

INTERNATIONAL
BUSINESS
TRANSACTIONS:
FOREIGN INVESTMENT
ELEVENTH EDITION

Ralph H. Folsom • Michael Wallace Gordon •
John A. Spanogle, Jr. • Peter L. Fitzgerald • Michael P. Van Alstine

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INTERNATIONAL BUSINESS TRANSACTIONS: FOREIGN INVESTMENT

Eleventh Edition

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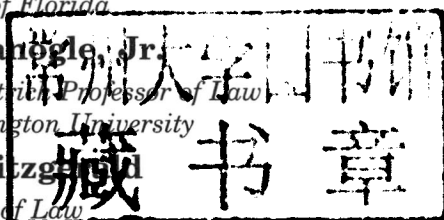
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We Dedicate This Book to:

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PREFACE

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 11th edition (2012). 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 Claims Act for alleged human rights or environmental abuses committed by 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 foreign, perhaps a Chinese company that wishes to open a foreign 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. law addressing foreign investment in the United States, such as the recent Foreign Investment and National Security Act, becomes important.

After a brief introduction to the conduct of business in the world community, the book uses hypothetical problems to present what we believe are some of the most important issues in foreign investment. There is an Appendix which introduces the European Union Legal System and a Documents Supplement prepared especially for use with the volume. References are made in each problem to those parts of the Documents Supplement which are necessary to an analysis of the problem. The Documents Supplement includes the above noted FINSA, the foreign investment law of Mexico, the

portions of the NAFTA and WTO governing investment, and other laws and regulations affecting foreign investment. It is essential that students use the Documents Supplement in many of the problems.

Most of the problems can easily be extended to additional class sessions, and many have been divided into two (or more) parts which may help such allocation. This should permit faculty to omit problems which they feel are less relevant to their goals in teaching the course, and to enhance those problems which they feel are most important with other readings.

The Teacher's Manual will help faculty using this volume for the first time, and should assist previous IBT users by comments in the initial paragraphs to each problem which explain changes made in each specific problem. Professors can obtain a looseleaf edition of this coursebook, which facilitates the transfer of teaching notes, from West Group.

Our focus 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 believed rather that a problem-oriented approach would offer a different perspective for law faculty teaching in this area. We welcome feedback on this special edition.

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