THE CASE STUDY (We will divide the class in a buyer side and seller side)

Frutas y Verduras S.L. (hereinafter, “FV”) is a successful chain of vegan restaurants popular for its high quality organic vegetables and cold pressed completely natural fruit juices. During the past five years, FV has grown from one to 33 restaurants located throughout Pacifico, a fictional Latin American country known for its beautiful scenery, its political and social stability and its growing middle class.

FV is owned by the Jimenez, a powerful family group led by Andres Jimenez, a 67 years’ old charismatic founder who manages FV with an iron fist. A large number of the 47 family members that own nearly 75% of the stock of FV are also employed in some managerial capacity by FV. The majority of the family members employed by FV are capable senior managers in their mid-60s. There is no heir apparent to Andres and the younger generation of the Jimenez family does not seem to be particularly interested in the business. The balance of the stock in FV is owned by a small group of minority shareholders who consider themselves long-term investors in the business. Pacifico corporate law provides that change of control transactions must be approved by 85% of the shareholders.

During the past five years, FV’s growth was financed by: (1) using all of the earnings of the initial restaurants to finance the opening of new restaurants and (2) heavy borrowing from local banks. There are no obvious additional local funding sources for the additional growth planned for the next three years (from 33 to 70 locations) as further domestic borrowings appear unlikely and the family wants to extract earnings from the business in order to finance a “good lifestyle” for the retirement of the older generation and the study abroad plans of the younger generation.

Andres has been approached by Greenstone Partners (hereinafter, “GP”), a reputable private equity firm with a good track-record of investing in the consumer products sector. GP aims to make control investments in growing businesses with a view to exit such investments within 5-6 years. GP has identified a capable CEO with consumer products experience, but no prior experience in Pacifico or in any developing markets that could run FV.

GP engaged a local law firm, an accounting firm, a business consultant and an investigative firm that conducted thorough due diligence of FV. Their due diligence report for FV highlighted the issues discussed above and the following additional facts:

➢ FV sources its organic vegetables and amazing fruit from five farms under supply agreements with favorable pricing; all supply agreements contain change of control provisions; there are no alternative supply sources of equivalent quality;

➢ There are fifteen ongoing lawsuits brought by the contractors retained by FV to construct the restaurants: some of the claims are for very significant amounts;

➢ There is an ongoing tax audit for the return filed by FV during the first three years (the tax statute of limitation in Pacifico is five years);

➢ In part because Andres did not keep books until he hired a CFO three years ago and FV has no compliance function or policy, the initial source of financing for the first ten restaurants opened by Andres in the “pioneer phase” did not appear clear at first. After digging further, the investigation firm has established that Andres had an unsavory silent partner in the early years. Luckily, it has been established that Andres has managed to buy out the unsavory partner. Pacifico’s laws against corruption and money laundering are extremely tough: in a worst case scenario, the authorities might seek to impose fines, seize assets financed through money laundering activities and even put Andres in jail;

➢ Marketing of the FV brand has centered on the healthy lifestyle, charisma and popularity of Andres; Andres is an icon of the good and balanced life prominently featured in all of FV’s advertising;

➢ In the past, the Jimenez have had no trouble in securing the permits necessary to open new restaurants because they are well regarded in Pacifico; the investigation firm is comfortable that no illicit activity was involved in securing such permits; however, it is also been established that foreign firms often have trouble securing permits in Pacifico;

➢ Pacifico has recently enacted a stringent data protection law; while FV is already subject to it, it has taken no steps whatsoever to comply with it; FV maintains a rich database with detailed customer information;

➢ GP owns a competing business in Pacifico so anti-trust clearance will be required; while approval is virtually certain, this will require at least 3 months;

GP and Andres agreed to try to negotiate the purchase of a 51% interest in FV upfront with a path to acquire the remaining 19% interest over time. The Enterprise Value of FV has been agreed by GP and Andres to be between US$400 and US$500MM. FV has debt of $100MM, holds cash of $20MM and Target working capital has been set at $50MM but expected working capital at closing will be $80MM due to seasonality. The price to be paid will be on a cash free debt free basis.

The Jimenez have not given exclusivity to GP because they are also engaged in conversations with Purplerock Partners (“PP”), a competing private equity shop that may be willing to pay more, but is reputed to be a “difficult partner.”

Some of you have been hired by GP to act as their New York counsel. Others have been hired by the Jimenez as their New York counsel.

(1) On behalf of GP, what price would you propose for the acquisition of a 51% interest in FV (keeping in mind the potential competition)? What arguments will you use to justify your proposal? Jimenez counsel to respond to the proposal.

(2) On behalf of the Jimenez, how do you propose to address the concerns around (A) the original financing of the chain and (B) the risk that Andres might be dragged into a scandal that might take him out of the business? Consider structuring possibilities, representations and warranties, covenants and indemnities. Explain the package that you want to try to negotiate. GP’s counsel will need to respond.

(3) On behalf of GP/Jimenez, how do you propose to address the concerns around the litigation exposure of FV? Consider representations and warranties, covenants and indemnities. Explain the package that you want to try to negotiate. Jimenez/GP’s counsel will need to respond.