

## **MERGERS, ACQUISITIONS AND PRIVATE EQUITY**

**Arjya B. Majumdar** : abmajumdar@jgu.edu.in  
Professor, Jindal Global Law School

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: Economics, Property Law, Contracts I & II, Company Law I & II

### COURSE DESCRIPTION (COURSE VISION):

Post liberalization, India has witnessed burgeoning M&A activity. The rise of the M&A lawyer has been equally meteoric and a sound foundation in the subject is a key skill required in any corporate lawyer's repertoire.

While nothing can replace learning from hands-on experience, this course shall aim to provide students with a basic grounding in the procedure and practices adopted in mergers and acquisitions. The course presupposes a rudimentary understanding of the Companies Act, 2013 and seeks to apply that understanding in M&A deals.

The emphasis of this course will be on practical learning. It has been the bane of most law firms around the world that fresh recruits have excellent theoretical knowledge but few skills to convert that theory into practical application. Thus, firms end up spending considerable amounts of time and money re-training law graduates into lawyers. This course seeks to bridge some of the gap between a law graduate and a lawyer. For students aimed at a career in corporate law, this course would be an excellent opportunity to differentiate herself/ himself and thus be a more attractive proposition when it comes to corporate law firm recruitment.

### TEACHING METHODOLOGY:

The course will be taught primarily in the form of lectures and class discussions. Students are expected to read the assigned materials in advance of the class so that the lectures are made more fruitful by class discussions.

In addition to the lectures and class discussions, there will be corporate advisory, and negotiation and drafting sessions. Since this course is being taught keeping in mind the practical application of various corporate related laws, emphasis will be placed on analyzing and translating law into practice.

### INTENDED LEARNING OUTCOMES:

Course Intending Learning Outcomes	Weight	Teaching and Learning Activities	Assessment Tasks/Activities
Have a sound understanding of the fundamentals of corporate law, provisions of the Companies Act 1956, the Companies Act 2013 and related statutes.	30%	<p>(i) <u>Lectures</u>:</p> <p>Students will be introduced to the key issues in corporate law and will acquire the ability to critically analyze and apply the concepts learnt to practical problems.</p>	<p>Students' ability to grasp and critically evaluate the topics/issues discussed in the syllabus will be tested in the following ways:</p> <p>(i) Due diligence report (40%)</p> <p>(ii) Negotiation and Drafting exercise (30%)</p> <p>(iii) End Semester Client Advisory memo (30%)</p>
Comprehend how statutory provisions work in corporate practice	20%		
Apply: the principles learnt in context of advising clients and in drafting key corporate documents, and/or; the knowledge of corporate law to research legal problems and suggest solutions thereto.	50%	<p>(ii) <u>Reading of statutes and other materials</u>:</p> <p>Students will acquire knowledge of the principles of (and key issues pertaining to) corporate law in connection with the topics covered in the syllabus.</p> <p>(iii) <u>Tutorials</u>:</p> <p>The Course Instructors will advise the students separately as to the specific</p>	

Course Intending Learning Outcomes	Weight	Teaching and Learning Activities	Assessment Tasks/Activities
		tutorials that will be conducted in class	

READING LIST (upto 10 select readings):

1. [Think Like a Business Person](#)
2. [The Essential Elements of Corporate Law: What is Corporate Law? John Armour, Henry Hansmann, Reinier Kraakman](#)
3. [The Corporate Contract, Frank H. Easterbrook](#)
4. [The End Of History For Corporate Law, Henry Hansmann Reinier Kraakman](#)
5. [Mergers & Acquisitions in India, Nishith Desai Associates](#)
6. [Columbia Venture Partners - MedTech Inc \(case study\)](#)
7. [M&A Lab Compilation 2016](#)
8. [Business Due Diligence Strategies, Jeffrey M. Weiner](#)
9. [Representations and Warranties in PE and M&A](#)
10. [What is an Indemnity anyway? DLA Piper](#)
11. [Revisiting The Indemnity v. Damages Debate, Nishith Desai Associates](#)
12. [Breach of Representations and Warranties in M&A: A Buyer's Guide](#)
13. [Regulatory Framework Governing Mergers and Acquisitions in India, Arjya B. Majumdar](#)
14. [The \(Un?\)Enforceability of Investor Rights in Indian Private Equity, Arjya B. Majumdar](#)
15. [Consolidated FDI Policy, 2020](#)
16. [Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.](#)
17. [Doing Business in India, Nishith Desai Associates](#)
18. [Public M&As in India, Takeover Code Dissected, Nishith Desai and Associates](#)
19. [Mergers and Acquisitions in Telecom Industry, Lodha and Wadhwa](#)

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
<b>MODULE 1: INTRODUCTION</b> • Introductory class	1

<ul style="list-style-type: none"> <li>• Review of contract law</li> <li>• Review of property law</li> </ul>	
<b>MODULE 2: COMPANY LAW REVIEW</b>	2
<ul style="list-style-type: none"> <li>• Review of company law</li> <li>• Basic company law principles.</li> <li>• Essential elements of corporate law and governance</li> </ul>	
<b>MODULE 3: INTRODUCTION TO M&amp;A AND PE</b>	3
<ul style="list-style-type: none"> <li>• Why M&amp;A?</li> <li>• Types of M&amp;A</li> <li>• Business/ asset purchase</li> <li>• Slump sale</li> <li>• Share acquisitions/ issuances</li> </ul>	
<b>MODULE 4: STRUCTURING M&amp;A TRANSACTIONS</b>	4
<ul style="list-style-type: none"> <li>• Types of share capital and contractually altered shares</li> <li>• Share Acquisitions</li> <li>• Primary issuances</li> <li>• Secondary issuances</li> </ul>	
<b>MODULE 5: DUE DILIGENCE</b>	5
<ul style="list-style-type: none"> <li>• Why do a diligence?</li> <li>• What do we look for?</li> <li>• Identifying risk</li> </ul>	
<b>MODULE 6: MITIGATING M&amp;A RISK:</b>	6
<ul style="list-style-type: none"> <li>• Conditions</li> <li>• Representations</li> <li>• Warranties.</li> <li>• Indemnity</li> <li>• Introduction to definitive documentation: Term Sheet <ul style="list-style-type: none"> <li>◦ Important provisions</li> <li>◦ Binding nature</li> </ul> </li> </ul>	
<b>MODULE 7: DEFINITIVE DOCUMENTATION (I): SHARE TRANSFER AND SHARE SUBSCRIPTION AGREEMENTS</b>	7
<ul style="list-style-type: none"> <li>• Difference between share transfer and share subscription</li> <li>• Companies Act provisions</li> </ul>	

<ul style="list-style-type: none"> <li>• Completion events</li> <li>• Anti-dilution</li> </ul>	
<b>MODULE 8: DEFINITIVE DOCUMENTATION (II): SHARE HOLDER AGREEMENTS</b>	8
<ul style="list-style-type: none"> <li>• Public nature</li> <li>• Control rights (Board and Member)</li> <li>• Exit Rights</li> <li>• Events of Default and Penalties</li> </ul>	
<b>MODULE 9: CROSS BORDER M&amp;As</b>	9
<ul style="list-style-type: none"> <li>• FDI (Discussion on E-commerce policy)</li> <li>• Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 and the 2019 Amendment.</li> <li>• External Commercial Borrowing</li> </ul>	
<b>MODULE 10: PUBLIC M&amp;As</b>	10
<ul style="list-style-type: none"> <li>• PIPE Deals</li> <li>• IBC – Distressed asset sale</li> </ul>	
<b>MODULE 11: TAKEOVER CODE</b>	11
<ul style="list-style-type: none"> <li>• Process</li> <li>• Pricing Issues</li> </ul>	
<b>MODULE 12: HOSTILE TAKEOVERS</b>	12
<ul style="list-style-type: none"> <li>• Bharati Shipyard – Great Offshore Takeover</li> <li>• L&amp;T – Mindtree Takeover</li> <li>• Adani – NDTV Takeover</li> </ul>	
<b>MODULE 13: NEGOTIATION ROUNDS</b>	13
<b>REVISION WEEK</b>	14