

## Symposium:

### Hedge Funds and Alternative Investment Funds in Hong Kong and Singapore

Jointly organized by:

HK Commercial and Maritime Law Centre, City University of Hong Kong and  
Centre for Banking & Finance Law, National University of Singapore

When: Fri 20 April 2018, 9.00am-6.00pm.

Where: CityU School of Law, Kowloon Tong, Hong Kong.  
Conference Room (P5401)/ Moot Court (P5419)

#### Programme (vers. 17 April 2018)

9.00am-9.15am Registration

9.15am-11.15am

#### *Hedge Fund Regulation and Structuring in Singapore*

Mr Amit Dhume (Colin Ng & Partners, Singapore) & Prof Alexander Loke (CityU HK School of Law/ HK Commercial and Maritime Law Centre)

The presentation is based on a paper which examines the current structuring and regulation considerations for hedge funds seeking to operate in Singapore. A theme explored in the presentation is how the Singapore regulatory regime encourages the development of the hedge fund industry in Singapore.

#### *Hedge Fund Operations and Regulation in Hong Kong: Comparison with Other Jurisdictions*

Dr Jin Sheng (NUS Centre for Banking & Finance Law)

Comparative law paper which examines the governance and regulatory issues of HK hedge funds, and compares them against the regime in the US and Europe. The paper will also discuss the Mainland-HK Mutual Recognition of Funds under the Shanghai-HK stock connect and Shenzhen-HK stock connect, and the mutual recognition of funds (MRFs) arrangement to which HK is a party.

Commentators:

Dr John Ho (CityU HK, School of Law/ HK Commercial and Maritime Law Centre)

Mr Scott Peterman, Orrick (Hong Kong)

11.15am-11.30am Tea break

11.30am-12.30pm

#### *When Shareholders Activist meet Controlling Shareholders in the Shadow of the Law*

Dr Lin Yu-Hsin (CityU HK School of Law/ HK Commercial and Maritime Law Centre)

Much scholarship has been devoted to shareholder activism in companies with dispersed share ownership. Current paper fill the void in the literature by examining shareholder activism in companies with concentrated ownership, and how minority shareholders (including fund managers) utilize existing minority protections under the law.

Commentators:

Ms Petrina Tan (NUS Centre for Banking & Finance Law)

Mr Brian Tang (Asian Capital Markets Institute)

12.30pm-2.00pm Lunch

2.00pm-3.00pm

*Collective Investment Schemes and Property Schemes*

Prof Hans Tjio (NUS Faculty of Law/ Centre for Banking & Finance Law)

Paper discusses the differences in regulatory reach over property schemes in the UK, HK and Singapore. Amongst the issues implicated are: how regulatory statutes should be interpreted, whether and how much deference should be given to the views of the regulators, and its ramifications for other areas like initial coin offerings.

Commentator:

Ms Karen Man, Baker & McKenzie (Hong Kong)

3.00pm-4.00pm

*Private Equity in Singapore: A Critical Analysis*

Dr Lin Lin (National University of Singapore)

This paper discusses the growth of private equity in Singapore and the steps that have been taken to develop the private equity industry. An evaluation is made of the reforms including changes to the limited partnership law and tax laws, and suggestions are made for further changes that will help develop the industry.

Commentator:

Ms Stella Leung (CityU HK School of Law)

4.00pm-4.15pm Tea Break

(Note venue change to **Moot Court** for last two sessions.)

4.15pm-5.15pm

*Learning from Hedge Funds as Top Predators in an Evolving Market*

Prof David C. Donald (Chinese University of Hong Kong, Faculty of Law)

Inspired by Andrew Lo's adaptive market hypothesis (2017), this paper explores if the regulators move from a focus on immediate causes of market instability to adopt an approach akin to an ecologist investigating behavior, environment and how the two interact over time.

Commentator:

Prof Hans Tjio

5.15pm-6.00pm

*Sharing recent developments and current issues*

Chairs: Prof Alexander Loke & Prof Hans Tjio

Participant share one or two recent development and/or current issues that might invite further research.

***Hedge Fund Regulation and Structuring in Singapore***

Amit Dhume & Alexander Loke

The presentation is based on a paper which examines the current structuring and regulation considerations for hedge funds seeking to operate in Singapore. The paper begins by examining the regulation of fund managers and their agents (Part 2). Fund managers have a variety of choices in how they choose to structure the fund. Indeed, a fund may be formed under the law of another jurisdiction (i.e. an offshore fund), even if the marketing and management of the fund takes place in Singapore. If a fund manager chooses to constitute a fund under Singapore law, a number of fund structures are available. These include the limited liability company, the limited partnership and the trust. Part 3 discusses why, despite the many structures available under Singapore law, hedge fund managers prefer to structure the fund in the form of a Cayman Islands company. It also discusses the proposed Singapore Variable Capital Company structure (“S-VACC”) that has features which will make it an attractive vehicle to be used for Singapore domiciled hedge funds. Part 4 discusses the regulation of offer of investments in a hedge fund, and in particular the exemptions that might be appropriate to avoid the burdens of the regulatory regime applicable to retail funds. Connected with this is Part 5, which discusses the licensing of intermediaries who are permitted to conduct such marketing activity. A theme explored in the presentation is how the Singapore regulatory regime encourages the development of the hedge fund industry in Singapore.

***Hedge Fund Operations and Regulation in Hong Kong: Comparison with Other Jurisdictions***

Jin Sheng

Hong Kong is the investment fund center of Greater China as well as offshore center of over 2,000 unit investment trusts and mutual funds. The Hong Kong hedge fund industry has been growing ever since the Securities and Futures Commission (SFC) released the Hedge Fund Guidelines in 2002. Most investors, including funds of mutual funds, insurance companies and other institutional investors, are from the US, Europe and elsewhere outside Hong Kong or have overseas domiciles. For example, many parallel funds, master feeder funds and umbrella funds are domiciled in Cayman Islands or BVI. Strengthening regulations on alternative investment funds against credit risk, liquidity risk and systematic risk and enhancing investor protection have become a tendency.

This paper will mainly address corporate governance and regulatory issues of Hong Kong hedge funds. First, it will compare the legal rules or restrictions over investment strategies and dealing procedure of hedge funds in the US (Dodd-Frank Act and FATCA), Europe (EU AIFMD, MiFID and EMIR) and Hong Kong (SFO Cap. 571 and UT Code), such as short selling, leverage rate, disclosure and financial reporting requirements, and conflicts of interest between fund managers (or management companies) and their investors. Second, it will compare the licensing, authorization, reporting requirements, tax treatment, marketing and exit strategy in Singapore, Cayman Islands and Hong Kong. Third, this paper will discuss the Mainland-Hong Kong Mutual Recognition of Funds (under the Shanghai-Hong Kong stock connect and Shenzhen-Hong Kong sock connect), and the mutual recognition of funds (MRFs) between Hong Kong and other jurisdictions from the regulatory perspective.

### ***When Shareholder Activists Meet Controlling Shareholders in the Shadow of the Law***

Yu-Hsin Lin

Hedge fund activism has changed corporate governance around the world in the past decade. Conventional wisdom holds that shareholder activism is only effective in firms with dispersed ownership. There has been much less discussion on whether and how activism would work in firms with controlling shareholders. This paper fills the void by investigating whether and how law influences the strategy setting and outcome of activism based on hand-collected data on activist investments, mainly by hedge funds, in firms with concentrated ownership in Hong Kong from 2003 to 2017. This paper finds that exercising legal right itself does not ensure success. Among all the legal tools available, minority veto rights in conflict-of-interests transactions help activists most in achieving their goals. Furthermore, the availability of legal remedies and the shareholding level of controlling shareholders are factors that influence the strategy setting of activists. Most activist actions against controlled firms involve corporate governance disputes where activists can leverage on the minority shareholder rights under the law. However, activists tend not to escalate their demand to the public and not to exercise legal rights when controlling shareholders control majority of the shares.

### ***Collective Investment Schemes and Property Schemes***

Hans Tjio

This paper sets out the decision of the UK Supreme Court in *Asset Land Plc v FCA* [2016] UKSC 17 where it was held that the land banking scheme there required authorization as a collective investment scheme. The HK definition is quite similar as is how authorisation works in practice which is that, without it, schemes can only be offered to sophisticated investors. The position in Singapore was and is different. Definitional changes were only made in 2017 to remove the concurrent requirements of pooling and external management, which kept land banking schemes outside the regulatory regime. These are not in force yet, which in Singapore means that they can be sold to the public generally (subject to consumer protection laws). Amongst other things to be discussed are how regulatory statutes should be interpreted, whether and how much deference should be given to the views of the regulators, and its ramifications for other areas like initial coin offerings. Time permitting, we will also look at the first court approved restructuring of a property based business trust in Singapore.

### ***Private Equity in Singapore: A Critical Analysis***

Lin Lin

This article sets out the growing importance of private equity for Singapore's economy and provides an overview of the existing regulatory framework governing private equity in Singapore. It outlines the two organizational structures currently used by the industry, namely the limited partnership and the company, and highlights the tax consequences of such structures. It then discusses the various tax incentives and concessions made available to fund managers and investors. Thereafter, this article proposes several potential reforms to bolster Singapore's position as an onshore hub for private equity funds. Such suggestions include introducing more liberal tax policies, permitting dual-class shares for listed companies, and modifying the limited partnership structure.

## ***Learning from Hedge Funds as Top Predators in an Evolving Market***

David C. Donald

The Efficient Capital Market Hypothesis (ECMH) provides the comforting stability that faith does in the context of a religion. Deviations from Efficiency may occur, but market participants can trust that according to the will of a higher law, Efficiency will when least expected return to settle the score. In a ECMH world, if disclosure of relevant information is made, price swings will be settled by supply and demand, bad behavior punished by reputation loss, and risk rewarded by return. Actors are rational, information is complete, and each decision seeks to maximize return. In a market participants believe to be efficient, trust can overcome fear of abuse.

Andrew Lo (2017) argues that exactly in this atmosphere, hedge funds entered as top predator with an open mind on market dynamics. Searching for flaws in the market they conduct statistical arbitrage and tie long and short trade positions in any way their data shows to be profitable. Feeding on inefficiency, hedge funds have for decades thrived against true believers in the ECMH. The successful behavior of hedge funds supports much of Lo's "adaptive market hypothesis" in which markets should be understood as an evolving ecosystem of changing technology, law and relationships in which investors themselves continually adapt by forming and forgetting biases that may have been efficient when formed but are no longer so in a changing environment.

If regulation were to be designed for the market as a hedge fund sees it rather than the market from an index fund's point of view, regulators would not focus "attention on just the immediate causes of" market instability, but as "an ecologist ... investigate behavior, environment, and how the two interact over time." What sort of a regulatory model would best fit a system that does not merely have a few bugs, but as Lo puts it, is "a system of bugs." This paper begins the investigation of that project.