INTERNATIONAL DEBT WORKOUTS (IDW)
(Course # LAWG/J-835-08)
Spring Semester 2017

SYLLABUS

Course description:

Cross-border lending has grown exponentially in recent decades, especially with the opening of new markets in emerging economies and further integration of financial markets globally. A natural consequence is the invariable need to restructure cross-border debt. Such financial restructurings or "workouts" can occur individually with a troubled debtor or on a broader level in systemic crises (e.g., the debt crises involving Asia, Russia, and Mexico in the late nineties, Argentina in the last decade, and the 2008 global financial crisis primarily affecting the United States and Europe). In this course we will simulate, from an international lender's perspective, the out-of-court debt restructuring or "workout" of a corporation in distress. The simulation of this hypothetical workout will have role-play and extensive class interaction: we will be members of the restructuring and insolvency practice of an international law firm. Our client will be an international commercial bank with a troubled loan to a company in a developing country. Our job will be to provide legal advice and services to our client throughout the loan workout process. During the semester we will also have insolvency practitioners as guest speakers. Our work will include conducting due diligence, recommending a legal strategy, coordinating the creditor group, establishing negotiation strategies (and leverage) for our client, structuring the transaction documents, and closing the deal. The objectives of this simulation are to help students (1) understand the legal framework governing cross-border insolvency and restructuring, (2) debate legal issues affecting cross-border debt restructurings, (3) grasp the principles and best practices of international debt restructurings and insolvency from a practical perspective, (4) develop legal risk analysis and problem solving skills in the context of a troubled international financial transaction, and (5) gain experience with relevant document structuring and
cross-border negotiation strategies. Issues that will be addressed in the course include choice of law and jurisdiction, enforcement of creditors' rights in foreign courts, corporate governance, holdout creditors, moral hazard, distress signs in a company, cultural sensitivities, and cross-border negotiation techniques. The course will be taught by Claudio N. Rechden, Special Advisor to the Vice-President and General Counsel of the International Finance Corporation (the private sector arm of the World Bank). Claudio has extensive international finance, cross-border restructuring and litigation experience, and has served as IFC’s primary in-house counsel for several distressed investments worldwide.

**Course requirements:**

**Attendance and participation:** Weekly class meetings: Mondays, 7:55 p.m. – 9:55 p.m., in Room McDonough 164.

**Written assignments and class participation:**

Short reaction papers (4 expected): a question related to the simulation, along with background materials, will be presented by email or uploaded to Canvas following each class and, based on reading assignments, class work, and case background provided, students (in groups of 2 or 3, depending on the class size) shall submit their reaction papers by email by close of business every Friday before the next class.

Grade range for each group paper: 0 (worst) – 10 (best)

Individual participation range for each session: 0 (unjustified absence); 2.5 (justified absence); 5 (presence); 7.5 (average participation); 10 (excellent participation)

Format: 3 page limit, font size 12 Times New Roman, margins on Normal (1" on all sides). **Anything above limit will not be graded.**

*Group Reaction Papers will account for 70% of your grade.*

*Individual class participation will account for 30% of your grade.*
There will be no exams.

Reading assignments:

Please see enclosed list.

Purchase of the textbook is optional, as the relevant chapters that we will cover in class are in the reading packet, but is encouraged to students wishing to focus on debt restructuring beyond this class.

Text book reading packet is available for purchase online at [https://students.universityreaders.com/store/](https://students.universityreaders.com/store/). Please purchase this course pack to stay on top of your readings. Doing so will help you be successful in this class. Shipping can take 1-4 business days, so please be sure to order in time to receive your materials for class.

You will have the option of selecting a printed copy. Please keep in mind that Georgetown Law adheres to copyright law, so any copyrighted material should not be copied or duplicated in any manner.

To purchase the reading packet, please follow the instructions below:

**Step 1:** Log on to [https://students.universityreaders.com/store/](https://students.universityreaders.com/store/)

**Step 2:** Create an account or log in if you have an existing account to purchase.

**Step 3:** Choose the correct course pack, select a format and proceed with the checkout process.

**Step 4:** After purchasing, you can access a digital copy of the first few chapters by logging into your account and clicking "My Digital Materials" to get started on your reading right away.

Print orders are typically processed within 24 hours; the shipping time will depend on the selected shipping method and day it is shipped (orders are not shipped on Sundays or holidays). If you experience any difficulties, please email [email protected] or call [phone number].

Other reading materials are available free either online, in TWEN, or HEIN – please follow links in the reading assignment session of the Syllabus.
Office hours:

I will generally be available after class or by phone at other times by prior appointment. Alternatively, feel free to use email.

Summary of our Sessions:

**Session I (January 23): Introduction:** course and lecturer intro; establish class ground-rules and format; explain class objectives; discuss fundamentals of IDW and framework international insolvency laws and principles; discuss common issues observed in debt restructuring; preparation and explanation of simulation and course assignments; give students some basic concepts to guide their thinking process and have clear understanding of class objectives.

**Session II (January 30): Guest speaker: [Workout fundamentals and lessons learned from a seasoned workout banker (James Reed – International Finance Corporation)].**

**Session III (February 6): Due Diligence:** Discussion of the simulation case. Discuss common stakeholders in IDW; discuss due diligence process (legal, financial, and other); staffing of the restructuring team (including local counsel); review the management, ownership, and creditor structure of Distressco and identify: stakeholders, signs of distress, and legal issues affecting our client’s loan (including collateral); review the general legal framework and judicial system of Troublenia (including enforcement of creditor’s rights); learn to establish the foundation for a restructuring. Learn common issues in enforcing foreign law documents in local jurisdictions/debate on choice of forum and law; Discuss collateral structures vis-a-vis the procedural laws of the target company’s country for enforcement (especially in certain secured transactions). Discuss foreign exchange restrictions/repatriation of funds. Review and discuss our client’s loan agreement.

**Session IV (February 13): Strategy and Recommendation:** Discuss further information received; discuss strategy guidelines for our recommendation to client and our strategy; propose a recovery strategy to client based on our analysis of the company viability and our options (either by restructuring (in and out of court), exit (assignment of the loan), or
legal action/bankruptcy); Work on summarizing legal issues and making a constructive recommendation/solution to client; Debate available recovery alternatives.

**Session V (February 23): Lender coordination and Standstills**: Discuss information on and coordination among lenders (in theory and practice). Discuss standstill arrangements, creditors' committees and related issues, including corporate governance and shareholders' role, potential lender's liability in conducting a restructuring, conflicts of interest (identification and management of).

**Session VI (February 27): Negotiation Preparation and SWOT analysis**: Prepare for negotiations; discuss holdout issues, local vs. international bank issues, BATNA, "cultural due diligence", negotiating leverage. SWOT analysis of company, shareholders, and client for discussion on our client's legal leverage for negotiations with the company and other stakeholders; try to anticipate agendas/interests.

**Session VII (March 6): Negotiations and Term-sheet (I)**: Results of first round of negotiations; discuss negotiation dynamics in distressed investments (including relationship with sophistication of stakeholders); analyze different stakeholder negotiating positions; discuss and structure first draft of restructuring term-sheet.

**Session VIII (March 20): Guest speaker: The Company's Perspective** (Luis de Lucio, Alvarez & Marsal).

**Session IX (March 27): Negotiations and Term-sheet (II)**: Mock negotiation; discuss new risks identified; continue to work on restructuring term-sheet.

**Session X (April 3): Negotiations and Term-sheet (III)**: Continue mock negotiation.

**Session XI (April 10): Negotiations and Term-sheet (IV)**: Continue mock negotiation.

**Session XII (April 17): Closing the deal**: Results of second (and final) round of negotiations; finalize restructuring term-sheet; start discussing closing and implementation of restructuring; structure Restructuring Agreement; implementation and closing mechanics/issues; discuss local counsel legal opinion; closing checklist.
Session XIII (April 24): Guest Speaker: Sovereign Debt Restructuring: [(Wolfgang Bergthaler, International Monetary Fund)]

READING ASSIGNMENTS

Session I:


INSOL Principles – download online at: http://www.insol.org/pdf/Lenders.pdf:


Session II:

Mandatory: [NONE]

Session III:


Session IV:


Optional: Greer, Brian E.: Fiduciary Duties when the Corporation is in the Zone of Insolvency (American Bankruptcy Institute Journal) – November 1, 2006 [ProQuest]


Session V:

Optional: Kuran, Timur; Sandholm, William H.: Cultural Integration and its Discontents Review of Economic Studies (2008) 75, 201 – 228 (Sections 1, 2, and 6) [JSTOR]


Session VI:
Mandatory:  


Optional:  


Session VII:  
Mandatory:  [TBD]

Session VIII:  
Mandatory:  [NONE]

Session IX:  
Mandatory:  [NONE]

Session X:  
Mandatory:  [NONE]

Optional:  

Session XI:  
Mandatory:  [NONE]

Session XII:  
Mandatory:  [NONE]

Session XIII:  
Mandatory:  [TBD]