

## SUBJECT DETAILS

Data on the subject	
Name	Due Diligence Interactive Clinic
Degree	Postgraduate in Masters in International and European Business Law
Year	2023-2024
Nature	Second semester
ECTS Credits	1 credit
Department	Law
Area	Law
Teaching staff	Shared, see below

Data on the teaching staff	
Teaching staff	Carlos Franco Duque & Tomas Acosta
Group	Masters in International and European Business Law
e-mail	<a href="mailto:carlos.franco@uria.com">carlos.franco@uria.com</a> & Tacosta@comillas.edu
Telephone	+34 91 587 09 43
Office	Uría Menéndez, Madrid
Tutoring Schedule	Upon request from students

## SPECIFIC DATA ON THE SUBJECT

Pre-requisites
General knowledge of corporate law generally and M&A transactions specifically.
Contribution of the degree to the professional profile
The due diligence clinic will provide students with an opportunity to broaden and deepen their understanding of the M&A transaction process by means of case studies and interactive exercises. The discursive nature and practical focus of the clinic will serve to develop key professional skills of critical analysis, communication and negotiation, thereby enhancing students' professional profiles.

## COMPETENCES TO BE IMPROVED

<b>Generic Competences</b>
<b>Instrumental</b>
GC 4: Problem solving skills GC 5: Decision making skills GC 6: Team work skills
<b>Specific competences of the subject</b>
<b>Conceptual (knowing)</b>
SC 14: Developing practical skills, especially in negotiation of contracts and complex disputes, and developing legal audit or due diligence abilities.

## THEMATIC AREA AND CONTENT

<b>AREA 1</b>
<b>Theme 1: Overview of the acquisition process</b>
1.1 Principal ways to acquire a business 1.2 Different types of acquisition process 1.3 Role of M&A intermediaries
<b>Theme 2: Due diligence</b>
2.1 Purpose and limitations
<b>Theme 3: Legal due diligence</b>
3.1 What information is of interest? 3.2 How to find it 3.3 Presentation of legal due diligence 3.4 Potential issues
<b>Theme 4: Transfer of undertaking: what to look for</b>
4.1 Importance of understanding “the numbers” 4.2 Specific areas of interest
<b>Theme 5: General / suggested due diligence process</b>
5.1 Initiating the process 5.2 Briefing meeting 5.3 Summary of the due diligence
<b>Theme 6: Due diligence report</b>
6.1 Overview of contents of the report
<b>Theme 7: Impact on the purchase agreement</b>

- 7.1 Structure of the transaction
- 7.2 Conditions precedent
- 7.3 Representations and warranties
- 7.4 Indemnification

#### Theme 8: Exercise

- 8.1 Interactive group exercise: representations and warranties

### AREA 2

#### Theme 1: Overview of auction sales

- 1.1 Introduction: what is an auction sale and when is it used?
- 1.2 Seller vs. Buyer: contrasting perspectives
- 1.3 Bilateral vs. auction
- 1.4 Overview of the process

#### Theme 2: Vendor's due diligence

- 2.1 Concept
- 2.2 Benefits
- 2.3 Problems
- 2.4 Complexities for law firms

#### Theme 3: Approach to the SPA

- 3.1 "Auction draft": striking the balance
- 3.2 Private equity sales
- 3.3. Ancillary documents

#### Theme 4: Evaluation of offers

- 4.1 Review of assumptions
- 4.2 Assessment of execution risk
- 4.3 Review of SPA mark-up

#### Theme 5: Release and reliance letters

- 5.1 Overview of purpose and contents of each
- 5.2 Controversial issues in negotiation

#### Theme 6: Exercise

- 6.1 Interactive group exercise: due diligence report and risk management

## BIBLIOGRAPHY AND RESOURCES

### Required reading for the first session:

- Due Diligence and Disclosure in Private Acquisitions and Disposals. Slaughter and May, August 2007.

[https://www.slaughterandmay.com/media/39323/due\\_diligence\\_and\\_disclosure\\_in\\_private\\_acquisitions\\_and\\_disposals.pdf](https://www.slaughterandmay.com/media/39323/due_diligence_and_disclosure_in_private_acquisitions_and_disposals.pdf)

### Required reading for the second session:

- Vendors Due Diligence: What, Why & How? By: Salvador Sánchez-Terán and Stephen J. Hess. This article will be posted in Moodle. It was originally prepared as a paper given at the 4th International Mergers and Acquisitions Conference of the International Bar Association in New York, June 2005. ©International Bar Association.

### Optional reading:

For students looking to delve deeper into the subject matter, we may recommend the following articles:

- A Look at Due Diligence. Francis J. Aquila (partner, Sullivan & Cromwell). In: Business Due Diligence Strategies: Leading Lawyers on Conducting Due Diligence in Today's M&A Deals. Aspatore, 2012.

<https://www.sullcrom.com/siteFiles/Publications/Aquila-Inside-Minds-April-2012.pdf>

- Business Acquisition Agreements.. William F. Griffin (Davis, Malm & D'Agostine). In: Drafting & Negotiation Massachusetts Contracts, 2013.

[http://www.davismalm.com/1BE153/UploadedDocuments/Articles/Griffin\\_CH12\\_Business\\_Acquisition\\_Agreements\\_2013.pdf](http://www.davismalm.com/1BE153/UploadedDocuments/Articles/Griffin_CH12_Business_Acquisition_Agreements_2013.pdf)

## TEACHING METHODOLOGY

General methodological aspects of the subject

Contact hours methodology: Activities

Highly interactive seminar involving due diligence exercises. Short lectures will be given by the professor but the bulk of the educational experience will be through hands-on exercises.

Independent study methodology: Activities

Readings will be assigned.

## SUMMARY OF STUDENT WORK HOURS

Activity	Number of contact hours	Number of independent study hours	Total number of hours
Lecture	3		
Practical class	7	15	
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam			25
Evaluation: exam review			
Others			
<b>ECTS Credits:</b>	<b>10 (+3)</b>	<b>15</b>	<b>25 +3</b>

## GRADE EVALUATION AND CRITERIA

Evaluation Activities	Indicators	Generic Competences	Evaluation Weighting
Attendance		Attendance	10%
Continuous evaluation			40%
Participation	GC 4: Problem solving skills	Participation in the clinic; critical analysis; value adds	5%
In-class group exercise 1 - DD briefing (first session)*	GC 4: Problem solving skills GC 5: Decision making skills GC 6: Team work skills	Performance of in-class exercise designed to apply the concepts explained during the clinic	12.5%
Assignment (DD report)	GC 4: Problem solving skills GC 5: Decision making skills	Preparation of an individual assignment applying in practice concepts discussed during the seminars	12.5%
In -class exercise 2 - R&Ws (second session)*	GC 4: Problem solving skills GC 5: Decision making skills GC 6: Team work skills	Performance on in-class exercise designed to apply the concepts explained during the clinic	10%
Final exam	GC 4: Problem solving skills	Given during the final session. Tests students' knowledge of the concepts and	50%

	GC 5: Decision making skills	methodologies taught during the clinic	
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\*Students will work in teams on one complex in-class exercise where they will be required to apply the concepts expounded upon during the seminar. The exercises will be reviewed in class and potential responses and rationale will be debated. Students will be graded on their participation within their respective teams (which the professors will monitor) as well as their performance in the review and critical analysis of the potential responses during the all-hands session.