

**Academic Year 2015-2016**

**INTERNATIONAL COMPARATIVE BUSINESS LAW (code 20215)**

**Prof. Marco Ventoruzzo**

*Tuesdays 2:30 p.m. – 4:00 p.m. and Thursdays 4:15 p.m. – 5:45 p.m.  
Velodromo Bld. – Room N39*

### **COURSE DESCRIPTION AND OBJECTIVES**

It is almost certain that, in your professional future, you will be dealing with corporations and, in particular, with the regulation of corporations. This course offers you a basic but in-depth understanding of the legal structure and characteristics of the modern business corporation examined in a comparative and international perspective. With the aim of providing students with the legal and economic background necessary to understand and actively participate in some of the most crucial events in the life of a corporation, we will address a selected number of corporate law issues through a combination of lectures and class discussions of actual and hypothetical cases.

After a brief introduction on the basics of comparative and international corporate law, topics include the incorporation process, limited liability, the financial structure of the corporation, principles of corporate governance (including shareholders' powers and directors' fiduciary duties), M&As and other business combinations, going private transactions, tender offers and hostile takeovers, insider trading.

While having a comparative and international dimension, the course will primarily focus on the US legal system, on the one hand, and European Countries, on the other hand.

### **ATTENDANCE**

This course will be taught through a combination of lectures and class discussions based on selected judicial opinions, law review articles and statutes as indicated in greater detail below (see class schedule and assignments). Students must read the assigned materials ***before*** class and be prepared to participate in class discussions. Every student will be expected to be prepared to answer when called on. Along with active participation, prompt and regular attendance is thus required. Since the final examination will focus heavily on the topics covered in class discussions, and in the light of the innovative nature of the course and the types of materials, class notes will be ***essential*** to prepare for the exam. Accordingly, failure to attend class or to access well-taken notes is likely to have a material adverse effect on final grades.

### **FINAL EXAM AND GRADING**

The instructor will keep track of attendance. Students missing 4 or more classes without a serious and documented justification, or who come to class unprepared more than twice, will be considered non-attending. While there is no specific penalty for non-

attendance, the fact that a student has attended regularly and has intelligently participated in the discussion will be considered when grading exams and be rewarded with one point. The final examination consists of 3 open questions (approx. 3,000 characters or 500 words each answer, 10 points each maximum), for a maximum of 30 points. Truly exceptional exams might receive a *laude* (31 points). Exams are curved based on Bocconi's rules as it will be more analytically explained in class.

### **OFFICE HOURS AND CONTACT INFORMATION**

Office hours will usually take place on Wednesdays, from 11:00 am to 12:30 p.m., in Room 1-E2-8 on the first floor of the Grafton Bld., Via Roentgen 1. Students can however contact the instructor via email ([marco.ventoruzzo@unibocconi.it](mailto:marco.ventoruzzo@unibocconi.it)) and, if necessary, set an appointment outside the above-mentioned office hours.

The Teaching Assistant for this course is Angelo Borselli, and can be reached at [angelo.borselli@unibocconi.it](mailto:angelo.borselli@unibocconi.it).

### **TEXTBOOK AND SUPPLEMENTARY MATERIALS**

The textbook for this course is: Marco Ventoruzzo and others, Comparative Corporate Law (West Academic Publishing, 2015).

Class participants cannot use course materials, including slides or other documents made available in any way, for any purpose other than personal education and study, and may not disseminate, distribute, publish, or alter course materials without prior express authorization of the Instructor. Unauthorized use of course materials is a violation of the Honor Code that will be prosecuted, and might also result in civil and criminal liability. As mentioned above, class notes will be *essential* to prepare the final exam. In fact, students are strongly urged to take very detailed class notes and prepare a comprehensive outline of both the cases assigned and the class discussions.

Having a copy of the relevant statutes and regulation that are going to be discussed in class would be helpful. Two suggested (but not required) sources are Business Associations. 2015 Statutes and Rules (Foundation Press, 2015) by Klein, Ramseyer and Bainbridge; and La disciplina delle Società di Capitali (with an English translation, Ipsoa 2009), by Piacentini.

## CLASS SCHEDULE AND ASSIGNMENTS

<b>class</b>	<b>Topic</b>	<b>Materials</b>
1.	Introduction to the Course and to Legal Studies	No Assignments.
2.	Introduction to Comparative Corporate Law	Methodological Introduction and Chapter 1 (skim).
3.	Choice of Law and Regulatory Competition in the U.S.	Chapter 2: Introduction; Freedom of Incorporation; Wilson v. Louisiana-Pacific; Examen v. Vantagepoint.
4.	Choice of Law and Regulatory Competition in the E.U.	Chapter 2: The Real Seat Approach; Centros v. Erhvervs; Überseering v. Nordic Construction. Optional: Chapter 2: Ventoruzzo, Cost-based.
5.	Incorporation and Veil Piercing	Chapter 3: Introduction; The Incorporation Process; Certificate of Incorporation and Bylaws of a Delaware Corporation (skim); Piercing the Corporate Veil; Baatz v. Arrow Bar; Walkovszki v. Carlton. Optional: Chapter 3: Minimum Legal Capital; Enriques & Macey, Creditors.
6.	Incorporation and Veil Piercing	Chapter 3: Cass. com. 19/04/2005: Denis Facques v. Jérôme Theetten; Tokyo District Court: Hanrei Taimuzu.
7.	Financing the Corporation: Classes of Shares	Chapter 4: Introduction; The Rights of Shareholders and Classes of Shares; NY Bus. Corp. Law § 501 and Italian Civil Code Art. 2351; Business Roundtable v. SEC.
8.	Financing the Corporation: Classes of Shares and Bonds	Chapter 4: Class Voting and Pre-emptive Rights; Deutsche Bank; The Mondadori Case; Bonds and Debentures; Commission of the European Communities v. Kingdom of Spain Optional: Chapter 4: Equitable Subordination of Shareholders' Loans.
9.	Corporate Governance: Models and Composition of the Board	Chapter 5: Introduction; Corporate Governance Models; Composition of the Board of Directors; Ventoruzzo, Empowering; Brenson, Initiatives.
10.	Corporate Governance: Powers of Directors v. Shareholders	Chapter 5: Powers of Directors vs. Shareholders; Blasius v. Atlas; International Brotherhood of Teamsters v. Fleming; German Federal Court of Justice: Holzmüller.
11.	Duty of Care of Directors	Chapter 6: Introduction; Duty of Care; Smith v. Van Gorkom; German Federal Court of Justice: ARAG.
12.	Duty of Loyalty of Directors	Chapter 6: Duty of Loyalty; Articles 144 of the Delaware General Corporation Law and 2391 of the Italian Civil Code; Lewis v. S.L. & E.
13.	Shareholders' Litigation	Chapter 7: Introduction; Derivative Suits in Common Law; Tooley v. Donaldson; Derivative Suits in Civil Law; Gelter, Why Do Shareholder; Derivative Suits in Asia; Puchniack, The Derivative Action in Asia.
14.	Shareholders' Agreements: Share Transfer Limitations	No Assignments: Hypothetical cases will be discussed in class. Optional: Chapter 8: Introduction.

15.	Shareholders' Agreements: Voting Agreements	Chapter 8: Voting Agreements; Clark v. Dodge; Mr. A v. XYZ.
16.	M&As: Mergers	Chapter 9: Introduction; An Overview of Mergers and Acquisitions. Hypothetical cases will be discussed in class.
17.	M&As: Cash-Out Mergers and Sales of All the Assets	Chapter 9: Sales of All or Substantively All the Assets; Hariton v. Arco; Leveraged Buyouts; Freeze-Outs, Cash-Out Mergers; Ventoruzzo, Freeze-Outs.
18.	Takeovers: Mandatory Tender Offers	Chapter 10: Takeovers: the Economic and Legal Basic Ideas.
19.	Takeovers: Defensive Measures	Chapter 10: Tender Offers and Defensive Measures; Article 9 of the European Takeover Directive; Unocal v. Mesa; Revlon v. MacAndrews; Takeover Regulation, Harmonization; Armour and others, The Evolution.
20.	Insider Trading	Chapter 11: Introduction; The Rationales of the Insider Trading Prohibition; SEC v. Dorhozko; Ventoruzzo, Comparing Insider Trading (part I and II).
21.	Insider Trading	Chapter 11: Spector Photo Group; Insider Trading Double Jeopardy; Grande Stevens v. Italy.
22.	International Law Issues: Jurisdiction and Arbitration	Chapter 12: Jurisdiction and Arbitration; North v. MacNamara; Powell Duffryn plc v. Wolfgang Petereit.
23.	Review Section	Final Thoughts.
24.	Review Section	Exam Simulation.

**Note:** when the assigned materials indicate the names of the cases and/or statutory provisions and/or excerpts of scholarly contributions that need to be read before class, you will only be responsible for these materials in our class discussion. However, in addition to the excerpts in the materials, we strongly suggest to also read, either before or after class, the short introductions preceding the specific material assigned (if not already included in the syllabus), and the “Notes and Questions” following it. When we indicate “(skim)” after a reading, a quick and not particularly analytical reading is sufficient. When we indicate “optional readings”, we think that to read these materials would be beneficial and helpful, but you are totally free to do it or not. Of course, you are always free to also read additional parts of the materials that might help you to clarify some issues.

Università Bocconi conceives of education as an ongoing process that stretches across a person’s entire professional life. The University hopes that the entire Bocconi community will respect the values of fairness and correctness associated with it, values which inspire and guide the conduct of all community members as they pursue common objectives and a shared mission. The Università Bocconi Honor Code is published at <http://www.unibocconi.eu/honorcode>. We encourage all students to read it.