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**EU CORPORATE LAW AND CORPORATE ENGINEERING  
EU INTERNAL MARKET AND CROSS-BORDER M&A  
(2018-2019)**

**PROFESSOR: JAIME SÁNCHEZ SANTIAGO**

- Practices mergers and acquisitions at Clifford Chance in Madrid
- Law Degree from the University of Salamanca (EC Law at the University of Leuven)
  - Master in Laws (LL.M): Harvard Law School and College of Europe
    - Member of the New York and Madrid Bar Associations
- Former civil servant at the legal department of the European Central Bank in Frankfurt
- Publishes regularly in commercial, EU and corporate legal journals and in collective works
- Professor of International Trade Law in ISDE. He has lectured in several universities and institutions including ICADE, Instituto de Empresa, University of Salamanca or University Carlos III (Madrid)

**PROFESSOR: SEGISMUNDO ÁLVAREZ ROYO-VILLANOVA**

- Notary in Madrid
  - Ph.D., Bachelor's Degree in Law and Diploma in Business Law (E-1) ICADE
  - Co-author of the book “Modificaciones estructurales de las sociedades mercantiles” (Mergers and reorganization of companies) - 2011
    - Publishes regularly in Commercial and Corporate Law legal journals (Revista del Mercado de Valores, La Ley, Cuadernos de Derecho y Comercio), and in collective works such as “Capital riesgo: su operativa” (Venture Capital: how it operates). 2012
  - Professor of Banking Law in Granada University. Has also lectured in the Universities of Madrid (Complutense, ICADE), Almería, Elche, Managua
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## **INTRODUCTION**

This course studies advanced issues of European corporate and mergers and acquisitions ("**M&A**") Law which have a crucial impact for companies operating in the European Union ("**EU**").

In particular, the aim of this course is to help students understand (i) the rights European companies have under freedom of establishment and the legal issues that may arise in relation to the same; (ii) key issues in relation to mergers and acquisitions ("**M&A**") in the EU.

During the course students will have the opportunity to deal with issues arising in some of the latest and most interesting cross-border transactions in the EU and also become familiar with some key substantive corporate and commercial laws of Spanish, English, German and French laws, as well as with the way in which certain European cross-border transactions are structured, documented and negotiated.

This course tries also to develop certain skills lawyers need in practice such as drafting; effective communication and negotiations.

## **METHODOLOGY – In Class and Independent Study**

We will mainly follow a problem-based learning method. Students should prepare case studies (one for each class) in groups or individually (as requested) and hand the requested assignments in at the beginning of the corresponding session. A list of the groups and the students which belong to each group will be provided at least one week before the course starts.

Case studies will consist of real cases or hypothetical scenarios, whereby students may be asked, for example, to draft/review/negotiate legal documentation or to draft a memorandum providing a practical solution to clients' requests. In the latter case memoranda should be brief, client focused and clearly structured. The case studies and the materials related to them will be provided at least one week before each session. Each group should deliver the case studies duly answered at least one day before each session.

In relation to case studies additional background documentation will be provided which will include, sometimes, questions to help students to focus on key issues. When preparing the class students should read the materials thoroughly and try to answer the questions raised. The Socratic Method, as commonly practiced in Anglo-Saxon law schools will be also used,

so students should be prepared to answer both the questions raised in the materials and during the lectures.

We consider important to analyse EU law together with other Member States laws related to the different topics analysed in each case. This is why we have included in the materials reports summarising some of the key legal issues of Spanish, English, German and French laws in relation to M&A transactions (see Schedule II). We advice (not compulsory) to read at least one of these reports before starting session four of the course. Coordinate with the members of your group (when appropriate) and try that at least one member of each group reads one of the reports of each jurisdiction. Parts of these reports and some legislation of these countries will be used to solve some of the case studies.

## Skills

### Generic Competences

- GC 1: Analysis and synthesis abilities
- GC 6: Team work skills
- GC 7: Ability to work in an international context
- GC 8: Critical appraisal skills
- GC 10: Ability to develop autonomous learning skills
- GC 12: Ability to apply theoretical knowledge into practice

### Specific competences of the subject

- SC 4 Mastering the main rules of EU law and international law that are relevant to international business development
- SC 5 - Being able to design strategies for the restructuring of corporate groups and / or intra-group and market activities to maximize the benefits of the legal framework

**PROGRAM:**

**SESSION 1: THE RIGHT OF ESTABLISHMENT OF COMPANIES (I): EUCJ CASE LAW**

- 1.1 Basic concepts of freedom of establishment.
- 1.2 The conflicts of law rules as applied to companies.
- 1.3 Corporate mobility through the EU: The controversial Court of Justice of the European Union ("EUCJ") case law
- 1.4 Case study.

**SESSION 2. THE RIGHT OF ESTABLISHMENT OF COMPANIES (II): TRANSFER OF SEAT AND EU CROSS-BORDER MERGERS TRANSACTIONS**

- 2.1 The transfer of seat: Case study.

**SESSION 3. THE RIGHT OF ESTABLISHMENT OF COMPANIES (III): EU CROSS-BORDER MERGERS**

- 3.1 Council Directive 2017/1132 of 14 June 2017 relating to certain aspects of company law (articles 118 to 133).
- 3.2 Council Regulation (EC) N° 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).
- 3.3 Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees.
- 3.4 Case study.

**SESSION 4. ACQUISITION PROCESS (I): INTRODUCTION**

- 4.1 Case study.

**SESSION 5. ACQUISITION PROCESS (II): SHAREHOLDERS' AGREEMENTS**

- 5.1 Case study.

**SESSION 6. ACQUISITION PROCESS (III): SALE AND PURCHASE AGREEMENT (I)**

6.1 Case study.

#### **SESSION 7. ACQUISITION PROCESS (IV): ACQUISITION FINANCE**

7.1 Case study.

#### **SESSION 8. ACQUISITION PROCESS (V): SALE AND PURCHASE AGREEMENT (II)**

8.1 Case study.

#### **SCHEDULE I: STUDENTS WORKING GROUPS**

#### **SCHEDULE II: OTHER RELEVANT DOCUMENTATION**

- Clifford Chance online services report on M&A in Spain
- Clifford Chance online services report on M&A in Germany
- Clifford Chance online services report on M&A in France
- Clifford Chance online services report on M&A in UK

<b>SUMMARY OF STUDENT WORK HOURS</b>			
<b>Activity</b>	<b>Number of contact hours</b>	<b>Number of independent study hours</b>	<b>Total number of hours</b>
Lecture	10	20	30
Practical class	7	10	17
Debate	0	0	0
In class presentation	0	0	0
Individual work	0	0	0
Work in collaboration	0	0	0
Evaluation: one minute paper	0	0	0
Evaluation: class test	0	0	0
Evaluation: exam	3	0	3

Evaluation: exam review		0	0
Others	0	0	0
<b>ECTS Credits:</b>	<b>20</b>	<b>30</b>	<b>50</b>

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Participation	<p>GC 7: Ability to work in an international context</p> <p>GC 12: Ability to apply theoretical knowledge into practice</p>		5%
Continuous Evaluation	<p>GC 1: Analysis and synthesis abilities</p> <p>GC 6: Team work skills</p> <p>GC 7: Ability to work in an international context</p> <p>GC 8: Critical appraisal skills</p> <p>GC 10: Ability to develop autonomous learning skills</p> <p>GC 12: Ability to apply theoretical knowledge into practice</p> <p>SC 4 Mastering the main rules of EU law and international law that are relevant to international business development</p> <p>SC 5 - Being able to design strategies for the restructuring of corporate groups and / or intra-group and market activities to maximize the benefits of the legal framework</p>	<p>Class participation (debate): 5%                      - Team or individual case studies (including presentations and negotiations): 35% (see simplified syllabus for further explanation on how this percentage is calculated for each session)</p>	35%



<p>Evaluation: exam (final)</p>	<p>GC 1: Analysis and synthesis abilities</p> <p>GC 6: Team work skills</p> <p>GC 7: Ability to work in an international context</p> <p>GC 8: Critical appraisal skills</p> <p>GC 10: Ability to develop autonomous learning skills</p> <p>GC 12: Ability to apply theoretical knowledge into practice</p> <p>SC 4 Mastering the main rules of EU law and international law that are relevant to international business development</p> <p>SC 5 - Being able to design strategies for the restructuring of corporate groups and / or intra-group and market activities to maximize the benefits of the legal framework</p>	<p>We will explain in detail in the first class how this would work.</p>	<p>50%</p>
<p>Attendance</p>			<p>10%</p>

#### **OTHER**

We are at your disposal outside class in order to comment on any issue raised in relation to the course. We can be contacted as follows:

- Jaime Sánchez Santiago by telephone at 91 590 75 00 or by email at: [jssantiago@icade.comillas.edu](mailto:jssantiago@icade.comillas.edu); and
- Segismundo Álvarez Royo-Villanova by telephone at 91 553 13 44 or by email at: [slalvarez@icade.comillas.edu](mailto:slalvarez@icade.comillas.edu).

## BIBLIOGRAPHY

- BRUNER, R., *Applied Mergers & Acquisitions*, John Wiley & Sons, 2004.
- CARNEY, W., *Mergers and Acquisitions: The Essentials*, Aspen Publishers, 2003.
- BARNARD, C., *The Substantive Law of the EU. The four freedoms*, Oxford University Press.
- DEMARIA, C., *Introduction to Private Equity*, John Wiley & Sons, 2010.
- EDWARDS, V., *EC Company Law*, Oxford University Press, First Edition Reprinted. FERRARINI, G.; HOPT, K. J.; WINTER, J.; WYMEERSCH, E. (eds.): *Reforming Company and Takeover Law in Europe*; Oxford, 2004.
- ANDENAS, M. AND WOOLDRIDGE, F., *European Comparative Company Law*, Cambridge University Press, 2009.
- RICKFORD J. (Ed.), *The European Company*, Intersentia, 2003.
- USHER, J.A., *The Law of Money and Financial Services in the European Community*, Oxford University Press, Second Edition Reprinted.

## USEFUL INTERNET WEBSITES

- <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML> An English version of the Treaty on the Functioning of the European Union
- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:ES:PDF> <http://www.europa.eu.int> European Commission website.
- <http://curia.europa.eu/> Court of Justice of the European Union and General Court website
- <http://europa.eu.int/eur-lex/> Eur-Lex is the official source of European legislation. Eur-Lex also provides links to other major sites providing information on European law, such as Curia and Celex.
- <http://www.iue.it/RSCAS/Publications/BrowseType.shtml> Publications from the European Institute of Florence.
- [http://europa.eu.int/comm/internal\\_market/company/index\\_en.htm](http://europa.eu.int/comm/internal_market/company/index_en.htm) Commission web page which deals with company law & corporate governance.
- [http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm) European Commission (DG MARKT) site on the harmonisation of the rules relating to company law and corporate governance.
- <http://www.ecgi.org/> The European corporate Governance Institute is an international association which promotes the debate and dialogue between academics, legislators and practitioners, focusing on major corporate governance issues. You may find relevant documentation and reference to studies on corporate governance issues.

- <http://system04.rug.ac.be/fli/> The Financial Law Institute aims at promoting the dissemination of the research results of different researchers within the field of financial and company law. You may find relevant studies in the aforementioned fields.
- <http://www.bis.gov.uk/policies/business-law/company-and-partnershiplaw/europe> Site dedicated to EU Company Law by the UK Department for Business, Innovation and Skills (BIS).
- [www.cnmv.es](http://www.cnmv.es) The Site of the Spanish Stock Market Regulator ("*Comisión Nacional del Mercado de Valores*").
- <http://www.evca.eu/default.aspx> European Private Equity and Venture Capital Association.

**Part I.**  
**SUBJECT DETAILS**

Data on the subject	
Name	EU Corporate Law and Corporate Engineering
Degree	Postgraduate in Master in International and European Business Law
Year	2018 – 19
Nature	Fall
ECTS Credits	2 credits
Department	Law
Area	Law
Teaching staff	Rubén Ferrer Ferrer

Data on the teaching staff	
Teaching staff	Rubén Ferrer Ferrer
e-mail	rferrer@ga-p.com
Telephone	+34 915829100
Office	Gómez-Acebo & Pombo Abogados SLP
Tutoring Schedule	Upon request from students by appointment

**SPECIFIC DATA ON THE SUBJECT**

Pre-requisites
None
Contribution of the degree to the professional profile
<p>This subject will provide students with a general knowledge of the normative framework and main conceptual and practical challenges of EU Corporate Law and Corporate Engineering. Thus, it will contribute to preparing the professional development of skills useful to work in business enterprises, and law firms doing business in the EU and across its Member States. It will grant students tools to evaluate critically the current state of EU company law, corporate governance, regulatory competition among EU Member States, the pressure on them to reduce capital requirements and the EU and national efforts to reduce the legislative burdens on small and medium size enterprises in an increasingly harmonized field, as well as the challenges that remain unresolved.</p>

### COMPETENCES TO BE IMPROVED

Skills you will gain from this course:

#### GENERIC COMPETENCES

GC 1: Analysis and synthesis abilities

GC 3: Ability to manage information

GC 8: Critical appraisal skills

GC 10: Ability to develop autonomous learning skills

GC 11: Concern for quality

GC 12: Ability to apply theoretical knowledge into practice

#### SPECIFIC COMPETENCES

SC 1 - Having a critical view of the functioning and interaction of various institutions with relevance for international business

SC 2 - Mastering the main relevant international treaties in the field of international trade, distinguishing between binding instrument and mere recommendations or instruments merely of an interpretive or guiding nature (soft law)

### THEMATIC AREA AND CONTENT

#### AREA 1: EU Company Law and secondary legislation

##### Theme 1: Legal framework.

- 1.1. Introduction
- 1.2. Legal basis for secondary legislation on Corporate Law
- 1.3. EU Directives on Corporate Law
- 1.4. Draft legislation
- 1.5. The harmonisation of EU Corporate Law and its shortcomings

##### Theme 2: Main elements of EU Directives

- 2.1. Formation of companies, capital requirements and branches
- 2.2. Company restructurings
- 2.3. Financial information and disclosure obligations
- 2.4. Shareholders' rights, corporate governance and takeover bids

#### AREA 2: Business entities governed by EU law

##### Theme 1: The European Company (SE)

- 3.1. Introduction
- 3.2. Principles of current regulation
- 3.3. Implementation and conclusions

##### Theme 2: European Economic Interest Grouping (EEIG)

- 4.1. Introduction

- 4.2. Principles of current regulation
- 4.3. Implementation and conclusions

### Theme 3: Other types of entities

- 5.1. The European Cooperative Society (SCE)
- 5.2. The single-member private limited liability company (CUP)
- 5.3. The European Private Company (SPE)
- 5.4. The European Foundation (FE)

## BIBLIOGRAPHY AND RESOURCES

### Basic Bibliography

#### Text books and articles

ANDENAS & WOOLDRIDGE, "European Comparative Company Law". Cambridge University Press, 2009.

PAPADOPOULOS, "EU law and the harmonization of takeovers in the internal market", Kluwer Law International, 2010.

VAN GERVEN (Ed.), " Cross-Border Mergers in Europe", Vol. I, Cambridge University Press, 2010

CERIONI, "EU Corporate Law and EU Company Tax Law", Edward Elgar, 2007.

EDWARDS V., EC Company Law, Oxford University Press, First Edition Reprinted.

FERRARINI, Guido; HOPT, Klaus J.; WINTER, Jaap; WYMEERSCH, Eddy (eds.): "Reforming Company and Takeover Law in Europe", Oxford, 2004.

RICKFORD J. (Ed.), The European Company (Intersentia, 2003). USHER J.A., The Law of Money and Financial Services in the European Community, Oxford University Press, Second Edition Reprinted.

#### Chapters of books

CHARNY, "Competition among jurisdictions in formulating corporate law rules: an American perspective on the 'race to the bottom' in the European Communities", in S. Wheeler (ed.), A Reader on the Law of the Business Enterprise, Oxford Readings on Socio-Legal Studies, 1994 Oxford: Oxford University Press, pp. 365–391.

VILLIERS, C. "Harmonisation of company laws in Europe, with an introduction to some comparative issues", in Geraint G. Howells (ed.), 1996, European Business Law, Aldershot: Ashgate/Dartmouth, pp. 169–195.

#### Articles

CERIONI, "The "Abuse of Rights" in EU company law and EU tax law: a re-reading of the ECJ case law and the quest for a unitary notion", European Business Law Review 2010, v. 21, n. 6, December, pp. 783-813

WOUTERS, "European Company Law: Quo Vadis?" (2000) 31 CML Rev 257

### Websites

Europa: Company law and Corporate Governance

[http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm) Europa:

News (Company Law)

[http://ec.europa.eu/internal\\_market/company/news/index\\_en.htm](http://ec.europa.eu/internal_market/company/news/index_en.htm) Europa:

Company law Directives and other official acts

[http://ec.europa.eu/internal\\_market/company/official/index\\_en.htm](http://ec.europa.eu/internal_market/company/official/index_en.htm)

### Legal documents

### Notes

### Other material

EU Commission's Action Plan: Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies.

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0740>

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on single-member private limited liability companies

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:212:FIN>

## TEACHING METHODOLOGY

### General methodological aspects of the subject

#### Contact hours methodology: Activities

The course will follow an interactive format, combining presentations, analysis of legal documents, with participation of the students (exchange of views and discussions, and Q&A periods). A significant importance will be accorded to the analysis of the EU Directives and the ECJ case-law. In addition, the themes composing the course will feature interactive workshops or practical classes. At these interactive elements of experiential learning, participation of the students is required. Students will intervene under the guidance of the professor, who will provide comments and feedback.

#### Independent study methodology: Activities

Each student is supposed to structure his / her individual study autonomously, using the course syllabus as a guideline, and taking into consideration the advice of the professor along the course. In preparation to each lesson, students are requested to read and examine the background materials to be specified in advance, in addition to the bibliography and resources listed in the course syllabus. Students are requested to prepare in advance for the workshops and debate activities that will be

held during the course, by working on the materials and following the specific indications provided by the professor. After each lesson and at the conclusion of the course, students are expected to revise course contents, notes taken during lesson, as well as the materials referred to under basic bibliography. The professor could provide additional references for supplementary research if required.



SUMMARY OF STUDENT WORK HOURS			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	10	15	25
Workshop or practical class	7,5	15	22,5
Evaluation: exam	2,5	0	2,5
<b>ECTS Credits:</b>	<b>20</b>	<b>30</b>	<b>50</b>

### GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Eva
Individual participation in class	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills	5%
Preparation of two written cases per lesson for Lesson 2 through Lesson 6	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice	25% (5
Preparation of written proposal and class presentation of activity in Lesson 7	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice	10%
Final in-class exam	GC 1: Analysis and synthesis abilities GC 3: Ability to manage information GC 8: Critical appraisal skills GC 10: Ability to develop autonomous learning skills GC 11: Concern for quality GC 12: Ability to apply theoretical knowledge into practice	50%
Attendance		10%

- ❖ The final exam will consist of an in-class written exam where the students will reflect general and specific knowledge of the subjects dealt with in class. This exam represents 50% of the final grade of the course. Students are required to pass the exam in order to be entitled to take the grades obtained in the other evaluation activities into consideration.
- ❖ Presentations (written and oral) and participation in the workshops and debates that will take place during the course on the legal implications of an EU-topical issue proposed by the professor represent 35% of the final grade of the course.
- ❖ The active and substantial participation of each student during every session of the course represents 5% of the final grade.