

## Master of Laws In International Transactions



### **Comparative corporate governance, regulatory compliance and corporate criminal liability in the international arena II**

Professors: Mr. Fernando Vives Ruiz, D. Marco Ventoruzzo, Mr. Eduardo Torres-Dulce Lifante, Mr. Emilio Hernández Muñoz, Ms. Helena María Prieto González, Ms. Beatriz Bustamante Zorrilla, Mr. Alejandro Abascal Junquera, Mr. Borja Jiménez Muñoz, José Antonio Bonilla Pella

**2020/2021**

- **Subject:** Comparative corporate governance, regulatory compliance and criminal liability of companies in the international arena II
- **Degree:** Master of Laws in International Transactions
- **Credits:** 2 ECTS credits
- **Semester:** 2nd
- **Professors:** Mr. Fernando Vives Ruiz, Mr. Marco Ventoruzzo, Mr. Eduardo Torres-Dulce Lifante, Mr. Emilio Hernández Muñoz, Ms. Helena María Prieto González, Ms. Beatriz Bustamante Zorrilla, Mr. Alejandro Abascal Junquera, Mr. Borja Jiménez Muñoz, José Antonio Bonilla Pella
- **Language:** English
- **Mode:** On-site
- **Type of course:** Obligatory
- **Academic year:** 2020/2021
- **Tutorial schedule:** will be scheduled upon request to the teacher

## 1. PREREQUISITES

None.

## 2. BRIEF DESCRIPTION OF CONTENTS

- Good corporate governance practices and their implications for multinational groups and international transactions
- The criminal liability of the company. Corporate crimes and crimes against the socioeconomic order. Crimes committed by companies. Criminal liability of directors, managers and auditors

Corporate governance is traditionally defined not only as the system of management and control of companies, but also as the set of relationships between a company's management, its board of directors, its shareholders and other stakeholders.

In this regard, it should be noted that, from the point of view of corporate governance, compliance, white-collar crime and corporate criminal liability have today become key elements to be taken into account in the management of such companies.

In fact, regulatory bodies and law enforcement agencies around the world are now more powerful than ever. They are showing a greater willingness to use the powers they have been given, encouraged by government initiatives, to persuade businesses that regulation must be taken seriously.

Moreover, the resulting investigations can have serious consequences, such as the dissolution and liquidation of a company. It is therefore essential that companies take a holistic approach to the legal and regulatory environments in which they operate.

This course therefore seeks to analyse, from a functional perspective, how various jurisdictions deal with these issues. Thus, firstly, the course will begin by analysing what white-collar crime is and where it is headed; secondly, the criminal liability of

legal entities at the international level will be addressed along with corporate defence and compliance models; thirdly, the role of the courts and the prosecutorial discretion in white-collar crime will be discussed; and finally, the course will conclude by addressing corruption and criminal offences against public administrations.

### 3. SKILLS ACQUIRED BY THE STUDENT AND LEARNING OUTCOMES

#### Basic skills:

CB7.- That students know how to apply the knowledge acquired and their problem-solving skills in new or unfamiliar environments within broader (or multidisciplinary) contexts related to their area of study.

CB8.- Students are able to integrate knowledge and deal with the complexity of making judgements based on information that, being incomplete or limited, includes reflections on social and ethical responsibilities linked to the application of their knowledge and judgements.

CB9.- That students know how to communicate their conclusions and the ultimate knowledge and reasons behind them to specialized and non-specialized audiences in a clear and unambiguous way.

#### General competencies:

CG1.- The student must acquire up-to-date general knowledge of the different aspects of legal practice in the field of international transactions in a broad sense.

CG2.- The student must be able to understand the international scenario by identifying its legal actors, its institutional structure and the activity they carry out in the field of international transactions.

CG3.- The student must be able to systematically understand the relevant information, its legal context and how to apply it to complex situations, in which different legislations and jurisdictions intervene in the field of international transactions, taking into account how it affects the party it represents.

CG7.- The student must be able to act autonomously in the planning and implementation of projects and legal decisions in the field of international transactions.

CG8.- The student must be able to play different roles within a legal, multidisciplinary and multicultural team in the field of international transactions.

CG9.- The student must be able to apply with an advanced level the tendencies that are manifested in the legal environment, being able to elaborate and defend arguments and solve complex problems in the field of international transactions.

CG10.- The student must be able to contribute different points of view on the same legal case, by means of the application of the knowledge and abilities acquired from legal practice in the field of international transactions.

CG11.- The student must be able to dominate techniques to approach and solve complex problems in an efficient manner in the field of international transactions.

Specific competences:

CE1.- The student must know the principles and institutions of common law and analyze its interaction and equivalence with continental law systems.

CE23.- The student must be able to understand the systems by which corporate governance is regulated from a comparative and functional perspective.

CE24.- The student must be able to provide proposals for advice in relation to the criminal liability of the legal person both in the Spanish criminal system and in comparative law, in the field of international transactions.

CE25.- The student must be able to provide legal advice on *compliance programs* that seek to exempt companies involved in international transactions from criminal liability.

Learning outcomes:

- To learn about the main corporate governance practices that exist at an international level.
- To know the regime of duties and responsibility of the directors from the purchased perspective, as well as the mechanisms of protection of shareholders and investors existing at international level.
- To know the legal-criminal regime of the companies, with particular mention to the corporate crimes and the crimes against the social-economic order. Crimes committed by companies. The criminal liability of directors, administrators and companies.

#### 4. EDUCATIONAL ACTIVITIES

Face-to-face mode:

Course 2.4. Comparative corporate governance, regulatory compliance and criminal liability of companies in the international sphere II (2 ECTS)		
Training activity	Hours	Percentage of FA attendance
AF1: Master Class and Theoretical Fundamentals	11,6	100%

AF2: Technical explanation for the resolution of cases related to the subjects	3,3	100%
AF3: Mentoring	3,3	25%
AF4: Student's Individual or Group Work	28,5	0%
AF5: Sharing Results and Procedures	3,3	100%
	50 hours	

## 5. TEACHING METHODS

### Teaching methodologies:

Code	Teaching methodologies	Description
MD1	Case studies	Systematic and in-depth review and analysis of the different aspects and issues of real and concrete case studies. In the distance mode, the teacher will leave the exercises at the disposal of the students in the folder provided for this purpose, with the explanations and indications for dealing with their resolution, and the students will deliver the resolutions in the aforementioned folder within the established period.
MD2	Performance of works	Preparation of reports and documents in which the student must carry out bibliographic searches, information gathering, document analysis, case analysis, writing and explanation of conclusions. In the distance mode, tools such as e-mail, document sharing software, forums, etc. will be used through the virtual platform for their realization and video conference sessions for their presentation.
MD3	Exercise and problem solving	Approach of situations and practical exercises that the student must solve. In the distance mode, the teacher will leave the exercises at the disposal of the students in the folder provided for this purpose, with the explanations and indications for dealing with their resolution, and the students will deliver the resolutions in the aforementioned folder within the established period.
MD4	Exposure Method / Master Class	Exposure by the teacher of the contents of each topic through explanations and presentations, together with indications on sources of information and bibliography.

## 6. EVALUATION SYSTEM

Face-to-face mode:

Ordinary Call

Evaluation System	Minimum weighting %.	Maximum weighting %.
SE1 - Individual work in resolution of exercises or cases	25	25
SE2- Group work in resolution of exercises or cases	25	25
SE3- Individual Final Test	50	50

### Extraordinary Call

Evaluation System	Minimum weighting %.	Maximum weighting %.
SE1 - Individual work in resolution of exercises or cases	50	50
SE2- Group work in resolution of exercises or cases	0	0
SE3- Individual Final Test	50	50

## 1. BIBLIOGRAPHY

**Warning about plagiarism:** The Centro de Estudios Garrigues will not tolerate plagiarism or copying under any circumstances. The reproduction of paragraphs from auditing texts other than the student's (Internet, books, articles, peer papers...) will be considered plagiarism when the original source from which they come is not cited. The use of appointments cannot be indiscriminate. Plagiarism is a crime. If this type of practice is detected, it will be considered a Serious Fault and the sanction foreseen in the Student Regulations may be applied.

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- ARLEN, "Corporate Criminal Liability: Theory and Evidence", en Harel (ed.), *Research Handbook on the Economics of Criminal Law*, Elgar Publishing, 2012.
- EDWIN H. SUTHERLAD, "White-Collar Criminality", *American Sociological Review*, Vol. 1, Num. 1, February, 1940.
- IÑIGO ORTIZ DE URBINA GIMENO, "Responsabilidad penal de las personas jurídicas: *The American Way*", in Santiago Mir Puig/Mirentxu Corcoy Bidasolo/Víctor Gómez Martín (Dir.), *Responsabilidad de la Empresa y Compliance. Programs of prevention, detection and penal reaction*, Edisofer, Madrid, 2014.
- KUHLEN/MONTIEL/ORTIZ DE URBINA (eds.), *Compliance and Theory of Criminal Law*, Marcial Pons, 2013
- NIETO MARTIN: "Problemas fundamentales del cumplimiento normativo en el Derecho penal" in KUHLEN/MONTIEL/ORTIZ DE URBINA GIMENO (eds.): *Compliance y teoría del Derecho penal*, Ed.
- STUCKE, "In Search of Effective Ethics & Compliance Programs", *Journal of Corporation Law*, Nº 39, Dec., 2013

- UHLMANN, D. M.: “Deferred Prosecution and Non-prosecution Agreements and the erosion of corporate criminal liability”, *Maryland Law Review*, n°. 72, 2013.

## 7. BRIEF CURRICULUM OF THE TEACHER

**D. Ventoruzzo frame.** D. in Law from the University of Brescia, Juris Doctor in Law from the University of Milan and Master of Laws from Yale Law School. A graduate of Bocconi University in Business and Economics, he has taught and lectured at many law schools in Europe, the United States and Asia, and has written extensively in the field of business law. He is a member of the Board of Directors of *Rivista delle società* and of the *European Company and Financial Law Review*.

He is a professor of law at Bocconi University in Milan (Italy) and at Penn State Dickinson School of Law (USA), where he lectures on corporations and securities regulation. He was director of the Institute in 2012 and 2013, and of the Doctorate in Business Law at Bocconi University. He is the vice-director of the Paolo Baffi Center at Bocconi University, and a researcher affiliated with ECGI. His working languages are Italian and English.

**D. Fernando Vives Ruiz.** PhD in Law, Cum Laude, Universidad Pontificia Comillas (ICADE), 2009. Doctoral thesis: The Validity of LBOs in Spanish Law He received the honorary distinction for the best doctoral thesis of the 2008-2009 academic year and the "José María Ramón San Pedro" award for the best doctoral thesis on topics related to Law and Business Economics, 2011 by the Universidad Pontificia Comillas (ICADE). Degree in Economics and Business Studies, Universidad Pontificia Comillas (ICADE), 1986. Degree in Law, Universidad Pontificia Comillas (ICADE), 1985.

Executive President and Managing Partner of Garrigues Abogados since September 2014. Managing Partner of Garrigues since September 2009. He has more than thirty years of experience in Garrigues, being a partner since 1998 and from 2001 to 2009 he was in charge of the Commercial Law area of Garrigues, which included: Stock Market, Financial Services, Real Estate, Competition Law and Mergers and Acquisitions. He practices in the areas of stock market law, corporate law, mergers and acquisitions, venture capital, banking and financial law and insurance law, with particular emphasis on the capital markets and financial services industry. He specializes in large mergers, restructurings, public offerings, leveraged buyouts, securities issues and offerings, and regulatory issues concerning listed companies. He regularly advises on large M&A transactions and is actively involved in venture capital operations, intervening in transaction-related tasks and in obtaining external funding. He also has extensive experience in the insurance sector, where he advises a large number of insurance groups operating in Spain. He also advises the shareholders' meeting and the board of directors of some of the most important Spanish listed companies on matters relating to corporate governance: Telefónica, S.A., Banco Bilbao Vizcaya Argentaria, S.A., Iberdrola, S.A., among others. Their working languages are Spanish and English.



**D. Eduardo Torres-Dulce Lifante.** He has a degree in Law from the Complutense University of Madrid. He has developed his professional career continuously in the public prosecutor's career, which he entered by competitive examination in May 1975. He has been assigned to the Seville Public Prosecutor's Office, the Guadalajara Public Prosecutor's Office as a Lieutenant Public Prosecutor, the Madrid Public Prosecutor's Office and the Public Prosecutor's Office before the Constitutional Court. In September 1996, he was appointed Chamber Prosecutor of the Supreme Court and Chief Prosecutor of the Technical Secretariat of the State Prosecutor's Office, where he remained until 2000, when he was appointed Chief Prosecutor of the Section of the Criminal Chamber of the Court, and until 2005, when he was again assigned to the Prosecutor's Office before the Constitutional Court, where he remained until he was appointed State Prosecutor in January 2012, a position he resigned from in December 2014, when he returned to his post in the Prosecutor's Office before the Constitutional Court. On September 1st of this year, he requested a voluntary leave of absence in the Tax Career and accepted Garrigues' proposal to take up the position of Of Counsel at Garrigues Abogados, attached to the Litigation and Arbitration Department with special performance in the area of Criminal Law.

During his mandate as Attorney General, he was appointed as an ex-officio member of the Council of State, participating in the Council's plenary sessions during that time.

Similarly, during this mandate as FGE, it has participated and intervened with various presentations in international forums such as the Assemblies of the AIAMP, the Association of Latin American Public Prosecutors and in those of the Consultative Forums of European Prosecutors General organized in collaboration with Eurojust as well as with the Nadal Network with identical protagonists. Its working languages are English, French and Spanish.

**D. Alejandro Abascal Junquera.** PhD in Law from Alfonso X El Sabio University (2016) with the doctoral thesis "The procedural condition of legal persons as investigated or prosecuted subjects in criminal proceedings". Judge of the Court of Instruction nº 4 of Fuenlabrada. He served as a judge of the Audiencia Nacional from March 2016 to December 2016, having extensive experience in the use of international cooperation tools. As a judge, he has conducted numerous criminal investigations in major transnational economic crime cases.

Alejandro is a regular speaker at events covering criminal law and procedure. He is a professor of the specialization program in Economic Criminal Law of the IEB (Institute of Stock Market Studies) and of the specialization program in business crimes of the UEM (European University of Madrid). Their working languages are Spanish and English.

**D. Borja Jimenez Munoz.** Doctor of Laws from the University of Cordoba and Bachelor of Laws from the University of Cordoba. As of July 2018, Office of the Prosecutor of the International Cooperation Unit. State Attorney General's Office. Madrid. In charge of international cooperation and coordination in criminal matters of the Attorney General's Office with the EU and third countries, with special attention to international



organizations, terrorism, money laundering and complex forms of crime. International project management activities. Study/project visit manager.

Attorney General's office. General Prosecutor's Office/ OPP of Córdoba. In charge of the ordinary functions of a prosecutor: investigation of crimes, attendance at hearings and trials.

Seville Public Prosecutor's Office PPO. Ordinary functions of the prosecution: investigation of crimes, appearance at trial and trial in courts of first instance and courts of appeal Their working languages are Spanish and English.

**D. Emilio Hernandez Munoz.** Degree in Law (1992) with Honours and Diploma in Law (1992) from the Universidad Pontificia Comillas - ICADE, Madrid. Outstanding member of the Legal Team awarded the 'European Counsel Award 2008' in the category of Regulated Sector (non-financial) by the International Law Office (ILO). He is a qualified Spanish and British lawyer, admitted as a member of the Madrid Bar Association since 1994 (no. 54.371) and since 2013 as a Solicitor of the Law Society of Scotland (ID 42281), as well as a Notary Public in Scotland (United Kingdom). He is also a Certified Compliance and Ethics Professional (CCEP-I) since March 2016 and a member (no. 00167318) of the Corporate Compliance and Ethics Society since December 2015.

He joined Iberdrola in 2004 as a qualified lawyer in the Legal Services of Iberdrola Renovables (Renewable Energy Business of the Iberdrola Group). In June 2010 he moved to the UK to work as General Counsel and Secretary to the Board of SCOTTISHPOWER RENEWABLES, managing both the corporate affairs and legal advice of the UK renewables business (including the application of the UK Bribery Act 2010), as well as the global offshore business of the Iberdrola Group. He joined Iberdrola Ingeniería y Construcción, S.A.U. in July 2013, where he was responsible for corporate governance and compliance matters and has since acted as Deputy Secretary of its Board of Directors and Secretary of its Audit and Compliance Committee (a position he continues to hold). Also since July 2017, he has been a senior lawyer in the legal department of IBERDROLA ESPAÑA, SAU (holding company of the different businesses of the Iberdrola Group in Spain), where he also acts as a director of the Iberdrola España Foundation. He is an associate professor of corporate and government affairs in graduate programs at several universities. Their working languages are Spanish and English.

**Ms. Helena María Prieto González.** Degree in Law and in Economic and Business Sciences from the Universidad Pontificia de Comillas (ICADE E-3). Financial specialty. Exchange programme at the University of Tübingen (Germany). Master in Economic Criminal Law from the Rey Juan Carlos University (Madrid). Diploma in Research Sufficiency (DEA) from the University of Barcelona: The criminal liability of legal entities.

After working in the M&A department of Bankers Trust/Deutsche Bank, he joined the tax department in 2004, having worked in the tax offices of Barcelona and Madrid. She was a prosecutor attached to the Public Prosecutor's Office for Road Safety, from which she participated in the reform of the Criminal Code in this area, undertaken in 2007,

and in the creation and deployment of the network of delegated prosecutors for road safety.

In 2008 he joined the State Attorney General's Office, having been part of the offices of Cándido Conde-Pumpido, Eduardo Torres-Dulce and Consuelo Madrigal, where he provided technical advice to the Attorney General and participated in the preparation of the Circulars, Instructions and Consultations that constitute the body of doctrine of the Institution.

He is responsible for the internal investigations unit within the criminal law area of Garrigues Abogados, having led multiple investigations in multinational companies for the clarification of criminal acts of a transnational nature. His working languages are Spanish, German and English.

**Ms. Beatriz Bustamante Zorrilla.** She graduated in Law from the Universidad Complutense de Madrid, took a Higher Course in Legal Consultancy for Companies at the School of Legal Practice of the same University, and has taken the Executive Programme "Corporate Diplomacy & Public Affairs" at Schiller International University (2014), has a Postgraduate Course in Compliance at the Universidad Carlos III de Madrid and Pompeu Fabra de Barcelona (2015) and has taken the Advanced Executive Programme of Specialisation in Compliance at the Instituto de Estudios Bursátiles -IEB- (2016).

She is a senior associate in the criminal practice of the litigation and arbitration department of Garrigues Law Firm. It specializes in crimes against honor and privacy, tax crimes, corporate crimes, crimes against intellectual and industrial property, crimes against the market and consumers (business and competition-related corruption), crimes of corruption in the public sector (bribery, influence peddling, embezzlement of public funds), environmental crimes, crimes against land use and urban planning, crimes of false documentation and crimes against workers' rights (occupational health and safety).

In relation to the above-mentioned crimes, he has intervened in numerous criminal proceedings before the Courts and Tribunals, as a defence or private prosecution of individuals and companies.

He is part of the firm's group of lawyers specialized in corporate compliance advice, as well as in the design, preparation and implementation of crime prevention models or programs (criminal risk assessment and maps, criminal risk management systems, organizational models, codes of ethics and professional conduct, internal policies, anti-corruption manuals and policies, ethical and reporting channels, internal investigations and disciplinary sanction systems). It provides training sessions to employees and managers of companies in various sectors on the prevention and criminal liability of the legal person. Their working languages are Spanish and English.

**Mr. José Antonio Bonilla Pella.** Graduate in Law from the Complutense University of Madrid and Graduate in advanced studies in Criminology from the Complutense University of Madrid. Partner, White Collar Crime Investigations and Defense at JONES DAY. He has extensive experience in corporate and securities law as a partner in an international law firm and as in-house counsel for a large financial institution. His

experience has enabled him to address underlying issues and better represent individuals and companies in white-collar criminal proceedings, focusing in particular on financial and securities issues, including tax fraud and criminal money-laundering matters. Their working languages are Spanish and English.

## 8. TEACHER LOCATION

Contact with the teacher/s through the Intranet of Centro de Estudios.  
Centro de Estudios Garrigues. Av. de Fernando Alonso, 828108 Alcobendas, Madrid.

## 9. DETAILED COURSE CONTENT

- Chapter 1. Criminal liability of legal persons at the international level: The sentencing guidelines of the US, FCPA and UKBA. "Criminal liability of legal entities."
- Chapter 2. Criminal liability of legal persons in Spanish law
- Chapter 3. Managing the legal risk of third parties
- Chapter 4. Corporate governance in global groups
- Chapter 5. Criminal Enforcement. Corporate defense models
- Chapter 6. The role of the courts and prosecutorial discretion in white-collar crime National and international cooperation among law enforcement officials in civil, administrative and criminal matters relating to white-collar crime
- Chapter 7. EPO (European Public Prosecutor's Office): fight against fraud and protection of the EU's financial interests
- Chapter 8. Internal investigations and monitoring programs. The extraterritorial application of the SEC and DOJ
- Chapter 9. Corruption and crimes against public administration
- Chapter 10. Criminal liability of directors?