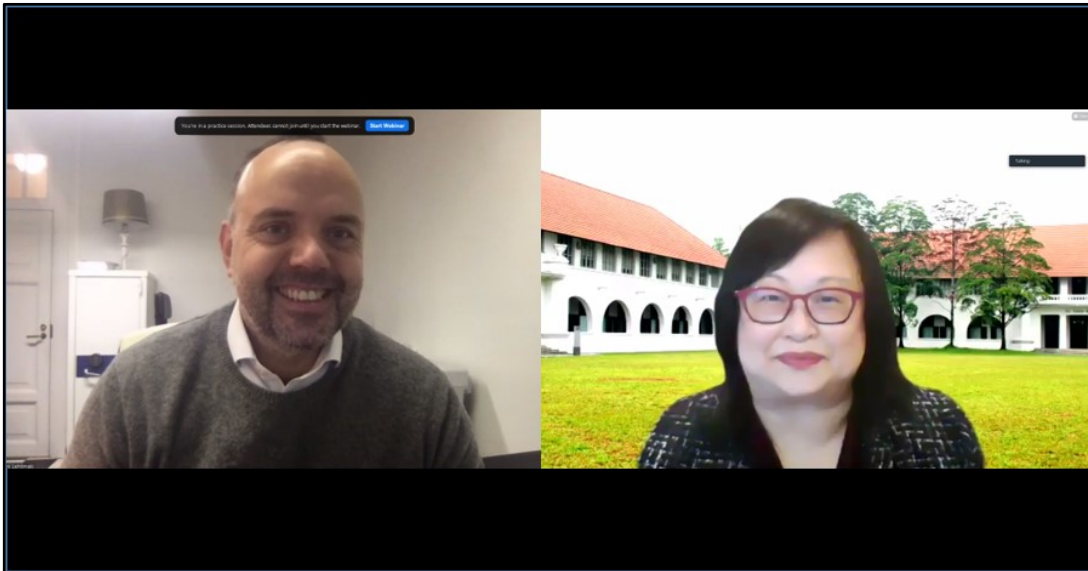


CBFL Seminar Series Leveraged Transactions and Intercreditor Agreements

7 January 2021, 4.00pm to 5.45pm

Webinar



Left to right: Mr Mika Lehtimäki (Research Associate, CBFL) & Assoc Prof Dora Neo (Director, CBFL)

Mika Lehtimäki, Research Associate at the NUS Law Faculty's Centre for Banking & Finance Law (CBFL), delivered a webinar on 'Leveraged buyouts and intercreditor agreements' on 7 January 2021. The event, which was part of CBFL's seminar series and accredited with 1.5 CPD points, was well attended by legal practitioners and academics.

In the webinar, Mika discussed the use of inter-creditor agreements (ICAs) in leveraged buyouts (LBOs), how they are structured, what theoretical and practical problems they solve and how they are capable of forming a privatised insolvency procedure. He discussed his recent empirical analysis of English law ICAs with a focus on the main problems in contracting about insolvency; capital structures and debt subordination; control of hold-out creditor actions and the validity of contractual restrictions. He also looked into creditor voting and creditor oppression case law, as well as enforcement and distressed disposals and trustees' obligations and release of liabilities.

Mika analysed the main contractual terms of ICAs and how to negotiate such terms in actual transactions. He concluded that ICAs may not work in all jurisdictions if the status of a contract can be overridden or if there are strong restrictions on 'bankruptcy waivers'. Also, ICAs often assume strong security packages and effectiveness of covenants in the loan documents to trigger the rights at proper times. He noted, further, that although ICAs are able to regulate most intercreditor conflicts and lead to a stable negotiating framework, statutory procedures may be still needed if the Board is under statutory liability obligation to file for insolvency or if there is a need for a debt-to-equity conversion and a large-enough part of the senior creditors cannot agree. However, ICAs can regulate scenarios ranging over several jurisdictions and complex debtor groups and changing flexible capital structures.

As a result, he pointed out that ICAs create a stable-enough bargaining framework for the relevant stakeholders to reach the most feasible solution economically – not a small accomplishment.