Business Development Companies

With exponential growth over the last decade, business development companies (BDCs) have become a valuable source of capital for companies. BDCs are a specialized subtype of investment company that, although regulated under the Investment Company Act of 1940 (1940 Act), are not registered investment companies, report like operating companies, and are subject to a modified regulatory structure under the 1940 Act. Our lawyers have experience with the regulatory requirements of these vehicles and the challenges of managing BDCs alongside registered funds, or private funds, or both.

BDCs can be particularly challenging for new entrants to the market, whether they come from a private fund background or a registered fund background. We are adept at explaining the differences and nuances to sponsors regardless of the perspective they bring, and we strive to help our clients develop a comprehensive understanding of the associated complex structure, operations, evolving tax requirements and ever-changing regulatory developments.

We provide multifaceted services to a number of BDCs, particularly their independent directors. Our practice involves representing directors or trustees of publicly traded, non-publicly-traded and private BDCs.

Our Services

Our experience with all forms of closed-end fund vehicles coupled with our knowledge of BDC regulation allows us to counsel our clients on the unique regulatory structure and rules that apply to these products, including the application of co-investment exemptive relief and how BDCs fit within a broader private credit business or a broader regulated fund business. We also counsel independent directors of BDCs on their obligations under state law and federal securities laws regarding the operations of BDCs.

Structure and Operations

Our lawyers can provide assistance with the formation, structuring and operations of BDCs, including counseling on capital structure and asset coverage, regulatory issues related to valuation, assistance in seeking exemptive or no-action relief, assistance with portfolio investments, and guidance on eligible portfolio company status. Several of our partners serve as independent director counsel for BDCs on either an ongoing basis or for specific transactions.

We assist directors of BDCs with their ongoing oversight of BDCs, including counseling on their fiduciary duties under state and federal law, assisting with their oversight of the BDC’s valuation designee, and supporting boards in their annual contract review process. We have also assisted boards with their consideration of high-profile mergers of BDCs, including involvement in creating the second largest externally managed, publicly traded BDC by total assets.

Tax Requirements

Our tax professionals are well-versed in the application of regulated investment company taxation to BDCs and can assist on tax issues faced by BDCs and their boards.

Regulatory Developments

Our firm leverages its deep bench of former U.S. Securities and Exchange Commission (SEC) Division of Investment Management staff members to guide our clients on the BDC regulatory provisions. We have obtained exemptive relief relating to BDC co-investment plans, as well as no-action relief for BDCs.

Representative Matters

- Serve as regular counsel to the independent directors of BDCs sponsored by BlackRock, FS Investments, KKR, Morgan Stanley, Oaktree and Silver Point.
- Routinely represent the special committees of BDC boards in affiliated and unaffiliated mergers, including representing special committees overseeing mergers involving BDCs sponsored by BC Partners, Blue Owl, First Eagle, FS Investments, KKR, Morgan Stanley and Oaktree, including recently representing the special committee of Blue Owl Capital Corp. III in a merger with Blue Owl Capital Corp., creating the second largest externally managed, publicly traded BDC by total assets.
- Represented the sponsor of a BDC, as regulatory counsel, in the sale of the BDC's investment adviser to a private equity firm.
- Obtained no-action relief for Gladstone Investment Corp. allowing for a streamlined regulatory notification process related to the redemption of preferred shares.