

## ***International Finance as International Business Transactions***

By:

*Eric J. Pan*<sup>\*1</sup>

*Benjamin N. Cardozo School of Law  
New York, New York, USA*

Many law schools in the United States offer a course on “International Business Transactions.” Many students elect to take this course (including this author when he was a student at the Harvard Law School) because they seek exposure to an area of law in which they hope to practice after law school. The name of the course conjures up images of dashing international corporate lawyers flying to exotic locales around the world and brokering front page deals between multinational conglomerates or arranging the multi-billion dollar financing of foreign companies. Students fixate on these images because they read the news announcements of the top international law firms, listing the latest transactions these firms have handled and their long list of international clients (see Appendix I for the list of news items reported by one leading international law firm). Many students inclined to pursue a career in business law aspire to obtain positions with these law firms or use their knowledge of international business transactions to pursue positions in related professional fields such as government, investment banking and management consulting.

The typical International Business Transactions course, however, tends to be quite different from students’ expectations. Not surprisingly, the typical course does not provide students with direct knowledge of how to be an international corporate lawyer and the workings of an international corporate transaction. The typical course does not teach deal making or any of the basic skills that young corporate lawyers need to learn such as agreement drafting, understanding representations and warranties, or negotiating covenants, termination clauses and

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<sup>1</sup> Assistant Professor Law and Director, The Samuel and Ronnie Heyman Center on Corporate Governance, Benjamin N. Cardozo School of Law, New York, New York, USA (e-mail: [epan@yu.edu](mailto:epan@yu.edu)). The author currently teaches a class at Cardozo called International Finance. Before joining the Cardozo faculty, the author practiced corporate and securities law for several years with Covington & Burling in Washington, DC where he advised clients on several cross-border mergers and acquisitions, joint venture and private equity transactions, handled two investor-state arbitration cases, and worked on several public and private securities offerings. While in law school, the author spent summers working at two leading international law firms in New York.

break-up provisions. This expectations gap is somewhat tempered by the fact that most students who are in their second or third year of law school understand that law courses aim to teach theoretical concepts and analytical frameworks rather than short-term practical skills.

More disappointing to students, however, is that the typical International Business Transactions course does not approximate what most international corporate lawyers do – especially those who practice with the leading US and UK firms. Rather, the typical International Business Transactions course covers topics that seem loosely related, specialized and even esoteric. Consider, for example, the topics covered in one leading US coursebook on International Business Transactions: international sale of goods, letters of credit, invoices, licensing and distributorship arrangements, international dispute resolution, tariff and non-tariff import barriers, World Trade Organization law, and European Union law. While these topics are important, they are encountered infrequently by most international corporate lawyers.

Teachers of International Business Transactions face a conundrum because many of the legal topics that are directly relevant to international corporate lawyers are already offered through other courses such as Corporations, Securities Regulation, International Trade Law, International Arbitration, European Union Law, Tax, and Corporate Finance.

In my opinion, the biggest gap in the curricula of US law schools (and I predict also at most non-US law schools) is International Finance. International Finance refers to the laws, rules and regulations governing cross-border financial transactions and the provision of multi-jurisdictional financial services. The topics covered in such a course would include:

- (i) international securities regulation and the regulation of foreign issuers in the United States, European Union and other jurisdictions;
- (ii) the regulation of cross-border stock and derivative exchanges;
- (iii) banking regulation and the establishment and enforcement of capital adequacy requirements;
- (iv) regulation of derivatives;
- (v) asset securitization; and
- (vi) clearance and settlement. These topics are directly relevant to the work of international

corporate lawyers. As the list of transactions in Appendix A shows, a large portion of the practice of international corporate lawyers is in the finance area.

Furthermore, the body of law that makes up International Finance has increased significantly in the past two decades. In the area of international securities regulation, both the United States and European Union have made dramatic changes in how they regulate cross-border securities offerings and financial services. These changes include the introduction of Rule 144A and Regulation S by the United States, implementation of the Financial Services Action Plan by the European Union, adoption of mutual recognition regimes by both jurisdictions, and regulatory convergence in the areas of accounting standards, public offering disclosure requirements and broker-dealer regulation. International banking includes the new capital adequacy standards set forth by Basel I and Basel II and application of principles of home country supervision of multinational banks. With respect to the derivatives and options markets, International Finance covers the development of the International Swaps and Derivatives Association Master Agreement and the rules and regulations setting forth prudential requirements. Furthermore, International Finance covers new developing areas of law including the regulation of stock exchanges and alternative trading systems, rating agencies, clearance and settlement entities, and payment systems.

International Finance is an appropriate alternative to the traditional International Business Transactions course for three reasons. First, it covers topics that are much more directly related to the practice of modern international law firms. Second, the course introduces students to the fast developing international financial architecture that is now being set up by national and regional financial regulators and international organizations to govern international capital flows. For my International Finance course, I post almost daily a new newspaper or journal article reporting on a current development in international financial law. I also frequently invite current regulators from the United States and European Union to address my class. Third, the course requires students to understand and analyze the applicability of important regulatory theories such as mutual recognition, regulatory convergence, regulatory competition, home-host country supervision, self-regulation, risk-

based regulation, and principles-based versus rules-based regulation. Working with these regulatory theories ensures that students will have a basis for understanding and analyzing future regulatory developments in their positions as lawyers, regulators, financiers and corporate executives.

Given the importance of international finance to the work of international corporate lawyers, law schools around the world should consider adding International Finance to their course offerings or at least consider incorporating International Finance topics into their current International Business Transactions courses.

## Appendix I

To understand the gap between what is covered in the typical International Business Transactions course and the work conducted by the typical large international law firm, it is helpful to look at the recent matters handled by one of those firms. Davis Polk & Wardwell (“Davis Polk”) is a leading international law firm based in New York with offices across Europe, North America and East Asia. The work handled by Davis Polk is representative of that of the largest international law firms in the world, and Davis Polk is one of the most desirable law firms to work for as a young lawyer. The following is a list of headlines from the Davis Polk website ([www.dpw.com/news/](http://www.dpw.com/news/)) describing recent matters handled by Davis Polk between September 1, 2007 and February 12, 2008:

- 1 RadiSys Corporation Convertible Senior Notes Offering
- 2 Kellwood Enters into Merger Agreement with Sun Capital
- 3 Overture Acquisition Corp. Initial Public Offering
- 4 KEXIM Mexican Peso Bond Offering
- 5 Bank of America Corporation Convertible Preferred Stock Offering
- 6 Theravance Convertible Notes Offering
- 7 Roche and Ventana Reach Definitive Merger Agreement
- 8 EnerSys Secondary Stock Offering
- 9 Eco Telecom Structured Financing
- 10 ADC Telecommunications Convertible Notes Offering
- 11 Campbell to Sell Godiva Chocolatier to Yildiz Holding A.S.
- 12 PT Media Nusantara Citra to Acquire a Controlling Interest in Linktone
- 13 Affymetrix to Acquire USB Corporation

14 Emerson Electric Co. and Crane Co. Sell Joint Venture to DE-STA-CO  
15 Ultrapar Participações S.A. Acquires the Ipiranga Group  
16 American International Group, Inc. Junior Subordinated Debentures Offering  
17 Diageo Notes Offering  
18 Washington Mutual Preferred Stock Offering  
19 Ingersoll-Rand to Acquire Trane  
20 Davis Polk Advises AMIS Holdings on Its Proposed Acquisition by ON Semiconductor  
21 Eisai Co., Ltd. to Acquire MGI Pharma, Inc.  
22 PROS Common Stock Offering  
23 Davis Polk Advises Comcast SportsNet, as managing partner of FSN Bay Area, on the  
Extension of FSN Bay Area's San Francisco Giants Rights Agreement  
24 Microchip Convertible Debentures Offering  
25 BM&F US\$3.3 Billion IPO  
26 General Electric \$4 Billion Notes Offering  
27 Penn Virginia Corporation Concurrent Common Stock and Convertible Notes Offerings  
28 Van der Moolen Sells NYSE Specialist Activities to Lehman Brothers  
29 PepsiCo, Inc. Senior Notes Offering  
30 The McGraw-Hill Companies, Inc. Senior Notes Offering  
31 PIMCO Income Opportunity Fund IPO  
32 E\*TRADE Receives Cash Infusion from Citadel  
33 Philips to Acquire Genlyte in All-Cash Transaction  
34 Internet Brands, Inc. IPO  
35 Virtual Radiologic Corporation IPO  
36 Davis Polk Advises Affymetrix on Its Convertible Notes Offering  
37 EnerNOC, Inc. Common Stock Offering  
38 ESML Intressenter Proposes to Acquire Securitas Direct  
39 Capitol Acquisition Corp. IPO  
40 AirMedia Group Inc. Initial Public Offering  
41 Bunge Mandatory Convertible Preference Share Offering  
42 NewStar Financial Corp. to Issue \$125 Million of Common Stock  
43 SandRidge Energy, Inc. IPO  
44 American Financial Realty Trust to Be Acquired by Gramercy Capital Corp.  
45 Neutral Tandem, Inc. IPO  
46 KEXIM Mexican Peso Bond Offering  
47 KEXIM U.S. Dollar Bond Offering  
48 Diageo Notes Offering  
49 Maxcom Telecomunicaciones NYSE Initial Public Offering  
50 CIT Equity Units Offering  
51 SP Acquisition Holdings, Inc. Initial Public Offering  
52 AngloGold Ashanti Ordinary Shares Offering  
53 Molina Healthcare, Inc. Convertible Senior Notes Offering  
54 Sodexo Acquires Circles  
55 Duff & Phelps Corporation IPO  
56 ING Perpetual Hybrid Capital Securities Offering  
57 Davis Polk Is Advising Nikko Cordial on Its Acquisition by Citigroup  
58 Range Resources Notes Offering  
59 Davis Polk Advises ICICI Bank Limited on US\$2 Billion Bond Offering  
60 Infineon/Qimonda Exchangeable Notes Offering  
61 TD Bank Financial Group to Buy Commerce Bancorp for US\$8.5 Billion  
62 Davis Polk Advises Quadrangle on NTELOS Stock Acquisition  
63 Concur Technologies Common Stock Offering  
64 GE Commercial Finance Investment in Credit Orienwise Group Limited  
65 Equinix, Inc. Concurrent Convertible Notes & Common Stock Offerings  
66 NICE-Systems Ltd. ADSs Offering

- 67 Davis Polk Advises AstraZeneca on Its \$6.9 Billion Debt Offering
- 68 P.T. Davomas Abadi Tbk High-Yield Notes Offering
- 69 Energy Transfer Partners Acquires Midstream Assets in Piceance-Uinta Basin
- 70 Mediatek to Acquire Analog Devices Cellular Handset Radio and Baseband Chipset Operations
- 71 Davis Polk Advises Cosan Limited on Its \$1.2 Billion NYSE IPO
- 72 Gateway to Sell Professional Division to MPC Corporation
- 73 Advanced Semiconductor Engineering to Acquire ASE Test in Going-Private Transaction
- 74 Copano Energy to Acquire Cantera Natural Gas from Metalmark Capital