



UNIVERSIDAD  
**esan**

# **Syllabus**

## **Structure of Corporate Transactions**

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**August – December 2018-2**

**12th Term**

**Lecturer**

**Carlos Enrique Arata Delgado**

## I. General information of the course

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|-----------|---|------------------|
| Course    | Structure of Corporate Transactions                     | Crédits: 3       |
| Code      | 9618  | Semester: 2018-2 |
| Requisite | Fusiones y Adquisiciones, concesiones y Privatizaciones | Cycle: XI        |

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|----------------------|-----------------------------------|
| Lecturer             | Email                             |
| Carlos Enrique Arata | [carata]@esan.edu.pe <sup>1</sup> |

## II. Outline of the course

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The course intends to introduce students to the real world experience of the deal making process, from the motivations that drive the parties to sell, acquire or invest in a business, and the first contact between these parties, to the drafting and negotiating of the principal agreements in each stage of the transaction, focusing on a private transaction but also over viewing other structures, such as leverage buyouts and acquisition of public companies.

## III. Objectives of the course

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By the end of the course the students should be able to understand the process of acquiring or selling a company, how the valuation is performed, certain tax implications and how the risks of the transactions are allocated.

## IV. Learning results

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At the end of the course, the student will be able to:

- Identify the main agreements that are entered into during the process of acquiring, or making an investment in, a company and the main actors in that process.
- Understand the key provisions of these agreements.
- Identify how these provisions vary depending on the characteristics and the position in the negotiation of the parties involved.
- Identify how and why risks are allocated among the different parties of the transaction.
- Create teams capable of negotiating complex transactions in a changing environment.

## V. Methodology

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- The class meets weekly for three-hour sessions and the lectures will be taught in English.

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<sup>1</sup> Es posible incluir mi mail personal ([carlosaratad@gmail.com](mailto:carlosaratad@gmail.com)) o del estudio Rubio ([carata@rubio.pe](mailto:carata@rubio.pe))?

- Students will be divided in certain number of groups; all but one group will be representing the buyer side. The remaining group will be the seller side.
- Weeks 1-4 will be introductory on how an acquisition process works, what drives sellers and buyers to enter into the transaction, what structures are commonly used.
- Likewise, on week 1, students will receive the hypothetical case that will be worked on during the semester.
- From week 4 to week 12 professor will introduce certain elements of a corporate transaction. Each buyer group, during the following 48 hours, need to prepare a proposed agreement/section of the agreement that needs to be sent to the seller, which in turn shall study the proposal for the upcoming class. Seller shall deliver comments to the professor of each proposal before each class. In the first hour of each class will be used to negotiate between buyers and sellers.
- If a buyer group does not send the proposal or if the seller group does not send the comments in the aforementioned term, the group will receive a 0 for that lesson.
- In total each group should have made 8 deliveries, the lowest 3 will be eliminated. The average of the remaining 5 will be the Permanent Evaluation grade.
- Three reading tests will be rendered on specific dates. None can be eliminated.

## VI. Evaluation System

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The evaluation system is permanent and comprehensive. The final grade is calculated with the permanent evaluation (PEP) (40%), the midterm exam (EP) (30%) and the final exam (EF) (30%).

$$\text{Final Grade} = (0,30 \times \text{Midterm Exam}) + (0,40 \times \text{PEP}) + (0,30 \times \text{Final Exam})$$

Permanent Evaluation will consist of:

$$(0.5 \times \text{Cases Deliveries}) + (0.3 \times \text{Investigation Report}) + (0.2 \text{ Reading Test})$$

## VII. Weekly contents

| <b>WEEK</b>   | <b>CONTENTS</b>  | <b>ACTIVITIES / EVALUATION</b>   |
|---|--|--|
| <p><b>1°</b></p> <p>Del 20 al 25 de agosto</p>              | <p><b>Course Introduction</b></p> <p>What drives someone to sell its business or to acquire new businesses?</p> <p>Case presentation</p>   | <p>Game plan for the course.</p> <p>Teams selection.</p>   |
| <p><b>2°</b></p> <p>Del 27 de agosto al 01 de setiembre</p> | <p><b>Unit 1:</b> Valuation. Different analysis.</p> <p><b>Learning result:</b> Students should be familiarized with the main valuation techniques</p>   | <p>Presentation from the lecturer</p> <p>Participation in class</p>  |
| <p><b>3°</b></p> <p>Del 03 al 08 de setiembre</p>           | <p><b>Unit 2:</b> Acquisition Structures and tax implications</p> <ul style="list-style-type: none"> <li>- Merger</li> <li>- Assets acquisition</li> <li>- Stock acquisition</li> </ul> <p><b>Learning result:</b> Students will learn the three different acquisition structures and what drives actors to choose one or the other</p> <p>Reading Test: (i) Oesterle 1-10, (ii) Miller 1-22, 31-35</p>  | <p>Presentation from the lecturer</p> <p>Participation in class</p>  |
| <p><b>4°</b></p> <p>Del 10 al 15 de setiembre</p>           | <p><b>Unit 3:</b> Bidding process and investment banking. Due diligence</p> <p><b>Learning result:</b> Students will understand how a bidding process is conducted</p>   | <p>Presentation from the lecturer</p> <p>Participation in class</p>  |
| <p><b>5°</b></p> <p>Del 17 al 22 de setiembre</p>           | <p><b>Unit 3:</b> Process Agreements:</p> <ul style="list-style-type: none"> <li>- Confidentiality Agreement</li> <li>- Exclusivity Agreement</li> <li>- Standstill Agreement</li> <li>- Letter of intent/Memorandum of Understanding</li> </ul> <p><b>Learning result:</b> Students should be able to understand the different agreements that are entered between buyer and seller before the actual structure and acquisition agreements are negotiated</p> | <p>Presentation from the lecturer</p> <p>Participation in class</p> <p>Review of managers presentation and comments (Delivery 1)</p> |
| <p><b>6°</b></p> <p>Del 24 al 29 de setiembre</p>           | <p><b>Unit 4:</b> Financing the acquisition: commitment letter</p> <p><b>Learning result:</b> Student will get familiarized with the principal ways to obtain financing to pay the purchase price and how this affects the seller's decision and the guarantees the sponsors may require from the SPV, its shareholders or the purchaser.</p>  | <p>Presentation from the lecturer</p> <p>Participation in class</p> <p>Review of proposed agreements and</p>                         |

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|  | Reading test: (i) Rosembau 295-319, (ii) Miller 23-77  | negotiation (Delivery 2)   |
| 7°<br>Del 01 al<br>06 de<br>octubre                  | <b>Unit 5:</b> Acquisition Agreement: purchase price provisions<br><br><b>Learning result:</b> Understand the main ways in which the purchase price is determined, paid and released.  | Presentation from the lecturer<br><br>Participation in class<br><br>Review of proposed commitment letters and negotiation (Delivery 3)             |
| 8°<br>Del 08 al<br>13 de<br>octubre                  | <b>MID TERM EXAMS</b>  |  |
| 9°<br>Del 15 al<br>20 de<br>octubre                  | <b>Unit 5:</b> Acquisition Agreement: conditions to closing and closing<br><br><b>Learning result:</b> Students will learn when closing conditions are required and how these considered and enforced in an acquisition agreement.   | Presentation from the lecturer<br><br>Participation in class<br><br>Review of proposed purchase price and payment conditions (Delivery 4)          |
| 10°<br>Del 22 al<br>27 de<br>octubre                 | <b>Unit 5:</b> Acquisition Agreement: Representation and Warranties. Qualifiers and carve outs. Disclosure Schedules<br><br><b>Learning result:</b> Students will understand the utility of representations and warranties in the context of an acquisition process and the scope of this clause depending on its position in the transaction. | Presentation from the lecturer<br><br>Participation in class<br><br>Review of proposed conditions to closing and negotiation (Delivery 5)          |
| 11°<br>Del 29 de<br>octubre al<br>03 de<br>noviembre | <b>Unit 5:</b> Acquisition Agreement: Covenants<br><br><b>Learning result:</b> Understand the key obligations assumed by the parties in the transaction.   | Presentation from the lecturer<br><br>Participation in class<br><br>Review of proposed representations and warranties and negotiation (Delivery 6) |
| 12°<br>Del 05 al<br>10 de<br>noviembre               | <b>Unit 6:</b> Termination rights; escrow agreements and other securities<br><br><b>Learning result:</b> Student will understand under what circumstances acquisition agreements can be terminated and the consequences of such termination  | Presentation from the lecturer<br><br>Participation in class<br><br>Review of proposed covenants (Delivery   |

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|---|---|---|
|   | Reading test: Miller 197-242  | 7)  |
| <b>13°</b><br>Del 12 al<br>17 de<br>noviembre                 | <b>Unit 7: Leverage Buyouts</b><br><br><b>Learning results:</b> Understand what a LBO is. | Presentation from<br>the lecturer<br><br>Participation in class<br><br>Review of<br>termination rights<br>and negotiation<br>(Delivery 8) |
| <b>14°</b><br>Del 19 al<br>23 de<br>noviembre                 | <b>Unit 8: Acquisition of public companies</b>  | Presentation from<br>the lecturer<br><br>Participation in class   |
| <b>15°</b><br>Del 26 de<br>noviembre<br>al 01 de<br>diciembre | <b>Unit 8: Acquisition of public companies</b>  | Presentation from<br>the lecturer<br><br>Participation in class   |
| <b>16°</b><br>Del 03 al<br>08 de<br>diciembre                 | <b>FINALS</b>   |   |

## VIII. Bibliography

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- INVESTMENT BANKING, Rosenbaum, Joshua and Joshua Pearl. Second Edition. Wiley & Sons. New Jersey, 2013
- MERGERS AND ACQUISITIONS, Miller, Edwin. Wiley & Sons, New Jersey, 2008
- MERGERS AND ACQUISITIONS IN A NUTSHELL, Oesterle, Dale A., Thomson/West. Minnesota, 2006.

## IX. Lecturer

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Carlos Enrique Arata Delgado: [\[carata@esan.edu.pe\]](mailto:carata@esan.edu.pe)

Attorney graduated from the School of Law at Pontificia Universidad Católica del Perú. Master Finance and Corporate Law by Universidad ESAN. Master in Law – Corporate Law by NYU School of Law. More than 12 years of experience in corporate transactions working for firms in Peru and in New York. He has been professor of Mergers and Acquisitions, Capital Markets and Banking Agreements in the postgraduate Specializations Programs at Universidad ESAN, and professor of Capital Markets at Universidad de Lima's Master in Corporate Law. He is currently partner of the corporate practice at Estudio Rubio Leguia Normand.