Columbia Law School

Spring Semester 2021

Strategic International Commercial Transactions

Mark Vecchio

Syllabus
This course is designed to introduce the student to several of the most frequently encountered types of strategic international business arrangements -- including mergers and acquisitions, joint ventures and strategic alliances, project finance, intellectual property licensing, and international private equity and venture capital transactions. We will compare and contrast deal elements common to international transactions of varying types. In addition, we will look at how specific elements of the U.S. regulatory environment and foreign regulatory environments affect international transactions and will consider what kinds of barriers -- legal, financial, cultural, commercial, practical, and ethical -- businesses face in cross-border deals. What are the elements which make a transaction truly international? How do international transactions differ from purely domestic ones? What is the role of the lawyer in international transactions? This course is targeted to JD, LLM and MBA students who are interested in learning more about international corporate law and business. We will be taking a decidedly hands on, practical approach, which will include close scrutiny and examination of actual deal agreements and related documents. The class is a basic, survey-style course, intended as an introduction to the world of international deal-making for the relatively uninitiated -- students with significant deal-making experience may find it insufficiently challenging. Students will be responsible for weekly reading assignments, class participation, and preparation of an 8-10 page mid-term take-home client memo. In lieu of a final exam, JD and LLM students (who will be earning 2 credits for this course) will be expected to prepare, individually, a 25-30 page research paper, and MBA students (who will be earning 3 credits for this course) will be expected to prepare, individually, two separate 15-20 page research papers, in each case on a topic of international business law as agreed upon with the instructor. A select number of students will have the opportunity to present the results of their research to the class. JD minor writing credit granted upon completion. LLM writing credit granted upon completion.

This course is expected to be conducted remotely prior to Spring Break and in Hybrid/HyFlex format after Spring Break.

Reading Materials: Various handouts, articles, sample agreements and other documents to be made available by the Instructor.
Introduction

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

- The Role of the International Business Lawyer
- Doing Deals Abroad
- Representing Foreigners in the U.S.
- The Importance of Perspective: How Cultural Differences Affect Business Negotiations

Required:


2. List of Company Extensions (www.corporateinformation.com).


   https://www.moneycrashers.com/choose-best-legal-structure-business/


Optional:

(See next page)
Optional:


Week 2    Monday, January 25, 2021

International Mergers and Acquisitions (Part 1)

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

- LOI’s, MOU’s, Term Sheets, etc.
- Stock Deals v. Asset Deals
- Deal Process and Timeline
- Who are the Various Players and What are Their Respective Roles?
- Structuring Transactions -- Forward and Reverse Triangular Mergers

Readings:

Required:


Optional:


Week 3  Monday, February 1, 2021

International Mergers and Acquisitions (Part 2)

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

• Dissecting the Documents: Covenants, Representations and Warranties, Conditions Precedent, Indemnification, etc.

• Deal Protection Mechanisms

Readings:

Required:


2. “Reverse Break-up Fees and Specific Performance” Practical Law Company, Practice Note 8-386-5095.

Optional:

3. Sample Stock Purchase Agreement

4. Sample Stock and Asset Purchase Agreement.
Week 4  Monday, February 8, 2021

Joint Ventures, Strategic Alliances and Foreign Direct Investment

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

• Choosing a Local Partner
• Pro's and Con's of Going it Alone
• The Importance of Due Diligence
• Difference Between Mature Markets and Emerging Markets
• "Contractual" versus "Entity-Type" Joint Ventures
• Shareholders' Agreement as the Magna Carta of Deals
• Timeline of Joint Venture Establishment
• Financial Issues (GAAP versus IFRS)
• Business Realities of Dealing in Different Geographical Markets

Readings:

Required:


Optional:

[See next page]
Optional:

4. Sample Joint Venture Agreements.
   a) Domestic.
   b) International.
   c) Delaware LLC.


Week 5  Monday, February 15, 2021

Project Finance and Privatization

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

NB: ALL MID-TERM TAKE-HOME PAPERS DUE AT THE START OF CLASS

- Areas of Application
  - Exploitation of Natural Resources
  - Power Generation
  - Transportation and Infrastructure
- Recourse v. Non-Recourse Financing
- Build-Operate-Transfer (BOT) and Build-Own-Operate-Transfer (BOOT) Models
- The Various Players
  - Developers
  - Private Banks
  - International Financial Institutions and Regional Development Banks
  - Suppliers and Other Contractors
- The Interrelationship Between Debt and Equity
- Government Incentive Programs (EXIM, COFACE, SACE, etc.)
- Political Risk Insurance (OPIC, MIGA)
- Special Considerations Regarding Privatization and Public - Private Partnerships
- Understanding the Role of the State in Overseas Jurisdictions

Readings:

Required:

Week 6 Monday, February 22, 2021

**U.S. Capital Markets**

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

- The ’33 Act and ’34 Act
- Public Offerings v. Private Placements
- The IPO Process – Bankers and Lawyers
- Exempt Offerings (Reg. D, Reg. S, and Rule 144A)
- American Depository Receipt Programs (ADR)
- PIPES and Registration Rights

**Readings**

**Required:**


**Optional:**

Monday, March 1, 2021  Spring Break – No Class
Week 7  Monday, March 8, 2021

Private Equity and Venture Capital

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

• What is Private Equity?
• Who are the Major Players
• Fun with Funds
• LBO's and MBO's
• Mezzanine Investments
• Convertible Preferred Stock
• Investors' Rights Agreements
• Co-Sale Agreements, Tag-Along and Drag-Along
• Liquidation Preferences
• Anti-dilution Protection
• Down-Round Financings
• Pay-to-Play Provisions
• Pro-Investor v. Pro-Entrepreneur Cultural Environments

Readings:

Required:


Optional:

[See next page]
Optional:

2. Sample venture capital deal documents, with annotations.
   a) Amended and Restated Certificate of Incorporation
   b) Series A Preferred Stock and Warrant Purchase Agreement
   c) Amended and Restated Investors’ Rights Agreement
   d) Right of First Refusal and Co-Sale Agreement
   e) Voting Agreement
Week 8  Monday, March 15, 2021

Hedge Funds

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

NB: FIRST OF 2 RESEARCH PAPERS DUE FROM ALL MBA STUDENTS

• What is a Hedge Fund?
• Hedge Funds vs. Private Equity
• Illustrative Investment Strategies and Styles
• Legal Structures
• Disclosure and Documentation
• Regulation of Hedge Funds

Readings:

Required:

2. Pictet, An Introduction to Hedge Funds (April, 2018):

https://www.group.pictet/media/212/download.


Optional:


5. Sample Hedge Fund Limited Liability Company Agreement.
Week 9  Monday, March 22, 2021

Licensing Intellectual Property

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

• "Hard" IP v. "Soft" IP
• Relevant International Conventions and Treaties (Paris, Berne, Madrid, Rome, TRIPS, etc.)
• Protection of Intellectual Property at Home and Abroad

Readings:

Required:


Optional

2. Sample Cross-Border Trademark License.
Week 10  Monday, March 29, 2021

International Tax Issues

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

• U.S. v. Foreign Taxes
• Transfer Pricing
• Foreign Tax Credits
• Withholding Taxes
• Tax Havens
• Bilateral Tax Treaties

Readings:

Required:


Week 11  Monday, April 5, 2021

The US Regulatory Environment

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

- Export Controls
- Boycotts and Anti-Boycott Legislation
- Trading with the Enemy Act; Helms-Burton
- Foreign Corrupt Practices Act
- Foreign Sovereign Immunities Act
- FINSA

Readings:

Required:


3. CONGRESSIONAL RESEARCH SERVICE, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (CFIUS) (May 15, 2019):
   https://fas.org/sgp/crs/natsec/RL33388.pdf


Resolution of International Disputes

(Class meets from 7:10 pm – 9:30 pm, with two separate 10-minute breaks)

**NB: SECOND OF 2 RESEARCH PAPERS DUE FROM ALL MBA STUDENTS**

**ALL JD AND LLM PAPERS DUE**

- International Arbitration (ICC, AAA, LCIA, ICSID, Stockholm Chamber of Commerce)
- Arbitration v. Litigation
- Choice of Law, Choice of Forum
- 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

**Readings:**

**Required:**

