

## **TU-E1140 CONTRACTING IN STRATEGY AND VENTURING**

2 credit units

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Course brochure, Spring 2022

Feb 1, 2022

### **1. BACKGROUND**

With the high stakes surrounding venture capital investments and M&As in the high-tech industries, it is imperative that entrepreneurs and business executives have an up-to-the-minute and in-depth understanding of the key legal issues surrounding today's complex transactions.

Venture Capital and M&A Contracting is about optimizing across objectives and constraints, which may not be visible at the first phase of transaction or collaboration. Terms and conditions of these deals can affect the value to be obtained by the parties with differing rights and obligations as they may be linked and triggered by foreseen and unforeseen events and circumstances in the future.

When structuring the terms of these deals, it is important to understand that such agreements usually involve several risk management structures and staged capital infusions based on performance. A number of market factors as well as factors that are internal to the recipient or specific to the company in question will influence the terms of the agreement reached between the two parties.

In venture capital transactions risk management mechanisms typically include representation and warranties, indemnifications, liquidation preference -structures, dilution protection, veto rights, share transfer restrictions and exit clauses. In M&A agreements contingent payouts and earn-outs are included as a way of risk management by keeping entrepreneurs and key managers from leaving the acquired entity.

### **2. INTRODUCTION**

This course introduces current practice of legal structuring related to venture capital investments as well as mergers and acquisitions through lectures and real-life cases that are solved in small groups and presented and discussed during seminar sessions.

The objective of the course is to give the participants an understanding of the key legal issues of venture capital transactions and M&As such as analyzing term-sheets, formulating and drafting the representations and warranties, investment agreements, convertible loan agreements, merger agreements, purchase agreements and their derivatives.

The course aims to

- provide a pragmatic view to various deal types and legal structures used in venture capital transactions and M&As in order to improve the chances of successful transactions;
- clarify the key issues of these agreements and how to define the optimum deal structure based on financial and legal perspectives; and
- offer real life examples, tips and guidelines to negotiations covering the most important themes on the topic.

### 3. EVALUATION

There will be no written examination in this course. The course evaluation will be based on individual participation and contribution (10%) and group assignments (90%). In group assignments the participants will form groups of 3 to 5 individuals. The groups are divided as entrepreneurs and investors as well as acquirers and sellers. Then the groups will have an assignment to analyze sample agreements and term-sheets in order to a) provide arguments to their opponent groups; and b) generate benefit for their own groups. Before discussion, each group will wrap-up a summary report of two pages covering the main points of their findings and key arguments to be addressed in negotiations. Summaries will be presented in discussion between groups. Excellent summary will integrate a concise analysis of given material and facts of the case discussed and will provide strong basis for the face-to-face argumentation. More detailed instructions will be provided by instructor early in the course.

### 4. SCHEDULE

The following three course sessions are held on weekly basis via Zoom at 2:15pm - 5pm:

1 <sup>st</sup> session 24 <sup>th</sup> March	Introduction; Venture Capital Fund; Investment Process and Negotiations, Due Diligence; First Round Documents; R&W; Indemnities; Buy-Out Structures
2 <sup>nd</sup> session 31 <sup>th</sup> March	Equity and Debt Instruments; Risk Management and Control; Definitive Agreements; Case example
3 <sup>rd</sup> session 7 <sup>th</sup> April	Inorganic Transactions; Transaction Structures and Process; Definitive Agreements; Case example

### 5. PREREQUISITES AND ENROLMENT

The maximum number of students is 20 due to the space constraints and small group work. The course is open for all students. However, priority is given to students majoring in Strategy and Venturing. Before participating in this course, passing one or more of the following courses is recommended as a prerequisite:

Prerequisites based on new course code	Equivalent course based on old course code
TU-C2010 Introduction to Strategic Management	TU-91.1003 Principles of Strategic Management
TU-E4030 Entrepreneurial Finance	TU-91.2009 Entrepreneurial Finance
TU-E1021 Strategies for Growth and Renewal	TU-91.2038 Strategies for Growth and Renewal
TU-E1131 Financial Modeling in Strategy and Venturing	TU-91.2035 Financial Modeling in Strategy and Venturing

### 6. CONTACT INFORMATION

The instructor of the course is Jari Lauriala MBA, LL.M., Translink Corporate Finance Ltd, Kluuvikatu 5, Helsinki, mobile: +358 400-918855, email: jari.lauriala@translinkcf.fi. The course coordinator is David Wunder, email: david.wunder@aalto.fi, mobile: +358 50 4353099.

Further information about the course can be received from the Instructor Jari Lauriala, Course Coordinator David Wunder or Professor Markku Maula. In all practical issues, please contact David Wunder.

## **7. THE INSTRUCTOR**

Jari Lauriala (MBA, LL.M., Managing Partner in Translink Corporate Finance Ltd.) Mr. Lauriala has worked last eight years in international investment banking and venture capital companies advising leading Finnish and international corporations, private equity funds and financial institutions in a broad range of domestic and cross-border mergers and acquisitions and finance transactions. He has represented various Finnish management teams in a wide variety of financings including venture capital and private equity transactions, leveraged financing arrangements, complex security issues, bilateral/syndicated loan arrangements and incentive schemes. He has also advised companies making public equity offerings and convertible debt issues that involve listing of shares on the Helsinki Exchange and large Finnish pension funds on the structuring and establishment of private equity funds. Mr Lauriala also frequently advises Finnish growth companies on their alliances with multinational partner companies. His clients include inter alia: TeliaSonera Plc, TietoEnator Plc, Profium Ltd, CTT Cancer Targeting Technologies Ltd, The Finnish National Fund for Research and Development, Unicrop Ltd, Okmetic Plc, Greenstream Network Ltd, Proha Plc, Ministry of Trade and Industry, Sentra Plc, Polar Electro Plc, Iqua Ltd., Darecon Ltd., Helmi Technologies Ltd., Ipsat Therapies Ltd and several institutional investors including Capman Plc, Terveystieteiden tutkimuskeskus Oy, Ilmarinen, Tapiola, Eläke-Fennia and Etera.

Mr. Lauriala has published four books and over twenty peer reviewed articles about legal aspects of venture capital and corporate finance. He also lectures widely on different fields of corporate law and finance. Mr. Lauriala holds Master of Law and Licentiate of Law degrees and studies in international MBA program (Finance concentration) in Helsinki School of Economics.

## **8. OTHER INFORMATION**

A detailed list of suggested optional readings will be provided by the instructor.

## DETAILED CONTENT

### 1. Venture Capital Contracting

#### SESSION I

- Venture Capital Fund (Limited Partnership formed as a Finnish *kommandiittiyhtiö*)
  - main principles related to the structure
  - sources of finance
  - decision making and roles of general partner and limited partners
  - managerial obligations and incentives of general partner
- Venture Capital vs. Buy-Out Structures
  - LBO, MBO, MBI;
  - Structural Sub-ordination and debt layers;
  - Venture Capital Investment
- Investment process and negotiations
  - term-sheet (key terms; confidentiality agreement; exclusivity agreement; costs)
  - due diligence (focus areas; resources; constraints)
  - caveat emptor –principle
  - representations and warranties
- Material: Limited Partnership Agreement; Term-Sheet; Due Diligence Checklists and Requests; and Representations and Warranties.

#### SESSION II

- Equity Instruments
  - overview of capital structure (nature of debt, quasi-equity and equity)
  - common stock and preferred stock;
  - capital loan and convertible loan;
  - warrants;
- Investment Agreement (Shareholders' Agreement)
  - purpose
  - board representation and veto rights;
  - dilution protection;
  - liquidation preference –structures;
  - pre-emptive rights;
  - non-competition restrictions;
  - transfer of intellectual property rights;
  - vesting arrangements and redemption of the entrepreneurs shares;
  - negative pledge and covenants;
  - tag along and drag along; anti-lock out –clause
- Case-example
- Material: Investment Agreement (Shareholders' Agreement) and Convertible Loan Agreement (Ratchet Agreement).

### 2. M&A Contracting

#### SESSION III

- Introduction to Inorganic Transactions;
  - mergers and acquisitions;
  - joint ventures;
  - minority investments;
  - spin-offs and carve-outs;
  - divestitures;
  - strategic alliances and technology transfers (contractual relationships)

- Transaction Structures
  - price and form of payment (cash/stock);
  - tax consequences;
  - cash purchase of assets;
  - cash purchase of stock (acquisition);
  - forms of merger; triangular transactions (forward and reverse);
  - alliances and contractual transactions; technology transfer and license agreements;
  
- Definitive Agreements
  - due diligence and first round documents
  - payment structure (fixed and contingent payments; performance goals of earnout - structures);
  - caps, floors, collars and lock-up options
  - commitments, representations and warranties;
  - control and governance features;
  - risk management devices (escrow arrangements; collaterals; holdback allowances);
  
- Case example

## **Related literature:**

Camp, J. J. 2002. Venture Capital Due Diligence: A Guide to Making Smart Investment Choices and Increasing Your Portfolio Returns: John Wiley & Sons.

Aspatore Books. 2004. The Venture Capital Legal Handbook: Top Lawyers & Venture Capitalists on the Laws and Documents that Govern VC Deals, Raising Capital, Mergers & Acquisitions, IPOs & More. Boston, MA: Aspatore Books.

Bruner, Robert F. 2004 Applied Mergers and Acquisitions: John Wiley & Sons.

Gladstone, David - Gladstone, Laura: Venture Capital Handbook: An Entrepreneur's Guide to Raising Venture Capital, 1988 or newer edition.

Gladstone, David - Gladstone, Laura: Venture Capital Investing: The Complete Handbook for Investing in Private Businesses for Outstanding Profits, 2003 or newer edition.

Lauriala Jari. 2004. Pääomasijoittaminen: Edita Publishing Oy.

Levin JS. 2004. Structuring Venture Capital, Private Equity, and Entrepreneurial Transactions, 2004 Edition.

Rankine Denzil, Stedman Graham, Bomer Mark. 2003. Due Diligence: Definitive Steps to Successful Business Combinations. Prentice Hall.

Reed Lajoux Alexandra, Elson Charles M. 2000. The Art of M&A Due Diligence. Navigating Critical Steps and Uncovering Crucial Data. McGraw-Hill.

Wilmerding A. 2003. Deal Terms - The Finer Points of Venture Capital Deal Structures, Valuations, Term Sheets, Stock Options and Getting Deals Done.

Wilmerding A. 2003. Term Sheets & Valuations; A Line by Line Look at the Intricacies of Venture Capital Term Sheets & Valuations.

Web links:

<http://www.onecle.com/>

<http://contracts.corporate.findlaw.com/>