

**SUBJECT DETAILS**

Data on the subject	
Name	EU Corporate Law and Corporate Engineering
Degree	Postgraduate in Master in International and European Business Law
Year	2016-2017
Nature	Fall Semester
ECTS Credits	4 ECTS
Department	Private Law
Area	Company Law
Teaching staff	Ignacio Ramos Villar/ Jaime Sánchez Diego/ Segismundo Álvarez

Data on the teaching staff	
Teaching staff	Ignacio Ramos Villar
e-mail	<a href="mailto:ignacio.ramos@cliffordchance.com">ignacio.ramos@cliffordchance.com</a>
Telephone	615 35 01 00
Office	N/A
Tutoring Schedule	Upon request from students

Data on the teaching staff	
Teaching staff	Jaime Sánchez Santiago
e-mail	<a href="mailto:Jaime.sanchez@cliffordchance.com">Jaime.sanchez@cliffordchance.com</a>
Telephone	91 590 75 74
Office	N/A
Tutoring Schedule	Upon request from students

Data on the teaching staff	
Teaching staff	Segismundo Álvarez Royo-Villanova
e-mail	<a href="mailto:salvarez@notariado.org">salvarez@notariado.org</a>
Telephone	91 553 13 44
Office	N/A
Tutoring Schedule	Upon request from students

## SPECIFIC DATA ON THE SUBJECT – Prof. Ramos

<b>Pre-requisites</b>
General knowledge of European Union Law and Company Law
<b>Contribution of the degree to the professional profile</b>
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. It will grant students tools to evaluate critically the current state of EU 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.

## COMPETENCES TO BE IMPROVED

<b>Generic Competences</b>
<b>Instrumental</b>
To deepen in the knowledge of EU Corporate Law and Corporate Engineering and its application to practical cases. To review this branch of law critically against the more general background of international corporate law and EU Law.
<b>Interpersonal</b>
To exercise participation skills and respect for the opinions of others.
<b>Systemic</b>
To display abilities of normative and critical analysis, as well as applied knowledge to practical problems.
<b>Specific competences of the subject</b>
<b>Conceptual (knowing)</b>

- To understand the functioning of the European Union institutional architecture in relation to corporate law.
- To examine the legal challenges regarding the role of EU corporate law in a global business environment.
- To understand the legal framework that regulates corporate law in the EU
- To know the competences of the EU in this field and those of its Member States.
- To review the primary and secondary legislation of the EU concerning corporate law.
- To understand the original objectives and subsequent development of the European integration process in the area of corporate law.
- To know the main developments of the case-law of the EU Court of Justice in relation to the application of the fundamental freedoms to corporate law.
- To know the main business entities governed by EU Law instead of national law.

#### Procedural (doing)

- To demonstrate the impact of the case-law of the Court of Justice of the EU on the incorporation of a business entity in the EU.
- To exemplify the functioning of the EU institutions through the study of practical cases.
- To solve practical cases of policy and law making.
- To debate in class through small working groups.
- To illustrate the functioning of EU Company law directives through the analysis of practical cases.

#### Professional (knowing how)

- To argue in favour of a certain position based on the abilities acquired through discussion in class and exercises dealing with case studies.

- To critically analyze the legal challenges involved in the subject.
- To analyze through case studies the actual functioning of EU institutions and its relation to the very different domestic legal orders of the Member States in Corporate law.
- To be able to provide legal advice on key elements of corporate law such as the requirements for the incorporation of a company in one or another Member States of the EU and the advantages and disadvantages of using one of the business entities proposed by the EU institutions instead of a national entity.

### THEMATIC AREA AND CONTENT

<b>AREA 1: European Corporate Law and the EU Treaties</b>
<b>Theme 1: Fundamental Freedoms and Corporate Law: The right of establishment</b>
1.1 Introduction 1.2 Treaty rules 1.3 The Case-Law of the Court of Justice
<b>Theme 2: Fundamental Freedoms and Corporate Law: The free movement of capital</b>
2.1 Introduction 2.2 Treaty rules 2.3 The Case-Law of the Court of Justice
<b>AREA 2: European Corporate Law and secondary legislation</b>
<b>Theme 1: Normative framework</b>
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
<b>Theme 2: Main elements of EU Directives</b>
2.1 Formation of Companies 2.2 Capital and Shareholder's rights

2.3 Management and Control of Companies
2.4 Investor protection
<b>AREA 3: Business entities governed by Union law</b>
<b>Theme 1: European Economic Interest Grouping</b>
1.1 Introduction
1.2 Principles of current regulation
1.3 Implementation and conclusions
<b>Theme 2: The European Company (<i>Societas Europaea</i>)</b>
2.1 Introduction
2.2 Principles of current regulation
2.3 Implementation
2.4 Conclusions
<b>Theme 3: Other Societary Forms</b>
3.1 European Cooperative Society
3.2 The European Private Company
<b>AREA 4: Cross-border mergers and acquisitions</b>
<b>Theme 1: EU legislation applicable to Cross-Border mergers</b>
3.1 Introduction: Principles and General scheme
3.2 Cross-border mergers: The Third and Tenth Directives
3.3. Takeovers: The Thirteenth Directive
3.2. Conclusions

## BIBLIOGRAPHY AND RESOURCES

<b>Basic Bibliography</b>
<b>Text books</b>
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,

#### 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)

#### 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 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:213:FIN>

- 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>

### Additional Bibliography

#### Text books

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

## TEACHING METHODOLOGY

### General methodological aspects of the subject

#### Contact hours methodology: Activities

Lecture (10 hours)  
 Practical cases and debate (7 hours)  
 Presentation (2 hours)

#### Independent study methodology: Activities

To be announced in the first session

## SUMMARY OF STUDENT WORK HOURS

Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	10		10
Practical class	5		5
Debate	2		2



In class presentation	2		2
Individual work		15	15
Work in collaboration		25	25
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	1		1
Evaluation: exam review			
Others			
<b>ECTS Credits:</b>	<b>2</b>	<b>4</b>	<b>6</b>

## GRADE EVALUATION AND CRITERIA

<b>Evaluation Activities</b>	<b>Generic Competences</b>	<b>Indicators</b>	<b>Evaluation Weighting</b>
Individual work			
Work in collaboration			
Debate	Analytical skills	Structuring of ideas, clearness of conclusions and legal reasoning	<b>20%</b>
Class presentation	Oral presentation skills, analytical skills	Structuring of ideas, clearness of conclusions and legal reasoning	<b>20%</b>
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam (final)			<b>50%</b>
Attendance			<b>10%</b>

**PART II – Profs. Sánchez Santiago & Álvarez “EU Internal Markets & Corporate Planning and Issues Concerning Multijurisdictional and Cross Border Corporations”**

**Theme 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.

**Theme 2: THE RIGHT OF ESTABLISHMENT OF COMPANIES (II): TRANSFER OF SEAT**

- 2.1 Case study

**Theme 3. THE RIGHT OF ESTABLISHMENT OF COMPANIES (III): EU CROSSBORDER MERGERS**

- 3.1 Council Directive 2005/56/CE of 26 October 2005 on cross-border mergers,
- 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.

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

- 4.1 Case study

**Theme 5: ACQUISITION PROCESS (II): SHAREHOLDERS' AGREEMENTS**

- 5.1 Case study

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

- 6.1. Case study

**Theme 7: ACQUISITION PROCESS (IV): ACQUISITION FINANCE**

- 7.1 Case study

**Theme 8: ACQUISITION PROCESS (V): SALE AND PURCHASE AGREEMENT (II)**

- 8.1 Case study

**BIBLIOGRAPHY AND RESOURCES**

**Basic Bibliography**

**Text books**

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

**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)

#### 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 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:213:FIN>
- 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>

#### Additional Bibliography

##### Text books

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

#### Basic Bibliography

##### Text books

- ANDENAS AND WOOLDRIDGE. *European Comparative Company Law*, Cambridge University Press, 2009.
- BRUNER, R., *Applied Mergers & Acquisitions*, John Wiley & Sons, 2004.
- BARNARD, C., *The Substantive Law of the EU. The four freedoms*, Oxford University Press.
- CARNEY, W., *Mergers and Acquisitions: The Essentials*, Aspen Publishers, 2003.
- DEMARIA, C., *Introduction to Private Equity* (John Wiley & Sons, 2010)
- 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.

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

### Chapters of books

Please see "other materials" below

### Articles

FERRAN, E:

- "Regulation of Private Equity - Backed Leveraged Buyout Activity in Europe" (May 2007). ECGI

- Law Working Paper No. 84/2007.

- "The Regulation of Hedge Funds and Private Equity: A Case Study in the Development of the

EU's Regulatory Response to the Financial Crisis" (February 15, 2011). *University of*

*Cambridge Faculty of Law Research Paper No. 10/2011; ECGI - Law Working Paper No.*

176/2011.

LICHT, Amir N., "Stock Market Integration in Europe", Harvard Law School, Program of International financial Systems, March 1997.

PAPADOPOULOS T., "EU regulatory approaches to cross-border mergers: Exercising the right of establishment", *European Law Review*, Issue 1 (2011) 71-97.

RINGE, W., "Domestic Company Law and Free Movement of Capital: Nothing Escapes the European Court?" (March 20, 2010), *Cambridge Law Journal*, Vol. 69.

SIEMS, M., "Sevic: Beyond Cross-Border Merger", *European Business Organization Law Review (EBOR)* 8 (2007) 307-316.

WYCKAERT, M AND GEENS, K., "Cross-Border Mergers and minority protection. An open-ended harmonization", *Utrecht Law Review*, Volume 4, Issue 1 (March 2008).

Please see also "other materials" below.

### Websites

- <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:ES:PDF TFUE>.
- <http://www.curia.eu.int> European Court of Justice and Court of First Instance 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://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://system04.rug.ac.be/fli/> The Financial Law Institute aims at promoting the dissemination of the research results of the different researches within the field of financial and company law. You may find relevant studies in the aforementioned fields.
- European Commission (DG MARKT) site on the harmonisation of the rules relating to 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)
- Site dedicated to EU Company Law by the UK Department for Business, Innovation and Skills (BIS): <http://www.bis.gov.uk/policies/business-law/company-and-partnershiplaw/europe>
- European Court of Justice: [http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/)

- European Private Equity and Venture Capital Association: <http://www.evca.eu/default.aspx>
- Publications from the European Institute of Florence\_  
<http://www.iue.it/RSCAS/Publications/BrowseType.shtml>
- [www.cesr.es](http://www.cesr.es)
- [www.esma.europa.eu](http://www.esma.europa.eu)
- [www.world-stock-exchanges.net](http://www.world-stock-exchanges.net)
- [www.iosco.org](http://www.iosco.org)
- [www.cnmv.es](http://www.cnmv.es)
- [www.amf-france.org](http://www.amf-france.org)
- [www.londonstockexchange.com](http://www.londonstockexchange.com)
- [www.euronext.com](http://www.euronext.com)
- [www.bolsasymercados.es](http://www.bolsasymercados.es)

#### Notes

Please see also "other materials" below. In addition, the power point presentations used for the lectures will be distributed to students

#### Other material

A complete syllabus will be provided.

The syllabus will include additional background documentation, including, without limitation:

- Case law of the EUCJ regarding freedom of establishment.
- Relevant EU legislation and Commission documents related to the matters of the course.
- Member States corporate and civil laws.

## TEACHING METHODOLOGY

### Profs. Sánchez Santiago & Álvarez

#### General methodological aspects of the subject

##### Contact hours methodology: Activities

As mentioned below the course is based in experiential learning based on case studies. There will be some theory only to the extent necessary to prepare and discuss the case studies. Therefore, at least 75% will be experiential learning and no more than 25% theory associated to the case studies.

More details to be provided in the first session.

##### Independent study methodology: Activities

There will be one case study for each session. Case studies will consist of real cases or hypothetical scenarios, whereby students are mainly asked to draft a memorandum providing a practical solution to the client, negotiating one legal situation or to draft legal documentation.

When preparing the class students should read the materials included in the syllabus thoroughly. The materials will include, sometimes, questions to help students to focus on key issues which should try to answer.

The Socratic Method, as commonly practiced in Anglo-Saxon law schools will be also used, so students should be prepared to answer the questions raised in the materials, in the case studies and during the lectures. All sessions will be open for discussion and participation is highly encouraged.

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. We advice to read at least one of these reports before starting the course. Parts of these reports and some legislation of these countries will be used to solve some of the case studies.  
More details to be provided in the first session.

#### SUMMARY OF STUDENT WORK HOURS

Activity	Number of contact hours	Number of independent study hours	Total number of hours
Lecture	20 (includes debate)		20
Practical class		12	12
Debate		8	8
In class presentation		8	8
Individual work		10	10
Work in collaboration		10	10
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam		2	2
Evaluation: exam review		2	2
Others			
<b>ECTS Credits:</b>	<b>2</b>		

#### Profs. Sánchez Santiago & Álvarez

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Attendance	Punctuality, responsibility, respect for class		10%
Individual work/work in collaboration/debate	Preparation of classes, analysis of theory and cases Ability to work in teams Participation, oral presentation skills		40%
Evaluation: exam	Theoretical knowledge and practical application of it		50%

#### Grade breakdown

1. 10% attendance: refers to arriving punctually to class and remaining present for the whole duration of the lecture, respecting the time assigned for breaks and duly re-joining the class in the schedule specified by the professor.

2. 40%: (i) individual work: participation in class reflecting reading understanding of the assigned/presented articles, chapters and case studies, either by reacting to direct questions of the professor to each student, by open questions to all the class, or by spontaneous interventions related to the subject matter that is being explained; (ii) work in collaboration: (in addition to individual participation referred to above) the student will develop his/her views on a concrete case demonstrating well-founded critical thinking. The class will be divided in two groups, each one will construct legal arguments to defend each of the two positions (applicant and respondent); (iii) debate refers to participating in debates posed in class and answering concrete questions regarding the two (or more) positions concerning the debate. It also reflects general interest in the class.
3. 50% Evaluation: exam- a written exam is required where the student will reflect general and specific knowledge of the subjects dealt with in class.