

Derecho de Sociedades, Fusiones y Adquisiciones

MAPO_014130

Departments	Department of Law
Teaching Languages	English and Spanish
ECTS	3
Teacher responsible	Geli Fernandez Peñaflor Eduardo - eduard.geli@esade.edu Gandoy Fernandez Isabel - isabel.gandoy@esade.edu

Course Goals

Upon successfully completing this course, participants should be able to:

- a) Understand the different types of corporate control structures, the differences between them and their implications.
- b) Recognise and understand the different phases of the sale-purchase of a company (whether through assets or shares), identifying the function of each phase, the principal problems and the documentation commonly used for these operations. They should also be able to analyse specific issues applicable to the acquisitions of companies in crisis.
- c) Familiarise themselves with private equity, its typologies, its investment strategy, specific issues regarding acquisitions (especially leveraged buy-outs), exit strategies, the regulations governing and principle differences between investment funds.
- d) Recognise and understand public takeover bids, compulsory and voluntary public takeover bids, exclusions and dispensable requirements, competing public takeover bids, exclusion of bids and purchase rights (squeeze out) and forced sale (sell out).
- e) Know how the key company integration operations (mergers, active and passive global cession, and division) are used in practice to acquire companies. Understand the characteristics of each and identify the most appropriate operation for each specific scenario.
- f) Be familiar with the business collaboration agreements, in particular for joint ventures, and their principal characteristics, the documents used and the principal problematic issues.

Prerequisites

Law Degree

Recomended courses

A degree in Business Administration or Economics is useful

Description

Course contribution to

This subject contributes to the program by helping participants:

program

(a) Acquire a basic understanding related to:

(i) company acquisitions, including leveraged buyouts, with reference to the unique traits of acquiring companies in crisis;

(ii) the acquisition of firms through restructuring processes (mergers, spin-offs and the global assignation of assets and liabilities);

(iii) the unique traits of acquiring publicly-listed companies; and

(iv) joint ventures and shareholder agreements, understanding the different phases of these operations, the purpose of each and the most important elements to bear in mind.

(b) Be capable of analyzing and understanding the implications of these operations from the different areas of law involved (civil, mercantile, tax, labor, regulatory, competition, etc.), understanding the convergence and interrelations between them and being able to structure the operations as efficiently as possible.

(c) Be familiar with the concepts, terminology, key problems and documentation regarding these operations, enabling them to acquire a global and general perspective of these operations and identify the primary advantages and disadvantages that they pose.

(d) Provide participants the tools they need to determine the most appropriate operation for each concrete situation, considering the clients needs and the particularities and implications of each type of operation.

Short description

This subject applies the case-study methodology. The different sessions consist of a presentation and discussion of supporting documents which participants receive beforehand and which faculty expand on during the session. Participants are encouraged to participate during these presentations to raise questions or comment on the issues raised. The aim is to generate and encourage dialogue and debates between participants who have to duly justify their answers.

Faculty will explain the theoretical concepts as applied to practical situations, in many case, referring to current events.

The case studies are discussed and resolved in class, with active participation by participants who will comment on the different issues raised and express their opinions. Faculty will guide these discussions and address the most interesting issues presented in the cases and ensuing discussions, presenting a summary of the conclusions reached.

Bibliography

Angel Carrasco Perera / José M^a Álvarez, Adquisiciones de Empresas, Aranzadi, 978841309318 (Book)

Rafael Sebastián Quetglas, Manual de Fusiones y Adquisiciones de Empresas, La Ley, 9788419905376 (Book)

Activities

In-class discussions and debates

Active student participation in class

Written and/or oral exams

A multiple-choice test

Case study resolution

Resolution of several case studies

Content

#	Topic
1	Introduction to the course and mergers and acquisitions (M&A) Aims: - Understand the content and aim of the course - First contact with company sale-purchases and with restructuring processes and corporate control structures Content: - Introduction to company sale-purchases - Introduction to restructuring processes and corporate control structures - Analysis of the "universal succession" and "individual succession" concepts as a means to transfer ownership of companies and analysis of the concept and implications (labour and tax- related) of "company succession"
2	The acquisition process Aims: - Understand the procedure and different phases of the acquisition process - Understand the role played by the different protagonists in acquisition processes - Understand the different preparatory agreements and their implications - Analyse letters or agreements of intent, their usual content and their legal effects - Become familiar with the concept of due diligence in the framework of an acquisition procedure, while placing special emphasis on due diligence, its content, scope and aims Content: - Initial phase and preparatory agreements for the acquisition process - Intervening parties and
3	The sale-purchase contract Aims: - Become familiar with the structure and content of the sale-purchase contract - Understand the inclusion of the sale-purchase contract (of Anglo-Saxon origin) in the Spanish legal system - Understand the obligations derived from the contract - Know the most common clauses - Know the most common guarantees within the framework of sale-purchase operations - Understand the signing system and close of contract, and the function and functioning of suspension conditions Content: - Contract object and parts - Declarations and guarantees - Obligations. Special reference to specific indemnities - Other obligations for the seller - Acquisition of companies in crisis: specificities - Suspension conditions and the close of operation. Special reference to the MAC clause - Preparing to close the contract
4	The acquisition of publicly-listed companies Aims: - Become familiar with Public Takeover Bids and their regulations - Understand in what scenarios Public Takeover Bids are compulsory, what scenarios are excluded and which may be dispensed with; what voluntary Public Takeover Bids are and what they are for - Understand the conditions that a Public Takeover Bid may be subject to, what defensive measures may be adopted by a company that is subjected to a takeover bid, the content and scope of the duty of passivity. - Understand the functioning and implication of competing Public Takeover Bids, the scenarios for the exclusion of bids and those related to forced purchase (squeeze out) and sale (sell out) rights. Content: - The acquisition of publicly-listed companies: applicable regulations, types of Public Takeover Bids (compulsory, voluntary, competitive) - Defensive measures and neutralisation regime - Passivity duty - Exclusion of bids, squeeze out and sell out
5	The operation of "private equity" entities Aims: - Become familiar with private equity entities, their investment policy and types and disinvestment - Understand how leveraged buyouts function - Analyse the prohibition of financial aid and its scope Content: - Venture capital and its activity - Venture capital entities - The Law on Venture Capital entities - The investment: equity and debt - Disinvestment: exit clauses - Compulsory purchase rights (squeeze out) and sale rights (sell out) in public-to-private operations - Incentives for executives - Financial subventions and grants - Leveraged mergers and their treatment in the law on structural modifications.
6	Acquisition of companies through different sale- purchase operations Aims: - Learn about national and international mergers, global cession of assets and liabilities and divisions (distinguishing segregation as a modality of division, and also the operation of a contribution to a branch of activity) - Understand the specificities of each operation, its similarities and differences, and also be able to determine which operation is most appropriate to solve a specific situation. Content: - Mergers: types and effects. Special mergers. Merger schedule and project. The exchange equation - Division: types and effects. Legal regime - Contribution to a branch of activity - Global cession of assets and liabilities - Cross-border mergers. European community mergers. Cross-border mergers with non-EU countries
7	Joint ventures Aims: - Become familiar with typical business collaboration scenarios with a special analysis of joint ventures: their aim, their typical structure, main problems that they present and ways of tackling them. - Understand shareholder

#	Topic
7	agreements, their content, structure and scope, as well as relevant recent jurisprudence and doctrinal trends Content: - The common company - Distinctions between similar types - Contracts regulating a joint venture: contract between partners, statutes - Executability of shareholder agreements - Recent Supreme Court jurisprudence and doctrinal trends
8	Joint ventures (2) Aims: - Become familiar with typical business collaboration scenarios with a special analysis of joint ventures: their aim, their typical structure, main problems that they present and ways of tackling them. - Understand shareholder agreements, their content, structure and scope, as well as relevant recent jurisprudence and doctrinal trends Content: - The common company - Distinctions between similar types - Contracts regulating a joint venture: contract between partners, statutes - Executability of shareholder agreements - Recent Supreme Court jurisprudence and doctrinal trends
9	Practice Cases
10	Summary and overview

Assessment

Tool	Assessment tool	Category	Weight %
In-class analysis and discussion of issues	Active student participation in class	Ordinary round	10.00%
Individual or team exercises	Resolution of case studies	Ordinary round	40.00%
Written and/or oral exams	Final exam (multiple-choice and the possibility of consulting relevant legislation):	Retake and ordinary round	50.00%

PROGRAMS

113-Law Exchange Program (Undergraduates: Law)
113 Year 1 (Optative)

DD05-Double Degree Program (exchange) (Undergraduates: Law)
DD05 Year 1 (Optative)

LCL23-Master of Lifelong Learning in Corporate Law (Masters: MUA)
LCL23 Year 1 (Mandatory)

LIB23-Master of Lifelong Learning in International Business Law (Masters: MUA)
LIB23 Year 1 (Mandatory)

MUA23-Master in Professional Legal Practice and Procuring (Masters: MUA)
MUA23 Year 1 (Optative)