
Table of Contents

1. Introduction	1
1.1. Expectations	1
1.2. Applicable law	1
1.3. Financing international transactions	4
1.4. Summary	5
2. Contracts	6
2.1. When is a contract a contract?	6
2.1.1. Types of contracts	6
2.1.2. Voidable, unenforceable and void contracts: what is the difference?	7
2.1.3. Contract vs. invitation to treat	7
2.1.4. Offer: a closer look	7
2.1.5. Acceptance: a closer look	8
2.1.6. Other requirements	9
2.2. Letters of intent and memoranda of understanding	9
2.2.1. LOI vs. MOU: the same or different?	10
2.2.2. LOI and MOU: a closer look	10
2.2.3. Can LOIs or MOUs be binding?	11
2.2.4. Key elements of LOIs and MOUs	12
2.3. E-contracts	13
2.3.1. Benefits derived from e-contracts	13
2.3.2. Offer in e-contracts	14
2.3.3. Acceptance of e-contracts	15
2.3.4. Signatures in e-contracts	15
2.3.5. UN Convention on the Use of Electronic Communications in International Contracts	16
2.4. Vienna Convention on the International Sale of Goods	17
3. Mergers and Acquisitions	19
3.1. Fundamental concepts of mergers and acquisitions	19
3.2. Preparations and prearrangements of the deal	20
3.3. Letter of intent and memorandum of understanding	21
3.4. Due diligence	22
3.5. Negotiations, signing and closing	23
3.6. Purchase price	24
3.7. Representation and warranties of the seller	25

3.8. Financing of a transaction	26
3.9. Conclusion	27
4. Competition Law	28
4.1. Why regulate competition?	28
4.2. Cartels	29
4.2.1. What is a cartel?	29
4.2.2. Markets that typically attract cartels	29
4.2.3. Hardcore cartels	30
4.2.4. Lawful horizontal co-operation	31
4.2.5. Practical example: the Phoebus cartel	31
4.3. Verticals	32
4.3.1. What are verticals?	32
4.3.2. Hardcore vertical restrictions	33
4.3.3. Practical example: the BMW case	33
4.4. Abuse of market power	34
4.4.1. Market power and dominance	34
4.4.2. Abuse of a dominant position	35
4.4.3. Practical example: Microsoft / Phonak	36
4.5. Merger control	36
4.5.1. Mergers, acquisitions, JVs, etc.	37
4.5.2. Merger control procedure	37
4.5.3. Clearance, prohibition, remedies	37
4.5.4. Practical example: GE/Honeywell	38
4.6. Enforcement	38
4.7. Conclusion	39
5. International Investment	40
5.1. Introduction	40
5.2. Practical example: Russia	40
5.2.1. Sources	41
5.2.1.1. The Russian Constitution	41
5.2.1.2. Statutory law	41
5.2.1.3. Legal precedent	41
5.2.2. Foreign investment restrictions	42
5.2.2.1. Restrictions on investments in strategic business sectors	42
5.2.2.2. Obtaining consent	42
5.2.2.3. Consequences of a failure to comply	42
5.2.2.4. Insurance	43

5.2.2.5.	Credit organizations	43
5.2.2.6.	Other restrictions on foreign investors acquiring control over companies in certain industries	43
5.2.3.	Establishing a legal presence	43
5.2.3.1.	Company	44
5.2.3.2.	Branch office	44
5.2.3.3.	Representative office	44
5.2.3.4.	Simple partnership	44
5.2.3.5.	Types of companies	44
5.2.3.6.	Open and closed JSCs	45
5.2.3.7.	Charter capital	45
5.2.3.8.	Registration formalities	45
5.2.4.	Acquisition structures	46
5.2.5.	Joint ventures	46
5.2.6.	Financing and repatriation of profits	47
5.2.7.	Financial services regulation	48
5.2.7.1.	Banking regulation	49
5.2.7.2.	Insurance regulation	49
5.2.7.3.	Foreign investment	49
5.2.8.	Acquiring and investing in real estate	49
5.2.9.	Merger control	50
5.2.9.1.	General concepts	50
5.2.9.2.	Forms of control	50
5.2.9.3.	Procedure	51
5.2.9.4.	Consequences of non-compliance	51
5.2.10.	Investment incentives	52
5.2.11.	Expropriation	53
5.2.11.1.	Russian law	53
5.2.11.2.	Bilateral investment treaties	53
5.2.11.3.	Expropriation vs. requisition	53
5.2.11.4.	Bilateral investment treaties	54
6.	International Employment Law	55
6.1.	Applicable law and place of jurisdiction	55
6.2.	Employee, sales agent or freelancer	55
6.3.	Labor law in Europe	56
6.3.1.	European directives	56
6.3.2.	Different labor law in member states	56
6.3.2.1.	Structures	56
6.3.2.2.	Termination	57
6.4.	Labor law outside Europe	57
6.4.1.	Labor law in the US	57

6.4.2.	Labor law in South America	58
6.4.3.	Labor law in Asia	58
6.4.4.	Labor law in Arab countries	58
6.4.5.	Labor law in Russia	59
6.4.6.	Labor law in Australia and New Zealand	59
6.4.7.	Labor law in Africa	59
6.5.	Tax aspects	59
6.5.1.	Income tax	60
6.5.2.	Permanent establishment	60
6.5.3.	Transfer pricing	60
6.6.	Social security	61
6.6.1.	European regulations	61
6.6.2.	Other countries	62
6.7.	Expatriates	62
7.	Intellectual Property	63
7.1.	What is intellectual property?	63
7.2.	What are intellectual property rights?	63
7.3.	Why does intellectual property matter?	64
7.4.	Types of intellectual property	65
7.4.1.	Patents	65
7.4.1.1.	Definition	65
7.4.1.2.	Granted rights and economic rationale	65
7.4.1.3.	Patentability	65
7.4.1.4.	Term of protection	66
7.4.2.	Trademarks	66
7.4.2.1.	Definition	66
7.4.2.2.	Granted rights, trademark infringement	66
7.4.2.3.	Grounds for refusal, opposition proceeding	67
7.4.2.4.	Types of trademarks	67
7.4.2.5.	Principle of specificity	67
7.4.2.6.	Use obligation	68
7.4.2.7.	Term of protection	68
7.4.3.	Copyright and related rights	68
7.4.3.1.	Definition	68
7.4.3.2.	Granted rights	69
7.4.3.3.	Term of protection, limitations	69
7.4.4.	Designs	69
7.4.4.1.	Definition	69
7.4.4.2.	Registration	70

7.4.4.3. Granted rights	70
7.4.4.4. Term of protection	70
7.4.5. Geographical indications	70
7.4.5.1. Definition	70
7.4.5.2. Granted rights	71
7.4.5.3. Registration	71
7.5. Unfair competition law	71
7.5.1. Safeguarding fair competition	71
7.5.2. Know-how and trade secrets	72
8. Non-Contractual Liability	73
8.1. Introduction	73
8.2. Legal grounds	73
8.3. Kinds of torts	74
8.3.1. Negligence	75
8.3.2. Breach of statutory duty	76
8.4. Remedies	76
8.5. Contractual and non- contractual liability: comparative analyses	77
8.6. Differences in external representation	78
8.6.1. England and Wales, Ireland, Continental Europe and Scandinavia	79
8.6.1.1. Systems relying on broad principles	79
8.6.1.2. Systems relying on a list of protected interests	80
8.6.1.3. The Netherlands	80
8.7. Differences in approach	81
8.8. Employer's liability	83
8.8.1. Germany	86
8.8.2. Spain	86
8.8.3. United Kingdom	87
9. Environmental Law	91
9.1. Introduction	91
9.2. What is the "environment"	91
9.3. International environmental law	92
9.4. Main principles of environmental law	94
9.5. The concept of civil liability in the context of environmental law	95
9.6. Progressive development of environmental law within the EU	96
9.7. Environmental legislation in China	97
9.8. Environmental law and trade issues	97
9.9. Environmental law: risks for business community	98

9.10. Environmental issues as a part of social corporate responsibility	99
9.11. Conclusion	99
10. International Business Crimes – International Instruments in Relation to Money Laundering and Corruption	101
10.1. Introduction	101
10.2. Anti-money laundering	101
10.2.1. Legal means of addressing money laundering	101
10.2.2. Financial means of addressing money laundering	102
10.3. International anti-corruption treaties	103
10.3.1. OAS – The Inter-American Convention against Corruption	103
10.3.2. OECD – The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	104
10.3.3. Council of Europe – the Criminal Law Convention on Corruption	104
10.3.4. The European Union Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union	105
10.3.5. The United Nations Convention against Corruption	106
11. Dispute Resolution	107
11.1. Introduction: Spectrum of dispute resolution options	107
11.2. Negotiation	108
11.2.1. Positional negotiation	108
11.2.2. Interest-based negotiation	109
11.2.3. Deadlock	111
11.3. Mediation	111
11.3.1. Mediation procedure	111
11.3.2. Facilitative mediation	112
11.3.3. Evaluative mediation	112
11.3.4. Transformative mediation	113
11.3.5. A Continuum	114
11.4. Arbitration	114
11.4.1. Comparing arbitration to litigation	115
11.4.2. Arbitration agreements	116
11.4.3. Arbitration in the international context	117
11.4.3.1. In Practice	118
11.4.4. Arbitration procedure	118
11.4.5. Baseball arbitration and high/low arbitration	121
11.5. Litigation	121

11.6. Hybrid ADR	122
11.7. Dispute resolution clauses	123
11.7.1. Choice of law	123
12. International Tax	125
12.1. Introduction	125
12.2. Double Tax Treaties	125
12.3. Transfer Pricing	126
12.3.1. Introduction	126
12.3.2. Dealing at arm's length	126
12.3.3. Price comparison methods	127
12.3.3.1. Introduction	127
12.3.3.2. Traditional transaction method	127
12.3.3.3. Transactional profit methods	127
12.3.4. Adjustments	128
12.3.5. Advance pricing arrangements	128
12.4. Dividend taxation	129
12.4.1. Withholding tax	129
12.4.2. Reduction according to double tax treaties	129
12.4.3. Treaty shopping	129
12.5. CFC regulations	130
12.5.1. Introduction	130
12.5.2. United States	130
12.5.3. United Kingdom	131
12.5.4. Germany	132
12.5.5. Australia	133
12.6. Thin capitalization	133
13. Conclusion	134
Authors	135
References	137
Index	145