Information Technology Transactions: Business, Management and Legal Strategies, Third Edition (2021)

Duncan C. Card, B.A., LL.B., LL.M. ICD.D

Successful IT transactions begin with reasonable risk management strategies that balance the need to achieve business objectives and resolve legal challenges.

An essential road map for the prescription for IT project success

This how-to manual provides a comprehensive and detailed examination of all commercial, risk management, contracting, and legal issues that arise in the course of planning, negotiating, documenting, and closing IT transactions. An "end-to-end" guide for all business managers and professionals involved in an IT transaction, the publication enables all participants to see, at each stage of the transaction, how all parts of the transaction and contract fit together to ensure the project's success.

Based on the book's widely acclaimed and demanded second edition 13 years ago, the text has been thoroughly expanded, updated, enhanced, and comprehensively augmented to stand as the quintessential reference tool for all levels of IT management – procurement managers, project managers, in-house legal counsel, enterprise risk managers, IT project consultants, and advisors – and even corporate directors who materially rely on the reliability, security, and operational effectiveness of their enterprise's IT infrastructure. This book serves as the single reference guide to help them successfully and effectively navigate large, mission critical or complex commercial, contracting, compliance, and management challenges to their enterprise's IT transactions.

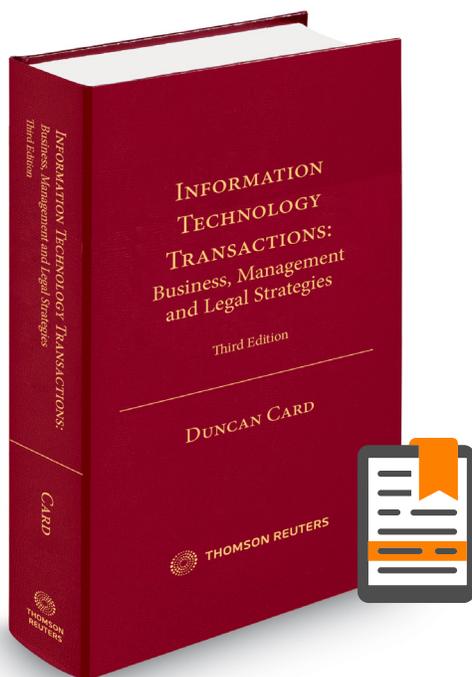## Information Technology Transactions

examines every step of an IT project and transaction, including:

- Planning and preparation for a successful transaction
- Negotiations leading to transaction
- Documentation (contracts) required
- Implementation of the agreement and project
- Ongoing management of contract performance and the vendor-client relationship

New in the 2021 edition

In addition to all of the book's updated cases, new publication references, and IT project developments since the Second Edition (2007) (346-page hardcover), the Third Edition now contains 273 pages of new IT transaction best practice material, including:

- All statutory and common law references are updated
- Over 100 new publication resources are now referenced
- Many new legal cases are referenced and discussed
- New checklists and contextual guidelines have been added
- Case study review of why large and complex IT projects fail, with a detailed review of best practices
- Illustrates how to apply the book's prescriptions to address: outsourcing and managed services, cybersecurity governance issues, cloud computing service transactions, offshore IT transactions (including U.S.), and enterprise modernization and transformation projects
- An added focus on Lessons Learned for avoiding IT project failures in the public sector, especially to address consistently repeated IT project mistakes and avoidable transactional missteps
- Includes a comprehensive index with 451 entries for ease of subject matter reference

INFORMATION TECHNOLOGY TRANSACTIONS: Business, Management and Legal Strategies

Third Edition

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The definitive guide to IT transaction best practices for success

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About the Author

Duncan C. Card, B.A., LL.B., LL.M., ICD.D., is widely acclaimed as one of Canada's leading, and most sought after, specialized lawyers and business advisors devoted to information technology procurement, transactions, and projects – for both IT vendors and IT buyers. Duncan is a senior partner at the prestigious Canadian law firm of Bennett Jones LLP, where based from his firm's Toronto and Ottawa offices, he is a global practice leader devoted to all aspects of commercial IT projects and transactions; emerging forms of FinTech including payments technology; SaaS/IaaS/DaaS solutions; all outsourcing and managed services; cloud services; modernization and enterprise transformation; nuclear technology and PPP projects; healthcare technology and transformation; all aspects of government procurement and contracting (best practices); defence and national security technology; and intelligent systems (including AI) and infrastructure projects (including energy, manufacturing, logistics, communications, hospitals, and transportation intelligent infrastructure).

For the last 20 years, Duncan has been consistently cited as one of Canada's best IT lawyers by numerous leading industry ranking services. Most recently, Duncan was cited by the prestigious 2021 Canadian Lexpert Directory as one of Canada's leading lawyers in both the Technology and Computer & IT Law categories. Duncan was cited in the 2020 directory as one of Canada's Leading Infrastructure (ICT) Lawyers, as well as in the previous two categories. Duncan was also recognized as one of Canada's most sought-after technology lawyers in the special edition of Lexpert's Technology 2020 rankings, published in the Globe and Mail's Report on Business.

Duncan's leadership rankings for IT law and transactions include the following recent professional distinctions: the 2019 National Post's rankings of the "Best Lawyers in Canada" (Technology Law); recognized in 2019 as one of Canada's Leading Infrastructure Lawyers in the September 27, 2019 issue of The Globe and Mail's Report on Business Magazine; named by both Lexpert Magazine and the Canadian Council For Public-Private Sector Partnerships as one of Canada's leading infrastructure lawyers; and cited in the 2018 inaugural edition of the U.K.-based Who's Who Legal as a world leading information technology lawyer. For Duncan's transactional work in Bermuda and across the Caribbean, he was awarded with the distinction of the "Telecommunications, Media and Technology Lawyer of The Year 2018 – Bermuda" by the U.K.-based Finance Monthly Magazine Global Awards.

In demand as a corporate director, Duncan received his formal ICD.D designation (class valedictorian) in 2013 after having taught the IT corporate governance section of the ICD program to several ICD cohorts. Duncan attended law schools at Queen's University (LL.B.), the London School of Economics, The Academy of International Law at The Hague, and the University of Toronto (LL.M.). Duncan is called to both the Ontario and Bermuda bars. Duncan works extensively with U.S.-based enterprises on their Canadian IT transactions, and he has advised on, or conducted, technology transactions in over 60 jurisdictions around the world. Duncan is a popular conference speaker, and he has published or presented over 350 technology transaction-related articles and conference papers or delivered governmental presentations over his 30-year career, including contributions to several books and compendia on commercial technology topics.

Follow Duncan on LinkedIn, or at **www.duncan-card.com**.

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"As all businesses are in the midst of digitization and technological transformation in order to remain relevant in today's economy, Duncan's book is a must-read for lawyers, CIOs, and business people who increasingly must navigate complex technology transactions. Duncan provides an extremely well written and highly informative road map that touches both on the big strategic questions and delivers analytical insights for those who crave the details. This book is a step-by-step 'must-have' resource tool to promote IT transaction success and sound governance."

George Begic
Partner and Deputy General Counsel, Deloitte Canada

"Mr. Card delivers what the title promises: a clear, articulate, and practical set of legal and non-legal strategies for dealing with the myriad of issues one encounters in today's IT transactions. The organization of the material in accordance with the phases of a transaction allows the reader to zero in on specified content and explore adjoining material as the need and the interest requires. The practical advice from Lessons Learned and Dear Executive highlight the author's business acumen, confidence, and genuine desire to share experience and knowledge with the readers. I would highly recommend this book to those experienced in the field looking to hone their perspective and those who are just commencing their journey of learning on IT Transactions."

Michel E. Belec
SVP, Chief Legal Officer & Corporate Secretary
Law & Governance
TELUS International Canada

"Mr. Card has written an excellent and comprehensive book, which provides an enlightening journey for IT executives through vital IT transactional areas such as legal, risk, and governance. The strategy of focusing on these areas is brilliant as these are areas that most IT leaders are not as well informed about as they are about technology itself. Ironically, most IT project failures are internal and are not the result of technology failures but a failure to fully understand, communicate, and document a detailed contract between the IT supplier and the customer. This book addresses this failure in detail and provides solutions, consequently, it will be of significant benefit to IT leaders. The book also clearly articulates the role of corporate/government Boards and what due diligence and oversight they should be conducting. However, having been a CIO three times in the private and public sector, Boards rarely carry out their responsibility when it comes to IT governance, not because they don't want to, but they are often unqualified and inadequately staffed to do."

Steven Delaney
CEO and Co-Founder of Capital Blockchain
CIO Association of Canada — National Board Member
PhD Candidate (Computer Science)

"A comprehensive reference with valuable insights and practical considerations on how to structure IT transactions. The accessible style will prove useful to managers and counsel alike in managing risk and promoting desired outcomes on large initiatives."

Blythe Walker
Chief Technology Officer
RenaissanceRe Holdings Ltd. (Bermuda)

"Throws a life preserver to those charged with closing a comprehensive IT transaction for their organization — something companies do rarely, if done properly. The portions of the book that leapt out at me are those addressing evolving areas of risk — these keep legal leaders awake at night, in no small part because of the changing landscape and lack of day-to-day exposure to them. ... In situations where parties are negotiating remotely, unable to gather live around a negotiating table, practice gems emphasizing the traditional nuts and bolts of how to get deals negotiated, closed, integrated, and managed effectively is invaluable. Mr. Card unflinchingly points out deal pitfalls, including those arising from lack of planning, inadequate negotiation preparation, failure to fully define services and other obligations, taking one's eye off the ball during implementation — all are chronicled, with sage advice on how best to avoid them. Mr. Card knows how to march a deal through to completion, as evidenced in this volume — he thoroughly covers the bases in a logical, coherent, but engaging manner. The human element is a wild card when doing deals and implementing them. Mr. Card's astute emotional intelligence carries through in the highly practical and hard-won wisdom shared in this book."

Robert Ellis
Senior Vice President, General Counsel and Corporate Secretary Celestica Inc.

"Once again, Duncan Card has amassed the ultimate reference text that provides for those involved in negotiating and securing IT transactions all they need to know to ensure that they can achieve the desired successful outcomes. Fully annotated, the book describes and recommends the best course of actions for any situation one would encounter in getting the transaction across the finish line. A must-have reference!"

Barry Clavir
Founder of CIO Summit (Canada) and CEO, Leaders Beyond Inc. (CIO Executive Training)

"Keeping up with the sophistication and constant evolution of the information technology business is a challenge for even the most experienced professionals. Mr. Card paves the way to navigate that complexity with the most comprehensive framework I have ever seen, which serves both the business and legal communities. The abundance of specific legal content guidance and real business strategy makes this book an indispensable resource for all levels of players of the information technology arena. This book can set you ahead of competitors with examples and scenarios that will help you lead your strategy from planning to execution. Find special room on your office desk for this book and make sure it stands within easy reach because you'll need it."

Cristiano Bernarde
Vice President and Regional General Counsel – Latin America and Caribbean SAP International Inc.

"Card provides an extraordinarily practical and exhaustively comprehensive guide to achieve successful IT transactions; from planning and strategy to negotiation and pitfall avoidance. His book is an invaluable resource for IT professionals as well as legal practitioners, collating wisdom and guidance gained from the author's real-world experience that is directly relevant and essential for managing IT projects today. This book is an essential 'best practices' resource for the successful management of all IT projects. Quoting the author, his book '...painlessly teaches lessons that others have painfully learned,' and I could not agree more."

Paul Didyk
Director of IT
Coralisle Group Ltd. (Bermuda)

"It is clear that technology is significant to a company's success and yet many Boards still lack the necessary knowledge and expertise to ensure that such a critical function is properly managed. The lack of IT governance and oversight from the Board can result in significant cost to the organisation and even a threat to its existence. Duncan's latest book is a comprehensive reference tool for effective IT governance, at all levels. While there is a focus on the legal aspects of the process, it provides a practical 'what,' 'why,' 'when,' and 'where' approach to the critical processes necessary in an effective IT organisation with an emphasis on the 'transaction' life cycle process from inception to completion. The Board, management, legal teams, and IT professionals will all find invaluable guidance and practical advice to follow to ensure that all angles are covered. Duncan leaves no IT or legal 'stone' unturned, covering all possible outcomes and strategies to mitigate the potential risks."

Ronald A. Viera, CISSP, CISM, CISA, CRISC
Financial Services CIO/IT Executive, and Cybersecurity Advisor

"Having long benefitted from Mr. Card's guidance in the 2nd edition, we welcome this 3rd edition of Information Technology Transactions: Business, Management and Legal Strategies. As our products and services migrate to the cloud ... the insights shared by Mr. Card have helped us build successful legal strategies, prioritize privacy and security, while identifying and actively mitigating risk."

Damien McCotter
Legal Counsel, Canada
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