



Corporate, Finance & Acquisitions

# We make our clients' business goals - our legal objective

Having successfully negotiated, documented and closed billions of dollars of commercial transactions and investments into the U.S. and abroad, Masuda Funai takes pride in consistently delivering exceptionally high-quality, comprehensive and practical transactional legal counsel to businesses based around the globe and throughout the country. Most of our clients are foreign-owned companies seeking to do business and maximize their investments in the U.S. and we are the leader in mid-market Japanese mergers and acquisitions in the United States. Foreign-owned businesses require a high level of multicultural understanding and often have a distinct management approach. We understand many different perspectives and are committed to serving as a bridge to companies entering and doing business in the domestic market.

Our firm represents companies of all sizes in all phases of the business life cycle. Our experience ranges from complex M&A and financing transactions, to tax analysis and real estate deals, to joint ventures and other development arrangements, to general day-to-day operations counsel. We advise multinational companies in the establishment and growth of their operations and facilities in the U.S., frequently serving as their U.S. general legal counsel. Additionally, with the great majority of our transactions having some cross-border aspect, we are well versed in the regulatory issues that affect our clients' transactions in the international environment, particularly in the areas of commercial (dual-use) and defense related export licensing, compliance and enforcement matters, U.S. trade sanctions, customs compliance and national security (e.g., Committee on Foreign Investment in the United States [CFIUS]) reviews. In everything we do, we focus on providing timely and highly personal services that fit our client's time zone and commercial agenda.

Our attorneys take the time to clearly explain U.S. law and business practices every step of the way — and frequently in our client's native language. Whether we are negotiating the terms of a deal or analyzing the risk inherent in a given transaction, our extensive economic and cultural understanding allows us to make doing business in the U.S. a more streamlined process.

Our unique ability to overcome the challenges international companies and executives face when operating in the U.S. demonstrates not only our understanding of the law, but also our unwavering sensitivity to distinct cultures and their specific commercial drivers. As a testament to our dedication, commitment, meticulous work product and ability to adapt, we are proud that relationships with many of our foreign-owned clients have continued for decades. Regardless of our client's country of origin, industry or product line, our attorneys are experienced negotiators and counselors who deliver the perspective, depth, legal acuity, cultural intelligence and business acumen to guide them through even the most sophisticated matters and transactions.

## Range of Services

### Mergers, Acquisitions & Divestitures

Masuda Funai represents domestic and international buyers and sellers in their merger, acquisition and divestiture activities. On the sell side, our clients include domestic and foreign-owned entrepreneurial ventures, mid-sized companies and large multinational corporations. On the buy side, we advise companies of all sizes seeking to invest in or expand their position in the U.S. market. Throughout the process of merging, acquiring and selling corporate entities, we remain diligently committed to our clients and to providing strategic advice that meets their commercial objectives.

Our experience is truly broad and deep, and includes buying and selling companies through stock or asset acquisitions, mergers and recapitalizations. We are also involved in divestitures resulting from industry consolidation, deregulation and evolving economic climates, as well as with the purchase and/or sale of distressed companies in and out of bankruptcy. Moreover, we advise on spin-offs including advice on such issues as prevailing tax considerations, the payment of dividends and board of directors' responsibilities.

We never lose sight of the client's specific objectives, no matter how complex the deal or how diverse or difficult the constituents involved. We are known and valued for protecting and safeguarding client interests and assets while getting the deal done. Our practice includes seasoned, savvy and multi-cultural business-minded lawyers who deliver not only an in-depth understanding of U.S. law and business, but also a proven track record of structuring, negotiating and consistently closing sophisticated transactions valued into the hundreds of millions of dollars. Our international focus also affords us decades of experience with the most difficult regulatory issues faced by clients engaged in cross-border transactions, including commercial (dual-use) and defense related export licensing, compliance and enforcement matters, U.S. trade sanctions, customs compliance and national security (e.g., Committee on Foreign Investment in the United States [CFIUS]) reviews and filings.

Our attorneys have proven time and again that they can resolve difficult challenges involving the myriad intellectual property and technology, regulatory, employment, business immigration, environmental, and real estate issues inherent with these deals. We also advise on the antitrust reporting and clearance aspects of mergers, acquisitions and divestitures, ably guiding our clients through the intricacies of complex antitrust law as it applies to our client's specific transaction.

Masuda Funai is also retained to analyze potential deals, conduct legal due diligence and other risk assessments for clients considering acquisitions or dispositions involving the U.S. market. We are particularly adept at assessing the regulatory environment affecting cross-border transactions. Our goal is to work with each client to balance uncertainty and risk by providing careful analysis, meticulous judgement and the ability to adapt to structural change and new or unique business models. We deliver solutions that keep our client's deal on track and advancing to a successful close. We know, from first-hand experience, what it takes to navigate beyond the profitability pressures our clients face by incorporating their ambitions into the prevailing economics of every transaction.

## Joint Ventures & Alliances

Masuda Funai advises on every type of corporate partnering arrangement, including structuring and negotiating joint ventures and strategic alliances involving foreign-owned and domestic start-ups, privately held businesses, public and multi-national corporations, and other joint enterprise structures. Our firm is involved in all aspects of the formation and construction of joint ventures, general and limited partnerships and limited liability companies, as well as related ancillary arrangements such as marketing, distribution, licensing and supply agreements. We are appreciated for our meticulous judgement in utilizing the most advantageous structure while balancing and leveraging tax considerations with economic and legal perspectives.

In addition to knowing the law, structuring and negotiating these often complex, multi-faceted entities requires substantial business insight and experience. Masuda Funai offers decades of practical know-how in selecting the optimal joint ownership structure and negotiating all related agreements. Throughout the negotiation process, our goal is to help clients maximize their product, distribution, development, infrastructure, market penetration and risk sharing opportunities. Our approach to negotiating with joint venture partners or joint developers includes working with our client to clarify their objectives to determine what best meets their needs and safeguards their interests now and into the future.

In addition, we advise on management structures to accommodate the interests of capital providers and operating partners, as well as structure complex profit distribution provisions. We also recommend ways of configuring entities and transactions for income and transfer tax efficiency and advise foreign investors and enterprises with respect to withholding taxes, reporting requirements and the like. Should our client's business change and/or evolve, we negotiate restructurings, buy-outs and terminations of agreements as needed.

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## Commercial Financing & Lending

Commercial lenders and borrowers require comprehensive legal counsel that supports their financial and business goals. Masuda Funai knows the law, financing and the impact lending, borrowing and capital can have on a business. We navigate our clients through and beyond the complexities of a wide array of commercial lending transactions, ably guiding clients through every phase of the financing process by designing creative and practical solutions that parallel each client's specific commercial objectives.

Our firm represents lenders and borrowers alike in structuring, negotiating and documenting asset-based and cash flow secured and unsecured loan transactions. We counsel domestic and foreign-owned businesses of all types and sizes on both the lender and borrower side regarding borrowing and other capital raising activities. We work closely with each client to ensure an understanding of the risks and rewards of even the most complicated financing arrangements, including loan syndications, letters of credit, industrial revenue bonds, leveraged lease transactions and asset securitization programs.

Our commercial financing experience includes loan transaction structuring, loan covenant compliance, intercreditor arrangements, priority matters, regulatory compliance, loan agreement preparation, security documentation and the perfection of security interests. We remain well-versed in the ever-evolving lending standards that impact financing transactions. We know, from first-hand experience, that financing options can

be as diverse and unique as the companies that rely upon capital to grow. We offer a veteran perspective and proven ability to negotiate, document and close even the most complex loans.

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## Investments

Capital raising and the issuance of debt and equity reflect the life blood of businesses around the globe. Masuda Funai represents domestic and foreign companies from a diverse array of industries participating in inbound and out-bound investments from all over the world, into and across the United States. We advise domestic and foreign-owned issuers and investors on a wide array of capital transactions such as securities offerings, “Blue Sky” law, and private placements including Regulation S and Regulation D offerings.

Our attorneys guide clients through the challenges of disclosure and documentation, as well as advise on exemptions from federal and state securities registration laws and compliance with resale and trading restrictions. In the rapidly-changing regulatory environment, we also counsel clients on the compliance issues applicable to the industries into which they are investing, including national security (e.g., Committee on Foreign Investment in the United States [CFIUS]) reviews and filings and commercial (dual-use) and defense related export licensing. We prepare term sheets and letters of intent, private placement memoranda and subscription documents, as well as perform the requisite securities filings as needed. We negotiate securities offerings and purchases, and work diligently with each client to overcome the complexities of investor, first refusal, co-sale and registration rights. We know how to resolve the control and governance aspects of sophisticated, big ticket investments.

Masuda Funai’s decades of global business perspective and national and international commercial transactions experience allow us to maximize and leverage our client’s position at every stage of the deal. We advise on investments within the United States, from Japan to the U.S., and on cross-border transactions between countries outside the U.S. Our understanding of the law and dedication to remaining at the forefront of domestic and cross-border investment trends serve us in negotiating and closing complicated transactions in an efficient and economical manner.

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## Corporate Workout & Restructuring

At Masuda Funai, we take pride in safeguarding our client’s future. Our attorneys understand the momentum a downward spiral can have on a business, particularly because time is critical when financial stability is the primary driver to avoiding insolvency. As a result, we are relied upon for our proven ability to design consistently innovative solutions for distressed company scenarios. Our clients include troubled companies and their boards of directors, owners, managers, investors, lenders and creditors. We are also retained to advise acquirers involved in financial workouts, restructurings, acquisitions and dispositions of distressed assets.

Our focus is on finding the right approach to navigating beyond the obstacles at hand while minimizing costs, creating tangible value and re-positioning our client for today and into the future. We understand the negative

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impact liquidity can have on a business, and seek to mitigate crises with comprehensive and sensible contingency planning. We advise domestic and multinational clients on restructuring corporate groups and documenting related company transactions. We act quickly to analyze and execute alternatives to bankruptcy throughout the recovery process. With particular sensitivity to the time requirements restructurings demand, we work tirelessly to assure prompt government filings and the implementation of restructurings and reorganizations. We also advise on the structuring and/or restructuring of employee stock participation plans, phantom stock plans and deferred compensation plans.

Our longevity and practical experience serves us in navigating clients through turmoil and to recovery and beyond. Whether we are renegotiating our clients' bank loans and covenants, revising debt instruments, working out payment plans with vendors, or involved in a restructuring or right-sizing initiative, our firm delivers decisive action and legal solutions in precarious times. Because a reorganization can involve a variety of professionals, our attorneys understand the importance of team-play. We are dedicated to working in collaboration with consultants and turn-around specialists to achieve a common goal.

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## **Formation & Maintenance of Business Entities**

It is important for any business or new venture to begin on solid ground. Because the choice of entity structure can depend upon many factors and is likely to evolve over the life of a company, the right structure is often considered a significant factor in realizing ROI. Selecting the entity structure that optimizes each client's distinct commercial objectives is at the core of Masuda Funai's practice. Since the firm's inception, we have worked with domestic and international businesses of all sizes and from diverse industries to structure entities that can accommodate our client's long- and short-term strategic objectives both in the U.S. and abroad.

We provide multi-faceted legal counsel on the many stages of development through maturity. We focus on helping our client best position themselves for success by forming appropriate business structures and providing strategic counsel that aids them in meeting their ongoing legal and business requirements throughout the life cycle of the business. This type of advice requires a careful analysis and understanding of our client's existing or proposed business in order to determine the advantages and disadvantages of potential legal entities.

We bring decades of experience in many sectors of the global economy to understanding a client's business and advising on the most appropriate organizational structure to meet corporate objectives. We understand, from practical experience, how entity structure impacts our client's ability to do business. We work with our clients to consider the many issues involved in entity selection, which can range from the choice of state of formation; to potential operating costs of the legal entity; to capital requirements, financing objectives and state and federal tax considerations; to corporate governance matters, liability and indemnification; to potential liquidity events and exit strategies.

We also counsel shareholders and other interest holders on shareholder agreements, LLC operating agreements and similar contractual arrangements for the management of a corporation or LLC. In fact, our firm currently maintains corporate records for hundreds of private entities doing business throughout the United States.

