Corporate

Barclay Damon's Corporate Practice Area provides a vast array of legal and business counseling services in areas that include strategic planning, operations, and evolving business relationships for individuals and privately and publicly held companies.

With over 60 corporate attorneys, our bench includes both former and current board of director-level health care executives, software and venture-capital executives, energy industry talent, construction and project developers, and commercial finance professionals. Our collective experience includes a wide breadth of business transactions ranging from entity structure and formation, day-to-day operational and intra-company issues, and evolving financing needs to acquisitions and divestitures, restructuring, and succession planning. *Chambers & Partners* ranks Barclay Damon's Corporate Practice Area among top corporate/M&A practices, noting, “Barclay Damon is an established corporate player valued for its strengths across commercial transactions and tax work, as well as securities concerns and business formation matters.”

In addition to having deep, focused knowledge and hands-on experience in business and corporate law, our corporate attorneys utilize creative and constructive approaches in resolving legal and business issues, teaming with attorneys across practices that include environmental, financial institutions and lending, intellectual property litigation, real estate, regulatory, and tax to deliver the most targeted legal services available.

We represent companies across a wide variety of industries that include project development, emerging technologies, renewable energy (hydro and solar) and traditional energy, health care, higher education, and hospitality. *Chambers & Partners* added that the firm has deep knowledge in the “energy and health care spheres, with impressive experience acting for multinational corporations, venture capital funds, and financial institutions” and “The corporate team holds additional skills in emerging technologies.”

Our attorneys are not merely traditional vendors of corporate services, but business partners who take the time to understand their clients' businesses as well as their existing and anticipated future needs. In addition to conventional per-hour billing for services, we work with clients on alternative-fee arrangements based on the unique facts and circumstances at hand.

Supported by the latest technology, Barclay Damon's corporate attorneys are committed to delivering excellent legal services with the skills and depth necessary to represent our clients efficiently in today's competitive and fast-changing market. We plan for today's issues with the flexibility necessary to meet tomorrow's needs on a pragmatic basis, teaming across practice areas to facilitate the closing of transactions.

Business Formation and Structuring Issues

Our attorneys help S and C-corporations, not-for-profit corporations, partnerships, and limited liability partnerships and companies achieve a competitive edge by establishing a sound initial infrastructure to serve them at start up while supporting their future business operations. We work with them to assess and protect both their immediate and long-term interests and assets, identify and evaluate capitalization strategies, and implement appropriate financing strategies as their business evolves.

Operational and Intra-Company Issues

Members of the Corporate Practice Area are experienced in developing and implementing ethics and compliance programs in light of applicable regulatory requirements and best practices. While we structure shareholder and LLC organizational and operational documents to best avoid intra-company conflicts and issues, our attorneys are experienced at addressing and resolving these problems if they do arise.

Financing Issues

We have significant experience representing clients in a variety of financing matters that include angel to subsequent-funding rounds, bank financing, traditional asset-based financing, construction and permanent-project financing, tax-credit financing and related structuring, and venture-capital and seed financing. We have represented a number of VC firms and industry-specialized financing companies in providing financing and acquiring equity positions and have represented business clients in restructuring their existing financing.

Mergers & Acquisitions

Our corporate attorneys regularly represent clients involved in acquisitions, sales, investing, and financing. We guide them through every stage of the strategic-planning process to fully explore all available options, including tax preferential structures, and then effectively negotiate and implement those strategies. Our experience includes asset and equity purchases and sales such as leveraged buy-outs, purchases and sales of divisions and subsidiaries, spin-offs, reorganizations and recapitalizations, joint ventures, and strategic alliances.

Regulatory

We counsel clients in the VC and tax-credit financing, health care, energy, and environmental industries, on compliance, defend their interests through litigation and arbitration, and assist them in consummating complex regulated transactions or transactions involving regulated industries in an innovative, cost-effective, and timely manner.

Contracts and Other Transactional Matters

Whether our clients need advice prior to entering an agreement or after an agreement has been made, we have the experience to guide them through any issues that may arise. We routinely negotiate and draft affiliation, asset/stock purchase and sale, consulting, executive employment, licensing, noncompetition, nondisclosure, nonsolicitation, and support and transition agreements using our full understanding of our client's business and objectives. We seek to avoid ambiguities to make transactions easy to implement and to avoid subsequent disputes regarding interpretation. We are experienced in analyzing existing contract content, achieving contract resolutions, and enforcing rights.

Representative Experience

- Represented a Buffalo, New York-area start-up in a $3 million Series B private placement financing round.
- Represented a printing company in their acquisition of a manufacturing company in Connecticut.
- Represented an energy industry client regarding an opinion related to construction and term loans provided by National Cooperative Bank, N.A.
- Represented a buyer in their $1.4 million acquisition of a company developing medical sterilization devices.
- Represented a solar project developer in obtaining a credit facility from the New York Green Bank for developing a solar energy project.
- Represented a not-for-profit outpatient mental health facility in its petition to the attorney general to transfer substantially all of its assets to another not-for-profit corporation.
- Represented a Canadian change management software firm in the corporate reconstruction of a US affiliate entity.
- Represented a NYC ice cream shop owner in the formation of a corporate entity and subsequent commercial lease negotiation.
- Represented a Canadian online training platform with the corporate reconstruction of multiple related entities.

- Represents a holding corporation in its ownership of Canadian real property and related corporate structuring and ownership succession planning.
- Represented a real property company in its conversion from a limited liability company to a limited partnership in order to facilitate foreign investment and conform with Canadian corporate law.
- Represented a purchaser in the $1.2 million acquisition of the stock of a national aluminum ladder and dock manufacturer.
- Represented a purchaser in its $450,000 acquisition of the business assets of a consulting, bookkeeping, payroll, and tax preparation services firm.
- Represented a purchaser in its $2.4 million acquisition of the business assets of a Georgia rifle and rifle accessory designer and manufacturer.
- Represented a psychiatry practice in its formation and organization of a NYS professional service limited liability company.
- Represented an optometry practice during its transition to a successor and preparation of the related practice transfer agreement and record transfer agreement.
- Represented a family-owned health care information technology consulting firm in its general corporate records cleanup, the sale of half its membership interest to a long-time employee, and the negotiations and preparation of an employment agreement with a key employee.
- Represented a NYS not-for-profit health care workforce development agency regarding revising its corporate bylaws and drafting its conflict of interest policy, director independence policy, and whistleblower policy.
- Represented a Canadian face-to-face not-for-profit fundraising company regarding the general corporate cleanup and restructuring resulting from its acquisition of a US company and its subsidiary.
- Represented a fast food franchise operator in the asset sale of four Taco Bueno restaurants and subsequent leaseback negotiations.
- Represented a dentist in the sale of his dental practice, associated assets, and office real property.
- Represented a Canadian telecommunications engineering and construction firm regarding its formation of a US investment and holding vehicle.
- Represented a national lighting manufacturer and supplier in connection with the substantive revising of its terms and conditions of sale.
- Represented a senior care placement technology start-up in connection with HIPAA compliance and privacy policy and terms and conditions advising.
- Represented a purchaser in its acquisition of the business assets of a local sodas, ice cream, and confections shop and in the related commercial lease negotiation.
- Represents a user-generated content software application company focused on collaborative and guided community storytelling in connection with its fundraising, daily contract requirements, employment arrangements, and general corporate matters.
- Served as transaction counsel to the purchase of the business assets of a closely held industrial abrasives manufacturer and distributor by a WNY-based private equity company.
- Represented a high-volume, family-owned restaurant and pizzeria, designing and executing on a deal structure that resulted in a profitable and succession-friendly sale to a trusted, long-time employee.
- Represented a WNY-based private equity company in its acquisition of the business assets and real property of a popular, historic Buffalo commercial bakery (operating since 1888) that markets and sells premium frozen dough products and fresh baked goods.
- Represented a purchaser in its $70 million acquisition of the business assets of a California designer and manufacturer of dynamic instrumentation for vibration, shock, and pressure measurements.
- Represents an international piezoelectric sensor manufacturer regarding its general corporate and contract requirements, acquisitions, and related matters.

- Represented a purchaser in its attempted multi-million-euro acquisition of the stock of Irish and Costa Rican medical device manufacturers.
- Represents a global medical devices and consumables manufacturer regarding its general corporate and contract requirements, acquisitions, and related matters.
- Represented a corporation in its $5.5 million sale of a Montana hotel and lodge.
- Represented a major Central New York landmark in regard to its permanent financing.
- Represented a company in its financing and acquisition of a major pasta company.
- Acted as outside counsel to a not-for-profit development disability health care provider in its transfer of assets to another provider.
- Served as outside counsel to a Buffalo-based industrial laundry business in the sale of its business to a publicly traded competitor.
- Represented a plumbing business in the sale of $1.2 million in assets.
- Represented an owner of auto parts stores in the sale of a Rochester, New York-area store to a competitor.
- Served as outside general counsel in the $75 million redevelopment of a facility on the National Register of Historic Places into a 90-room boutique hotel and conference facility, including acquiring the project from New York State, negotiating and preparing development documents and leases, preparing and processing tax incentives, and coordinating historic tax credit financing with Empire State Development grants.
- Represented a hospital group in the sale of its large urology and radiation oncology medical practice and related real estate.
- Served as outside counsel in negotiating and closing construction and term loan agreements with an institutional lender and ISDA swap agreements.
- Represented a hydroelectric developer in its acquisition of a hydroelectric facility in Oregon, including negotiating an acquisition agreement and conducting due diligence involving environmental and real estate issues and permits.
- Assisted a client with converting a Family Limited Partnership (FLP) set to dissolve into an LLC designed to hold and manage the family's recreational property. Worked with the client and their family to design a tailored operating agreement that would transition from manager-management to eventual member management as property passed through several family generations.
- Created a complex estate plan for Native American clients with $20 million in assets, including balancing issues with treaty exclusions from a restriction on transfers perspective and federal estate and transfer tax exemptions, restructuring assets, handling issues for the succession of closely held business interests operating on restricted lands, and restructuring holdings into LLCs.
- Represented behavioral health care providers in their formation of a Medicaid health home.
- Represents an administrative data exchange in organizational planning, governance, regulatory compliance, contract negotiations, and building and implementing business-sustainability strategies.
- Represented a regional health information organization (RHIO) in developing the Statewide Health Information Network of New York (SHIN-NY), including research on cutting-edge privacy, security, and consent issues for governmental, public, and private collaborations. Continues representing the RHIO in organizational planning, governance, regulatory compliance, contract negotiations, and building and implementing business-sustainability strategies.
- Assisted a NYS care coordination organization (CCO) with health care compliance matters during its initial formation and once operational, including assisting with vendor contracting, reviewing data-use agreements and security attestations, corporate matters, HIPAA compliance and policies, and preparing a corporate compliance plan and related policies.
- Represented an India-based venture capital investor investing in US technology companies.

- Represented a manufacturer of air-pollution-control devices for the petroleum refining and marine industries regarding its general contract requirements with companies from Nigeria, Mexico, France, China, and Singapore.
- Represented a specialized dairy transport company in its sale of stock to a large Malaysian trucking firm.
- Represented an owner, operator, and developer of hydroelectric power projects in its $8.1 million purchase of a Virginia hydroelectric facility, including handling the status and necessary assignment of a US Federal Energy Regulatory Commission (FERC) license as well as the pre-closing investigatory process with regard to potential environmental issues and necessary post-closing connections to the electrical grid.
- Represented a Spanish renewable energy provider regarding the restructure of its and its affiliates $27 million in loans, converting a portion into an equity investment and restructuring the balance. Retained by the client's primary counsel to work through the labyrinth of the borrower's US companies and their charter documents as well as existing loan and security documents so as to effectuate a restructure. Also enforced collateral position when the borrower defaulted on the restructured loan.
- Represented a hospitality software business in its $16.6 million sale to a leading provider of software and services.
- Represented principals in the $112 million sale of a majority interest in a wholesale optical lab, including confidential negotiations with a supplier, licensor, and competitor as well as extensive management provisions post-closing. Also worked with three firms representing the buyer regarding membership sale and subsequent operational matters, real estate, and anti-trust issues.
- Represented an individual in his sale of interest in a car dealership franchise that involved sensitive environmental issues and took over three years to complete, including negotiating all transaction documents.
- Represented a purchaser in its acquisition of a packaging supplies and equipment distributor, including negotiating an asset-purchase agreement and ancillary documents, assisting in due diligence, and coordinating and negotiating with debt holders.
- Represented an international facilities management company in its acquisition by merger of a janitorial commercial cleaning servicer.
- Represents a liquor distillery in connection with its entity formation, corporate structuring, and $300,000 series seed raise.
- Represents an airline software operations start-up in connection with its entity formation, corporate structuring, and $1.25 million series seed raise.
- Represents a NYC cannabidiol (CBD) products start-up in connection with its entity formation, corporate structuring, and $750,000 series seed raise.
- Represented multiple practicing neurological-surgeon entrepreneurs and advised them in connection with their respective ventures, including the commercialization, protection, and subsequent monetization and licensing of their medical-tech intellectual property.
- Represents a Canadian distributor of orthotic footwear regarding its US expansion and operations.
- Represents an international supplier of injected molded parts with manufacturing facilities in the United States, Mexico, and China regarding its general corporate and contract requirements.
- Represented an international manufacturer of frozen Italian food products regarding its day-to-day corporate and contract requirements.
- Represented a purchaser in its $408,000 acquisition of a local grocery store franchise and related assets.
- Represented a NY industrial automation components and equipment distributor in the $2.3 million sale of its business assets to a New Jersey company.

- Represented a national electrical distribution services provider to major festivals, sporting events, concerts, and tradeshows in the $3.46 million sale of its business assets to a DE LLC.
- Served as outside counsel to a residential health care facility operator in the $7.5 million sale of a facility and related real property.
- Served as outside general counsel to a regional pharmacy, pharmaceutical products, and long-term and assisted living consulting company in a $14 million sale of assets.
- Served as company and shareholder counsel in a tuxedo rental company's $1 million sale of assets to a Pennsylvania acquirer.
- Served as outside general counsel to a purchaser in the $500,000 acquisition of a gun-care-products company and related intellectual property rights.
- Assisted with the restructuring of all secured and unsecured debt related to the $25 million merger of two hospitals, including redeeming and reissuing civic facility bonds, coordinating consents from the PA and NY Departments of Health, and handling all real estate and title insurance work related to financing.
- Performed all legal responsibilities related to the $225 million development, construction, and financing of a children's hospital, including negotiating and preparing all development, design, and construction contracts and preparing all loan and real property documentation related to HUD-insured mortgage financing and EB-5 financing.
- Represented a client in an $85 million transaction involving the sale of a large medical practice specializing in urology and radiation oncology to a captive medical practice controlled by a large regional hospital system together with all related real estate owned by entities affiliated with the practice. The real estate was purchased by a local developer and leased back to the captive practice pursuant to a master lease.
- Served as outside general counsel to a performing provider system (PPS) in the acquisition of a Rochester-area regional health home network.
- Served as outside general counsel to a regional commercial trucking business and business owners in the $2 million sale of the business and handled the related real property and employment of the selling business owners.
- Served as outside general counsel to a WNY behavioral health provider in its merger with a regional child and adolescent behavioral health provider and in obtaining related regulatory approvals.
- Served as counsel to a custom antenna manufacturer involved in positive train control and covert surveillance in its corporate restructuring, ownership change, negotiation of employment agreements, and tax planning.
- Served as counsel to a selling shareholder in a $2.7 million buyout of equity in a heating and cooling equipment company and affiliated entities and negotiated the related consulting agreement.
- Served as outside general counsel to a purchaser in the acquisition of firearm magazine-loading technology and intellectual property rights and served as issuer counsel in the related $600,000 Regulation D private placement fundraising round.
- Served as outside general counsel to a US online test proctoring company in a $5.1 million Canadian cross-border asset sale.
- Served as outside general counsel to an insurance agency in its $2.7 million acquisition of two affiliated Rochester-area insurance agencies and the related property lease.
- Served as outside general counsel to an insurance agency in its $2 million acquisition of a Rochester-area insurance agency and the related property lease.
- Served as outside general counsel to a Buffalo eDiscovery and litigation support company in its $100,000 acquisition of a graphic design and printing company.
- Served as outside general counsel to a Buffalo eDiscovery and litigation support company in its $350,000 acquisition of an Ohio-based eDiscovery business.

- Served as counsel to a perishable foods broker and marketing company in a $3 million-plus earn-out asset sale and real property lease to a nationwide firm.
- Served as counsel to a majority purchaser group in the $7.2 million acquisition of a Rochester-based manufacturer's sales representative for industrial heating, cooling, and generators and affiliated entities.
- Served as counsel to a NY Regional Health Information Organization (RHIO) in its merger with another RHIO that doubled the scope of the client's service base.
- Served as counsel to veteran-owned, regional construction cost estimators in the $2 million acquisition of a nationally known cost consulting firm. Also handled formalized business succession planning and employment matters.
- Served as general outside counsel to a development company regarding the acquisition of a facility in Binghamton, New York, as well as financing the facility renovation through traditional construction financing and through the sale of federal and state historic tax credits and obtaining state and local assistance. Handled real property title issues, appropriate historic designations, and the negotiation of the master lease and other equity considerations to facilitate the financing.
- Represents a stainless-steel-processing equipment manufacturer and certain members of its closely held ownership in a $10 million shareholder dispute and corporate dissolution action involving competing allegations of corporate misconduct, misappropriation of property, financial irregularities, and other shareholder and fiduciary claims.
- Served as general outside counsel to a hydroelectric power project owner and developer regarding the $80 million acquisition of several hydroelectric facilities located on Maine’s Kennebec River. Handled real property title issues, obtaining necessary approvals of the assignment of US Federal Energy Regulatory Commission (FERC) and state regulatory licenses, and labor union issues as well as the pre-closing investigatory process with regard to potential environmental and regulatory issues and post-closing issues with management companies.
- Served as general outside counsel to a NY-based owner-operator of post-acute health care facilities regarding the $10 million acquisition of a nursing facility in Brockport, New York, and the acquisition financing, including title matters and restrictions and required NYS Department of Health and Attorney General approvals.
- Served as counsel to a perfume and cologne manufacturer regarding its sale of assets to a private equity-owned distributor of flavor and fragrance ingredients.
- Served as general outside counsel in financing a transaction that included equity rights to a specialized venture capital group that provides financial assistance to energy-related industries. Relevant issues included real property title, environmental, and intercreditor agreements.
- Served as general outside counsel to a nursing home and rehabilitation center regarding the acquisition of the operating assets of another residential nursing home and rehabilitation center and related real property located in New York City as well as the financing of the acquisition, including title matters and restrictions, required NYS Department of Health and Attorney General approvals, and the client acting as a receiver for the subject facility with the consent of the DOH.
- Represented a principal and a long-standing local business in the sale of the principal's 100 percent membership interest, negotiating the sales contract and consummating the entire transaction, including financial assumptions, vendor consents, and negotiating a new lease and employment contract. The result of the transaction assured the orderly transition of the company to another entity and the continuation of the company for the benefit of the community and the employees.
- Serves as counsel for a medical device start-up in connection with its $3 million Series B Regulation D, Rule 506 accredited investors equity round. Also served as counsel in its $3.6 million Series A round. The Series B round involves the preparation of various documents, including preemptive rights notices, an amended and restated operating agreement, subscription agreements, authorizing resolutions, and the creation of a post-funding equity incentive plan.
- Served as outside general counsel to a purchaser in the acquisition of Oklahoma taco restaurant franchises and related business assets collectively valued at $2.8 million.

- Served as outside general counsel to sellers in a $15 million sale of 25 hamburger fast food restaurant franchises and related business assets to an Oklahoma purchaser.
- Served as outside general counsel for nursing home facilities and related sellers in a $45 million multiyear, progressive equity sale of nursing home entities and in the NYS Department of Health (DOH) regulatory approval process.
- Served as local NY counsel to a Canadian client in a $9.4 million cross-border acquisition of a food manufacturer and related real estate.
- Served as outside general corporate counsel to a commercial cooling, heating, and ventilation systems manufacturer in acquiring $1 million business assets from a New York wholesale air conditioning supplies company.
- Represented a US exports company in its Regulation D, Rule 506 private placement fundraising rounds and subsequent $25 million cross-border stock sale to a Canadian purchaser.
- Served as outside general corporate counsel to a safety equipment distributor regarding negotiating and preparing an asset purchase agreement in which the client purchased inventory and intellectual property worth $3.3 million from a safety equipment distribution company in Pennsylvania.
- Served as outside general corporate counsel to a safety equipment distributor in its $3 million acquisition of a safety equipment distribution company in Indiana.
- Represented a music distribution and licensing company in the $2.5 million sale of its business assets, including intellectual property and other proprietary rights in various recordings and musical compositions.
- Counseled a private liberal arts college on its overseas program, including relationship-building and documenting agreements for the provision of educational instruction at partner institutions overseas.
- Serve as outside general counsel for the United Way of Buffalo and Erie County, advising executive leadership and the board of directors on matters related to corporate governance, commercial contracting, and providing day-to-day legal support.
- Represented the seller of a New York City–based specialty pharmacy in the sale of its assets to a strategic buyer in a transaction valued at $10 million.
- Represented the owner, organizer, and producer of a US tradeshow for people with disabilities and the seller in the negotiation and sale of meetings, events, tradeshows, and exhibitions and related digital properties to a UK-based media business.
- Represented a full-service mid-sized cutting tool company in the acquisition of a carbide manufacturer to enhance existing product and service offerings. The transaction involved pre-closing transfers to trust stockholders, rollover of stockholder equity, and employment agreements for key target company employees with equity option awards in the acquirer's parent.
- Assisted a family investment firm in the acquisition of a commercial printing company located in Upstate New York for a total purchase price of approximately $20 million. This transaction involved a private equity placement and bank financing to fund the purchase price and the purchase of representation and warranty insurance that was sourced through Alliant Insurance Services, Inc.
- Represented the seller in the sale of a hardware and electronic security distribution business in Upstate New York.
- Representing an offshore provider of a teaching and learning platform, handling the review, revision, and counseling for the provider’s SaaS agreements with various universities in the United States.
- Represented a health care consulting company in drafting and negotiating a platform services agreement for procuring a white label instance of an online platform for managing patient risk, capturing governmental reimbursements, and reducing the risk of noncompliance with reimbursement regulations.
- Represented a software manufacturer in drafting a master license agreement (MLA) and service level agreement (SLA) related to its software as a service (SaaS) for the management of data in energy and exploration businesses within the oil and gas industries.

- Represent a manufacturer of software and hardware in the media and broadcasting industry, structuring, drafting and negotiating a wide range of agreements, including software-as-a-service (SaaS) agreements, service level agreements (SLAs), end user license agreements (EULAs) and application developer program agreements.
- Representing a global clinical trial data management company in structuring, implementing, and updating its online and web portal terms (addressing the European Union's General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), the US Health Insurance Portability and Accountability Act (HIPAA) and other privacy-related laws), including the preparation of a multinational privacy policy, privacy notice, cookie policy, terms of use, and portal terms.
- Representing a provider of cloud-based health care solutions, preparing workflows, agreements, and policies and templates regarding deal flow, quoting, master licensing, subscriptions, business associates, resales, referrals, terms of use, acceptable use policy, privacy policy, enrollment terms, information sensitivity policy, and employees.
- Represented Canadian purchasers in their acquisition of a New Jersey-based sublimated apparel company and handling of cross-border transaction structuring issues.
- Acted as special counsel to the client in connection with the execution and delivery of certain loan documents to obtain funding for a solar photovoltaic electric generating project.