSciences in numerous divestitures of agricultural products, including the sales of Dow AgroSciences' European Dithane fungicide business, the M-Pede insecticide business, the Scythe herbicide business and Tebufenozide insecticide and thifluzamide fungicide business.

Corporate, Capital Markets and Mergers & Acquisitions

- **Africa Oil Palm.** Represented Unilever on the sale of a Ghana oil palm plantation business and the Frytol brand to Wilmar Africa Limited.
- **AgroFinanzas S.A.** Represented Société Générale in the acquisition of a 50 percent equity interest in AgroFinanzas SA de CV, a specialized financial institution focused on agricultural financing in Mexico.
- **Canada Meat.** Represented JBS S.A. on the acquisition by a 50 percent equity interest of Weddel Limited, a Canada-based privately owned meat producer.
- **Dow AgroSciences Joint Ventures.** Represented Dow AgroSciences in several strategic joint ventures with plant breeding and agricultural R&D companies around the world, including in the corn, wheat and soybean sectors. These transactions involved, among other things, complex supply, collaboration and license agreements.
- **Dow AgroSciences Seed Company Acquisitions.** Represented Dow AgroSciences in dozens of seed company acquisitions, including Brodbeck Seed, Dairyland Seed, Grand Valley Hybrid, Hyland Seeds, Northwest Plant Breeding Co., Pfister Seed, Prairie Brand Seed, Renze Seeds, Schillinger Seed and Triumph Seed.

- **Dow Crop Protection.** Represented Dow AgroSciences in an exclusive supply and distribution agreement with Syngenta covering crop protection products in 12 countries in the Commonwealth of Independent States region.
- **European Dithane.** Represented Dow AgroSciences in the divestment of its European dithane fungicide business to India-based Indofil Industries Ltd., a fully integrated agribusiness and agrichemicals company.
- **Fresh Del Monte.** Represented the underwriter in the issuance of \$10.5 million ordinary shares to Fresh Del Monte Produce.
- **Grupo Bimbo.** Represented George Weston Limited in the sale of its U.S. baked goods business to Grupo Bimbo, S.A.B. de C.V. for approximately \$2.5 billion.
- **Mitsui & Co., Ltd.** Represented Mitsui in its \$275 million acquisition of Multigrain AG, an agricultural production and grain distribution company.
- **Natumi AG.** Represented Hain Celestial Group on the acquisition of the German soy milk producer Natumi AG.
- **Nestlé S.A.** Represented Nestlé in its \$11 billion acquisition of the global infant formula business of Pfizer, Inc.
- **Nestlé S.A.** Represented Nestlé in a Latin American milk powder and liquid milk products joint venture with Fonterra Cooperative Group of New Zealand.
- **Senoble.** Represented Senoble on its acquisition of a dairy plant from Mliekoservis Slovakia AS, a Slovakia-based manufacturer of milk powder.
- **Syngenta Crop Protection.** Represented Syngenta in its acquisition of Pasteuria Bioscience, Inc., a biotechnology company engaged in the development of nematicides for agricultural and specialty crops.
- **Syngenta Crop Protection.** Represented Syngenta in the purchase of the chrysanthemum and asters business of Yoder Brothers Inc.
- **Syngenta Insecticide.** Represented Syngenta in its \$125 million acquisition of the DuPont Professional Products insecticide business.
- **Unilever Plc.** Represented Unilever on the disposal of its seed oils and cooking fats business in the United Kingdom to Princes Limited.
- **Unilever Plc.** Represented Unilever on the sale of its refined oils business and boxed fats business to Pura Foods Limited, a subsidiary of Archer Daniels Midland Company.
- **Unilever Ventures.** Represented Unilever in its investment in SNOG Pure Frozen Yogurt Limited, a producer and retailer of frozen yogurt.
- **VION Food Group.** Represented VION Food Group on the sale of its Thai chicken business, Grampian Foods Siam Ltd., to Navis Capital Partners.

Government and Global Trade

- **Baby Food Company.** Represented a company manufacturing breast milk substitutes before various European agencies.
- **European Customs.** Represented a feedstuff manufacturer and banana importers regarding various customs determinations before the European Union.

- **Free Trade Agreement.** Represented Central American poultry and sugar industries on negotiations of a free trade agreement with the European Union.
- **Nutrition Company.** Represented a producer of nutritional complements regarding consumer protection legislation before various European institutions.
- **Bilateral Trade Agreements.** Represented numerous countries around the world, including China, Peru, Colombia, Korea, Vietnam and Ukraine, in numerous bilateral and multinational trade agreements.
- **Multinational Trade Agreements.** Lead representation in the NAFTA 117-nation, Uruguay Round and WTO Doha Round free trade agreements.
- **Tax Dispute.** Obtained a Presidential decree in Brazil regarding the discriminatory tax treatment of a US F&A company.
- **Provimi.** Represented the purchaser in the €1.5 billion acquisition of Provimi, a Netherlands-based animal nutrition company.

False Advertising Class Actions

- **Dreyer's Grand Ice Cream.** Represented Dreyer's Grand Ice Cream in a nationwide consumer class action alleging false advertising with respect to frozen dessert products labeled "0g trans fat."
- **Gerber Probiotic.** Represented Gerber Probiotic Sales Practices in a nationwide consumer class action alleging false advertising with respect to baby formula and cereal products labeled as containing immune-supporting probiotics, digestion-supporting prebiotics, and brain and eye development-supporting DHA.
- **Chobani.** Represented Chobani, Inc. in a nationwide consumer class action alleging false advertising with respect to Greek yogurt products marketed as having "only natural ingredients".
- **Mott's LLP.** Represented Mott's in a nationwide consumer class action alleging false advertising with respect to nutritional claims of Yoo-hoo chocolate drinks.
- **Nestlé USA.** Represented Nestlé in various consumer class actions alleging false advertising with respect to Hot Pockets and Coffee-mate products labeled "0g trans fat.", juice products marketed as supporting brain development, immunity and digestive health, juice products marketed as "Juicy Juice 100% Juice Blend" and nutritional and immunity claims of Carnation Instant Breakfast.
- **Cargill Sorbitol and Starch.** Represented Cargill on an IDR 2.72 billion acquisition of a majority stake in Indonesia-based PT Sorini Agro Asia Corporindo Tbk, a producer and supplier of sorbitol and other starch products.
- **Financiere Turenne Lafayette.** Represented Financiere Turenne Lafayette in its acquisition of Madrange S.A., a France-based producer of packaged meat products.
- **German Company.** Represented a German food company in a cartel investigation by the German Bundeskartellamt, the German competition authority.

Antitrust and Competition

Contacts

For more information about Mayer Brown's Food & Agribusiness practice, please contact:

TEAM LEADER

Jeffrey L. Dunetz

Chair of Food & Agribusiness Group

Chicago/New York

+1 312 701 8282

+1 212 506 2670

jdunetz@mayerbrown.com

ANTITRUST

Scott Perlman

Washington DC

+1 202 263 3201

sperlman@mayerbrown.com

Stephen Shapiro

Chicago

+1 312 701 7327

sshapiro@mayerbrown.com

BANKRUPTCY/ RESTRUCTURING

Thomas (Tom) S. Kiriakos

Chicago

+1 312 701 7275

tkiriakos@mayerbrown.com

Stuart Rozen

Chicago

+1 312 701 7302

srozen@mayerbrown.com

CORPORATE

David Carpenter

New York

+1 212 506 2195

dacarpenter@mayerbrown.com

Jennifer Keating

Chicago

+1 312 701 8858

jkeating@mayerbrown.com

D. Michael Murray

Chicago

+1 312 701 7321

mmurray@mayerbrown.com

Marc Sperber

Chicago

+1 312 701 7444

msperber@mayerbrown.com

ENVIRONMENTAL

Timothy Bishop

Chicago

+1 312 701 7829

tbishop@mayerbrown.com

Kevin Desharnais

Chicago

+1 312 701 8079

kdesharnais@mayerbrown.com

LITIGATION/DISPUTE RESOLUTION

Michael Lackey

Washington DC

+1 202 263 3224

mlackey@mayerbrown.com

Paulette Vander Schueren

Brussels

+32 2 551 5950

pvanderschueren@mayerbrown.com

Carmine Zarlenga

Washington DC

+1 202 263 3227

czarlenga@mayerbrown.com

FINANCE

Robert Baptista

Chicago

+1 312 701 7101

rbaptista@mayerbrown.com

Debora de Hoyos

Chicago

+1 312 701 7115

ddehoyos@mayerbrown.com

David Duffee

New York

+1 212 506 2630

dduffee@mayerbrown.com

Jeffrey L. Dunetz

Chair of Food &

Agribusiness Group

Chicago/New York

+1 312 701 8282

+1 212 506 2670

jdunetz@mayerbrown.com

J. Paul Forrester

Chicago

+1 312 701 7366

jforrester@mayerbrown.com

John Lawlor

Chicago

+1 312 701 7220

jlawlor@mayerbrown.com

Brian Newhouse

New York/Los Angeles

+1 212 506 2148

+1 213 229 9520

bnewhouse@mayerbrown.com

Timothy R. Ryan

Charlotte

+1 704 444 3563

tryan@mayerbrown.com

Steven W. Walker

Charlotte

+1 704 444 3696

wwalker@mayerbrown.com

FOOD INDUSTRY FALSE ADVERTISING

Dale Giali

Los Angeles

+1 213 229 9509

dgiali@mayerbrown.com

Archis Parasharami

Washington DC

+1 202 263 3328

aparasharami@mayerbrown.com

Kevin Ranlett

Washington DC

+1 202 263 3217

kranlett@mayerbrown.com

Michael Resch

Los Angeles

+1 213 229 9525

mresch@mayerbrown.com

Carmine Zarlenga

Washington DC

+1 202 263 3227

czarlenga@mayerbrown.com

GOVERNMENT & GLOBAL TRADE

Mickey Kantor

Washington DC

+1 202 263 3295

mkantor@mayerbrown.com

Timothy Keeler

Washington DC

+1 202 263 3774

tkeeler@mayerbrown.com

Duane W. Layton

Washington DC

+1 202 263 3811

dlayton@mayerbrown.com

Jean-Philippe Montfort

Brussels

+32 2 551 5970

jpmontfort@mayerbrown.com

com

Susan Schwab

Washington DC

+1 202 263 3331

sschwab@mayerbrown.com

Tiffany Smith

Washington DC

+1 202 263 3882

tsmith@mayerbrown.com

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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