

PE, VC and FEMA

Course Description

In the past two decades, there has been an exponential rise in start-up companies in India. This has been supported by changes in the legislative structure in India, with many compliances being relaxed for such start-up companies. Many of these start-up companies have received funding from domestic and foreign institutional investors, achieving a unicorn status (i.e., a valuation of USD \$1 billion as a private company) in the last decade (including Zomato, Rapido, Ather, Blinkit, etc.). Many of these unicorn companies have also been successful in achieving an IPO status, i.e. they were successful in listing their equity shares on Indian stock exchanges. Institutional investors can be of various kinds. These can be corporations, private equity funds, venture capital funds, and hedge funds.

In parallel, there has also been a rise in corporate lawyers who can advise investors and companies alike. The demand for such lawyers not only exists in law firms but also in in-house roles with institutional investors and companies.

This course is intended to introduce concepts related to the formation of private funds in India and their investments in Indian companies, especially from a corporate governance perspective. This is necessary since there is a growing confusion between the differences between the role and investment strategies of private equity and venture capital firms.

The course will consider the life cycle of private funds (both private equity funds and venture capital funds), and the deal life cycle when these private funds invest in private companies, starting from due diligence to post-investment integration and disputes. This will also include compliance issues throughout the deal, structuring of deals based on the identified compliance issues, such as stamp duties, tax considerations, foreign direct investment, SEBI and other sectoral restrictions which may exist.

The course is ideal for students exploring corporate laws as viable career paths since it seeks to clarify cumbersome and challenging concepts, which are subject to fast-paced amendments. The course will also introduce real-life case studies and the application of these laws in a transaction. The course is based on the practice experience of the course instructor, who has worked on multiple transactions over the years.

Course Aims

The course aims to introduce students to deal structuring and investments received by Indian companies – introducing core concepts, relevant laws, structuring of deals by both the companies and the investment firms and understanding them in a manner which can be applied by students when working as professionals. However, it must be cautioned that the laws are subject to amendments, and students should always recheck the provisions before application in any transaction.

The course seeks to provide practical insight and knowledge which are expected of interns and young associates in law firms who can differentiate themselves work-wise, having a sound theoretical background, coupled with practical application.

Teaching Methodology

The course will be taught primarily through various corporate law provisions, such as the Indian Contract Act, 1872, the Indian Stamp Act, 1899, the Specific Relief Act, 1963, the Arbitration and Conciliation Act, 1996, the Companies Act, 2013, the FEMA Manual, and the SEBI Manual, read with their relevant rules, regulations and notifications, as necessary to the discussion. A combination of the lecture method, faculty-led discussions and the Socratic method may be employed. Case studies of actual deals will be relied upon and may include cases that the course instructor has also undertaken in her professional experience.

Intended Learning Outcomes

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
Core principles and concepts underlying investment strategies by institutional investors into Indian companies	30%	Lectures, problem-solving, case studies	The internal components will include a mid-term examination, and an opinion that students will have to draft any of the investment documents which will be discussed in the classroom.
Identifying, reading and interpreting the various components of corporate laws to derive the correct legal position.	30%		
Applying the identified laws to commercial propositions – drafting possible investment structures, undertake due diligences, draft, review and negotiate investment documents	40%		

Credit Type: **Law**

Level: **Both (UG and PG)**

Cross Listing: **No**

Pre-requisites: **Contract Law I, Contract Law II, Company Law I, Company Law II, and Company Law (for LLB Course)**

Course Design and Overview (Weekly Plan)

Week	Topics
1.	<p>Introduction to PE/VC investment life cycle</p> <p>Review of company law principles common for private transactions, including:</p> <ul style="list-style-type: none"> - Types of share capital - Private placement - Preferential allotment - Corporate governance - Articles of Association v. Shareholders Agreement
2. and 3.	<p>Review of Principles of:</p> <ul style="list-style-type: none"> - Contract Law - Property Law - Insurance Law - Labour Law - Environmental Law - Foreign Exchange Laws - Indian Stamp Laws - Dispute Resolution, including specific relief
4.	<p>Structuring fund formations in India under the SEBI (Alternative Investment Funds) Regulations, 2012</p> <p>Structuring investments by investors into private companies</p>
5. and 6.	<p>Financing of PE/VC deals:</p> <ul style="list-style-type: none"> - Alternative investment funds - Private placement memorandum; and - Debt financing (including leveraged buyouts and management buyouts)
7.	<p>Due diligence</p> <ul style="list-style-type: none"> - Process - Risk identification - Risk mitigation - Drafting Report
8. 9. and 10.	<p>Investment Agreements and other related documentation</p> <ul style="list-style-type: none"> - Term Sheet - Share Subscription Agreement - Share Purchase Agreement - Shareholders' Agreement - Business Transfer Agreement - Employment Agreement - Side Letters
11. and	Post-closing actions and valuation issues

12.	<ul style="list-style-type: none"> - Corporate governance - Role of proxy voting firms - Cultural issues - FEMA issues with post-closing valuation
13.	<p>How do companies become Unicorns? A Discussion on Case Studies from some of India's most famous start-up companies:</p> <ul style="list-style-type: none"> - Zomato - Shaadi.com - Byju's - Nykaa - Razorpay - Flipkart - Bharatpe
14.	<p style="text-align: center;">REVISION WEEK</p> <p>[NOTE: There shall be teaching classes scheduled during the fourteenth week subject to the JGU Academic Calendar circulated by the Office of the Registrar, JGU and any official declaration of non-working days by the JGU Registrar.]</p>

Essential Readings:

1. Nisith Desai Associates:
 - a. Fund Formation: Attracting Global Investors
 - b. Startups and Venture Capital Investments
 - c. Start-up Governance Essentials
2. Chris Hale (ed), Introduction in Private Equities: A Transactional Analysis
3. Louise Gullifer and Jennifer Payne, Corporate Finance Law (3rd Ed)
4. Narine Lalafaryan, Private Credit: A Renaissance in Corporate Finance (<https://dx.doi.org/10.2139/ssrn.4635056>)
5. Young Soo Jang and Simon Mayer, Capital Structure in Private Equity (<https://dx.doi.org/10.2139/ssrn.4553359>)
6. Jeffrey M. Weiner, Due Diligence in M&A Transactions: A Conceptual Framework
7. SN Kaplan and P Strömberg, Financial Contracting Theory Meets the Real World: An Empirical Analysis of Venture Capital Contracts (2003) 70 Rev Fin Stud 281
8. JM Fried and M Ganor, Agency costs of venture capitalist control in startups (2006) 81 NYU L Rev 967
9. J Armour, L Enriques and others, The Anatomy of Corporate Law (3rd Ed)
10. M Isaksson and S Çelik, 'Who Cares? Corporate Governance in Today's Equity Markets' OECD Corporate Governance Working Paper No 8 (2013)

Prior to the relevant classes in weeks 7 to 12, the course instructor will also share relevant draft contracts for a more fruitful discussion.