**CROSS-BORDER BUSINESS TRANSACTIONS –**

***HOW TO REACH AGREEMENT AND RESOLVE DISPUTES***

**Lecturer:** **Bruce Alan Mann** – guest lecturer (USA)

**Course description**

This course will focus on the lawyer’s role in advising businesses that propose to enter into a transaction with a foreign business, focusing on that types of transactions, the issues raised in each, how to resolve those issues, and how to provide for dispute resolution if an agreement can’t be reached. The course will consist of 10 two-hour sessions in which actual transactions will be reviewed, using video, lecture, interactive role playing, and discussions with guest speakers who are actively involved in representing parties to cross-border business transactions

**Course outline**

Session 1 - Following a brief summary of what the course will cover, this session will focus on why parties engage in cross-border business transactions and what they hope to accomplish from them.

Session 2 – Who are the potential parties to a cross-border transaction? The use of sole proprietorships, corporations, and general and limited partnerships to conduct the domestic enterprise (“Domco”) before the transaction, and the advantages and disadvantages of each. What to focus on and what questions to ask of the foreign business (“Foreignco”) before entering negotiations.

Session 3 – What are the alternative types of cross-border transactions? The use of total or partial acquisitions, minority investment, franchise or licensing agreements, and other forms of transactions to implement a cross-border business transaction.

Session 4 – What are the basic financial and accounting issues involved in cross-border business transactions? The use of earn-outs, baskets, negotiable contingent value rights and other ways to resolve the expectation gap between the parties, and the traps for the unwary that shouldn’t be ignored.

Session 5 – What agreements should the parties enter into before deciding whether to enter into a cross-border transaction? The use of confidentiality agreements, stand-still agreements, and other agreements to preserve the ability of the parties to walk away if they do not reach agreement.

Session 6 – Should the parties enter a “letter of intent” or “memorandum of understanding” before negotiating the definitive agreement? What should the LOI contain and what should be deferred for future negotiation.

Session 7 – What is included in a cross-border acquisition or investment agreement? This session involves a discussion of the role and contents of representations and warranties, closing conditions, post-closing covenants, and other provisions that are customarily included in an acquisition agreement.

Session 8 – What agreements are common to cross-border investments that do not involve the acquisition of Domco? The form of the investment agreement and the use of rights of first refusal, voting agreements and investor rights agreements to govern post-investment relations between the parties.

Session 9 – How does a lawyer prepare for negotiating a cross-border business transaction? A review of the provisions in a cross-border transaction that are most contentious and how to resolve the parties’ differences of position. How to learn what to expect from the other party and its lawyers. Is there an “art of negotiation” and, if so, what is it and how does the lawyer play a role in the negotiation process?

Session 10 – What are the alternatives if a dispute arises? The use of buy-sell agreements, termination rights, ADR, mediation and litigation to resolve disputes, including choice of forum, law, language and other provisions that should be included in the transaction documents.

**Assessment**

Written exam