Columbia University School of Law
Fall Semester 2015

Strategic International Commercial Transactions

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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 regardless of type. 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 2L, 3L, LLM and Business School students who are contemplating a career in international corporate law or business. We will be taking a decidedly hands on, practical approach to international deal-making, which will include close scrutiny and examination of actual deal agreements and related documents. Students will be responsible for weekly reading assignments, class participation, and preparation of an 8 - 10 page client memo. In lieu of a final exam, students will be expected to prepare, individually, a 25-30 page research paper, or at the student’s option, jointly with one other student (i.e., in groups of 2), a 35-40 page research paper, 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. Minor writing credit granted upon completion. LLM writing credit granted to those preparing individual papers upon completion. Enrollment limited to 40 students.

Reading Materials: Various handouts, articles, sample agreements and other documents to be made available by the Instructor.
Week 1  September 14, 2015  Introduction

• The Role of the International Business Lawyer

• Doing Deals Abroad

• Representing Foreigners in the U.S.

• The Building Blocks of International Commercial Relations -- the Alphabet Soup of Commonly Encountered Domestic and International Business Entities (Inc., LLC, S.A., A.G., GmbH, S.a.r.l., Societas Europeae, etc.)

• The Importance of Perspective: How Cultural Differences Affect Business Negotiations

Readings:


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

Week 2  September 21, 2015  *International Mergers and Acquisitions (Part 1)*

- Stock Deals v. Asset Deals
- Structuring Transactions -- Forward and Reverse Triangular Mergers
- Dissecting the Documents: Covenants, Representations and Warranties, Conditions Precedent, Indemnification

**Readings:**


3. Sample Stock Purchase Agreement.

4. Sample Asset Acquisition Letter of Intent.

5. Sample Stock and Asset Purchase Agreement.


Week 3  September 28, 2015 International Mergers and Acquisitions (Part 2)

- See readings from Week 2.
Week 4  October 5, 2015  Joint Ventures, Strategic Alliances and Foreign Direct Investment

- 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:


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

Week 5  October 12, 2015  Project Finance and Privatization

- 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:

Week 6  October 19, 2015  Entering the U.S. Securities Markets

- Special Rules Relating to Foreign Issuers
- Regulation S
- American Depository Receipt Programs (ADRs)
- Exempt Offerings (Regulation D and Rule 144A)
- PIPES and Registration Rights

Readings


3. Sample Equity Offering Memorandum.
Week 7 October 26, 2015 Private Equity and Venture Capital

- 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
- Antidilution Protection
- Down-Round Financings
- Pay-to-Play Provisions
- Pro-Investor v. Pro-Entrepreneur Cultural Environments

Readings:


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  November 2, 2015  Hedge Funds

- 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:

2. Sample Hedge Fund Private Placement Memorandum.
3. Sample Hedge Fund Limited Liability Company Agreement.
Week 9  November 9, 2015  Licensing Intellectual Property

- "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:


2. Sample Cross-Border Trademark License.
Week 10  November 16, 2015  International Tax Issues

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

Readings:


Week 11  November 23, 2015  The US Regulatory Environment

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

Readings:


Week 12 November 30, 2015 Resolution of International Disputes

- International Arbitration (ICC, AAA, LCIA, ICSID, Stockholm Chamber of Commerce)
- Arbitration v. Litigation
- Choice of Law, Choice of Forum
- 2005 Hague Convention on Choice of Court Agreements

Readings:


Week 13 December 7, 2015 (ALL PAPERS DUE) Presentation of Papers

Week 14 Date around December 7, 2015, to be determined (Make-up Class Due to Credit Hour Requirement) Presentation of Papers (N.B. This session is a make-up class required in order to be able to take a 10-minute weekly mid-session break.)