

# International Business Transactions Foreign Investment Law

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TWELFTH EDITION

Ralph H. Folsom | Michael Wallace Gordon  
Michael P. Van Alstine | Michael D. Ramsey

**INTERNATIONAL BUSINESS  
TRANSACTIONS**

**FOREIGN  
INVESTMENT LAW**

**Twelfth Edition**



by

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*We Dedicate This Book to:*

*Pixie*

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*Elsbeth Wallace and Huntly Milne Gordon*

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*Lisa*

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*Lisa, Christopher, and Colin*

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# PREFACE

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This is a special edition adapted from Chapters 1–3 and 8–11 of the authors' widely used *INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSEBOOK*, now in its 12th edition (2015). The purpose of this volume is to facilitate a focused study of the law of foreign investment.

Many lawyers engaged in international business law will confront one or more issues of foreign investment law. A client that has long sold goods abroad decides to manufacture those goods in a foreign country to be determined. That might be in an economic union that has special rules affecting foreign investment, such as the European Union, or in a free trade area to which the United States is a party, such as the NAFTA. When the decision is made to invest in a certain nation, there will be many further choices, such as the form of entity to establish, usually a branch or a wholly or majority owned subsidiary. There may be restrictions on foreign investment imposed by the foreign country, such as limitations on equity or use of a percentage of local components. The client may prefer to acquire a company in the foreign nation, or it may decide to begin a new company, called a “greenfields” investment. New financing alternatives may arise, such as international development banks and organizations. Operating in a country with a different currency, such as the Euro or Swiss franc or Mexican peso, raises many issues, such as whether and when to convert one currency to another. If things go wrong there may be litigation or arbitration with international dimensions, such as the use of choice of forum and choice of law provisions. Or the client may be sued in the United States under such laws as the Alien Tort Statute for alleged human rights or environmental abuses committed in connection with its foreign operations. Finally, if things go very wrong, there may be an insolvency that brings into play different insolvency rules.

A different form of foreign investment is where the client is from outside the United States, perhaps a Chinese company that wishes to establish an investment in the United States. Many of the same issues arise as when the U.S. investor goes abroad. In this case, however, U.S. laws addressing foreign investment in the United States, such as the Foreign Investment and National Security Act (FINSIA), become important.

In analyzing these and related issues of foreign investment law, this book utilizes the problem method. The goal of this approach is to model how lawyers confront legal issues in real world situations. Thus, after a brief introduction to the conduct of business in the global community, the

book uses a series of hypothetical problems to present what we believe are some of the most important issues in foreign investment law. An Appendix at the end of the book also introduces the European Union legal system, which is relevant to a number of the Problems.

Each Problem follows the same structure: (a) a statement of the basic facts of a hypothetical; (b) a “focus of consideration” that sets the context; (c) readings that provide the law relevant to the hypothetical; and finally (d) questions and comments that apply the law to the fact pattern. The problem method requires careful analysis of these questions and comments. They are not merely thought exercises (as is common in law school case books).

The excerpted materials in the readings come from a wide variety of sources, including treaties, statutes, regulations, and scholarly analyses. We provide foreign sources and perspectives to the greatest extent possible. In general, the book has a modest amount of case law. The most prominent exceptions are in those areas where litigation has generated valuable judicial analysis.

We have structured this book in separate Parts organized around general themes: After an introductory Part 1, Part 2 turns briefly to the law of export controls and to the U.S. Foreign Corrupt Practices Act (FCPA), which has great importance to foreign investments. Part 3 then presents two Problems on contractual transfers of technology. Part 4, which is in many ways the heart of the book, contains seven Problems addressed to common issues arising from the establishment and operation of a foreign investment. Part 5 examines the settlement of international business disputes. Our focus in these Problems is on lawyers, public and private, as problem solvers. None of us was interested in undertaking this project for the sake of producing a “casebook.” We believe, rather, that a problem-oriented approach offers a different perspective for law faculty teaching in this area and for students interested in understanding how the law provides the foundation for and affects the conduct of actual international business transactions.

A complete analysis of most Problems will require an allocation of more than one class session, and we have divided many of the Problems into two (or more) parts to assist such an allocation. Each Problem also references specific legal documents necessary to its analysis. We have prepared a Documents Supplement for use with this book (as well as with a separate “Contracting Across Borders” book). The Documents Supplement permits easy reference to the legal materials necessary for the analysis of the Problems.

The Teacher’s Manual will help faculty adopting this course book for the first time. Previous users should note the bracketed comments in the initial paragraphs for each Problem. These comments explain the specific

changes made as compared to the 11th Edition of the book. A chart in the Teacher's Manual shows which Problems in the Master IBT book correspond to which Problems in this break-out edition on "Foreign Investment Law."

Our IBT course books have been used in well over 130 schools. The present editions have benefitted from numerous, valuable comments from faculty who have previously taught with them. We welcome additional comments from faculty and students.

With this Twelfth Edition, we welcome a new co-author, Professor Michael D. Ramsey of the University of San Diego School of Law. We also announce the retirement of Professor Michael Wallace Gordon, and acknowledge debts to two other past authors, Professors John A. Spanogle and Peter L. Fitzgerald. None of these latter authors participated in the preparation of this Edition, but their contributions resonate throughout. Thank you Mike, Andy, and Peter!

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