

# Public Finance

Public finance lies at the heart of highly visible improvements to our nation's colleges and universities, hospitals, affordable housing, schools, and municipal infrastructure projects. Barclay Damon's Public Finance Practice Area has facilitated the issuance of billions worth of revenue bonds, appropriation-backed bonds, and general obligation bonds. For over 30 years, the firm has been listed in the *Bond Buyer's Municipal Marketplace* ("Red Book"). Our team takes pride in assisting public finance professionals in developing and implementing concepts and programs that effectively deal with public needs and meet the changing demands of the financial markets. *Chambers & Partners* ranks Barclay Damon's Public Finance Practice Area among the top public finance practices, noting, "Barclay Damon LLP is highly capable across a wide range of public finance transactions. The team is regularly engaged to act as bond and underwriter's counsel, including in education, health care, and housing sector financings." *Chambers* added that the firm also has extensive experience "advising on the tax issues arising from tax-exempt bond financings."

Our public finance attorneys have extensive experience handling all facets of public finance, demonstrating our comprehensive skillsets when serving clients as bond counsel, underwriter's counsel, issuer counsel, letter-of-credit bank counsel, counsel for for-profit and not-for-profit conduit borrowers, and trustee's counsel. We represent our clients across the full spectrum of public finance transactions, including drafting approving resolutions and indentures, official statements, and other disclosure documents and all other financings documents; analyzing federal and state tax issues; negotiating with credit enhancement providers and bond insurers; and coordinating closings.

Our public finance attorneys understand how issuers, underwriters, and borrowers have to navigate complex disclosure and tax issues while facing greater scrutiny by the Internal Revenue Service, the Securities and Exchange Commission, and other regulatory agencies. With our deep understanding of these issues and practical experience, we are exceptionally qualified to assist clients looking for legal solutions in this complex industry.

## **Bond Counsel**

Our Public Finance Practice Area attorneys act as bond counsel for simple and complex bond issues, serving the needs of general obligation and conduit issuers. We serve as approved bond counsel to the Dormitory Authority of the State of New York, the NYS Housing Finance Agency, the NYS Municipal Bond Bank Agency, and the NYS Environmental Facilities Corporation. We also serve as bond counsel to industrial development agencies and local development corporations across New York State. We also represent over 100 general obligation issuers.

We are integrally involved in the bond-issuing process, meeting personally with issuer officials; attending meetings of governing bodies; and working closely with staff, underwriters, financial advisors, architects, and engineers. Our attorneys understand the time-sensitive nature of these projects and are readily available to all members of the financing team.

## **Underwriter's Counsel**

As underwriter's counsel, our public finance attorneys are keenly aware of the importance of the due-diligence and disclosure process. We use our technical knowledge of public finance law, creativity in structuring transactions, and a deep understanding of practical business applications to deliver the most effective results for clients.

## **Distinctive Tax Experience**

Our team has extensive knowledge of federal income-tax laws and regulations applicable to tax-exempt bond issues, analyzing complex transactions and providing innovative and pragmatic solutions to tax-related problems. We regularly advise clients on post-issuance compliance, including compliance with

private activity; arbitrage; and rebate laws and regulations. Our attorneys also regularly help clients respond to IRS audits.

### **Industrial Development Agencies and Local Development Corporations Counsel**

We represent IDAs and LDCs in a variety of capacities in Lewis, Onondaga, Oswego, Schenectady, and Suffolk Counties; the Cities of Hudson and Schenectady; and the Town of Babylon; and the Village of Green Island. In serving as bond counsel and agency counsel in connection with the issuance of revenue bonds for IDAs and LDCs, our attorneys have gained extensive experience handling small- issue manufacturing-facility financings and financings for not-for-profit corporations. We also routinely handle IDA “straight-lease” transactions and draft and negotiate complex payment-in-lieu-of-tax (PILOT) agreements.

We additionally provide day-to-day advice on compliance with the Public Authorities Accountability Act, the Public Authorities Reform Act, and the latest pronouncements and audit findings of the NYS Authorities Budget Office (ABO) and the NYS Comptroller's Office (OSC). Our attorneys frequently assist with drafting required policies and procedures, responding to ABO and OSC audits, filing annual PARIS reports, and determining when the recapture of financial assistance is required.

### **Affordable-Housing Projects**

Our public finance attorneys have been involved in all aspects of structuring billions of dollars of tax-exempt multifamily housing bonds utilized by state housing finance agencies, LDCs, and housing authorities to meet their financing objectives. We represent clients ranging from issuers and underwriters to developers and owners of affordable-housing projects. Our team also works with organizations that provide affordable-housing for families, senior citizens, and individuals in need of supportive services.

We have worked on a broad spectrum of public offerings, private placements, and “back-to-back” financings, and our attorneys routinely handle matters involving:

- 501(c)(3) bonds
- Bonds sold pursuant to forward-purchase agreements
- Bonds sold with various forms of credit enhancement, including:
  - Bank letters of credit
  - Federal National Mortgage Association and Federal Home Loan Mortgage Corporation credit enhancement and liquidity programs
  - Standby bond-purchase agreements
  - US Department of Housing and Urban Development (HUD) risk-sharing program insurance
- Draw-down bonds
- Fixed, variable, and multi-modal interest rate bonds
- Mission-based supportive-housing bonds
- Tender option bonds
- Recycling bonds
- Refunding bonds

Our public finance attorneys also handle matters relating to low-income housing tax credits and HUD programs such as Section 8, Public Housing, the Rental Assistance Demonstration, Community Development Block Grants, and the Home Investment Partnership Program (HOME).

### **Educational Facilities**

We regularly serve as bond counsel, underwriter's counsel, borrower's counsel, and credit-enhancement provider's counsel in connection with bonds issued to finance projects for colleges and universities,

private not-for-profit schools, and educational facilities for children with special needs. We counsel parties in transactions ranging from straightforward single-borrower financings to highly complex pooled financings.

### **General Obligation Bonds**

Our active general obligation bond practice includes serving as bond counsel to counties, cities, towns, villages, fire districts, and school districts. We have served as bond counsel for public facilities such as recreational facilities; parks; airports; public parking garages; municipal buildings; schools; and sewer, water, solid-waste and other infrastructure facilities. Our team prepares propositions and other authorizing proceedings, reviews disclosure materials, prepares financing documents, and issues our approving legal opinion. We routinely represent our municipal clients in projects financed by the NYS Environmental Facilities Corporation, the NYS Municipal Bond Bank Agency, and the US Rural Development Agency. Our public finance attorneys also frequently represent school district clients in financings of energy performance contracts and equipment leases and in financing projects through the Dormitory Authority of the State of New York.

### **Appropriation-Backed Projects**

Our team serves as bond counsel and underwriter's counsel in appropriation-backed bond transactions that finance road and bridge construction, environmental projects, affordable-housing projects and programs, and schools and dormitories.

### **Health Care Facilities**

Our public finance attorneys have comprehensive health care finance experience serving as bond counsel, underwriter's counsel, borrower's counsel, and credit-enhancement provider's counsel on financings for hospitals, nursing homes, senior-living facilities, independent-living facilities, and assisted-living facilities. A significant complement to this area of focus is our experience representing a broad cross-section of health care providers throughout New York State in corporate, regulatory, and tax matters.