

LENDERS & OTHER CREDITORS

OVERVIEW

Our lawyers work with a wide range of creditors at all levels of the capital structure.

Secured lenders

We regularly advise secured lenders regardless of whether the debtor in question is in a formal insolvency proceeding. Our secured lenders representations include:

- Restructuring and refinancing of distressed loans,
- Forbearance, standstill, and modification agreements,
- Negotiation of capital structures,
- Financial restructuring,
- Strategic advice relating to the acquisition or disposal of debt,
- Loan-to-own strategies,
- Security and risk assessment, and
- Enforcement actions.

DIP lenders

Debtors in US bankruptcy frequently seek financing to support their reorganisation efforts through debtor-in-possession ('DIP') loans.

A debtor's existing secured lender may wish to advance funds following a bankruptcy filing to avoid further deterioration of the lender's collateral value or lien position. With proper documentation and court approval, a DIP loan can be significantly more secure than a loan made prior to bankruptcy, and it can help guide the course of a Chapter 11 case or equivalent German proceedings. Our lawyers frequently represent secured creditors in negotiating, obtaining approval of and enforcing DIP loans. We are experienced with the sensitive issues, judicial restrictions and other pitfalls involved in these facilities.

We also regularly represent “new-money” DIP lenders that do not have a pre-bankruptcy lending relationship with a debtor. These loan facilities may involve high-profile Chapter 11 cases or complex cross-border issues that our lawyers have successfully navigated DIP lenders in a variety of contexts. Our DIP lender experience further maximises favourable resolution of disputes regarding collateral value, lien, and repayment protections, and enables our clients to successfully overcome challenging DIP loan negotiations.

Other creditors

When faced with a customer, supplier, landlord, tenant or borrower in financial distress, a creditor needs to move fast to assess its position, determine the impact on its own business and formulate a strategy to minimise its exposure. A creditor’s ability to quickly protect its interests and enforce its rights may distinguish between payment in full and a sizable loss.

Our lawyers have experience in all aspects of enforcing creditors’ rights and remedies. The team not only advises clients on their legal options, but also has the necessary experience to provide a realistic assessment of the relative risks, costs and likelihood of success of each option based upon the facts of the case and the client’s business objectives.

EXPERIENCE

- We represented Anglo Irish Bank in a workout and resolution of \$450 million debt secured by a multi-state real estate portfolio.
- We have represented a secured lender in enforcing its rights under a series of loans to a borrower in mid-Missouri. The borrower filed a Chapter 11 bankruptcy case in St. Louis on the eve of our obtaining the appointment of a receiver in Missouri state court. We were successful in immediately converting the bankruptcy case to a Chapter 7 proceeding, including the appointment of a trustee following a contested first-day hearing. The trustee’s appointment led to the orderly liquidation of our client’s collateral, and we continue to enforce rights against the borrower’s guarantors in state court.
- We represented the trustee for \$2 billion of second-lien notes in the Chapter 11 case of Energy Futures Holding Corporation, a large electric utility company. Its case is the eight-largest bankruptcy case in U.S. history. The parties litigated the noteholders’ right to a make-whole premium to the court of appeals, and the noteholders ultimately settled for 100% of principal and interest, plus 87.5% of the make-whole.
- We acted as Counsel to Delaware Trust Company as indenture trustee in the Chapter 11 case of Caesars Entertainment Operating Corporation in Chicago.

- We acted for the syndicate of lenders on the restructuring and consensual refinancing of USD 125,000,000 senior ABL facilities provided to a UK based aviation specialist. We worked alongside financial advisers to the lenders, on a consensual options process and arrangements pursuant to which milestones for delivering a consensual refinancing were agreed and monitored.
- We act for MF Global Holdings Limited, the holding company of the MF Global group, on the wind-down of its estate interests in the UK. We have been advising our client since 2013, when the court-appointed trustee Louis Freeh stepped down.
- We were instructed by a major UK high street clearing bank to advise them in respect of the management of their exposure to a 30 site UK real estate investment portfolio, securing £40,000,000 of loan and swap liabilities, following the default of the borrower. We undertook a contingency planning exercise alongside restructuring advisers and then advised and negotiated the terms of a bespoke deleveraging plan to reduce the bank's exposure whilst providing triggers if the deleveraging was not delivered as agreed.