

RESTRUCTURINGS OF COMPANIES IN FINANCIAL DISTRESS: GLOBAL AND ASIAN PERSPECTIVES

Organizer: Hong Kong Commercial and Maritime Law Centre,
City University of Hong Kong

Zoom Meeting ID: 705 191 1552

Password: 656131

PROGRAMME

Day 1 - 10 June 2020, Wednesday	
9:00 - 9:15	<p>Opening Address Prof TAN Cheng Han Dean <i>City University of Hong Kong, School of Law</i></p> <p>Prof Wai Yee WAN <i>City University of Hong Kong, School of Law</i></p> <p>Dr Charles QU <i>City University of Hong Kong, School of Law</i></p>
9:15 - 10:15	<p>Keynote Presentation: Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy Prof Anthony J. CASEY <i>The University of Chicago, Law School</i> local time 20:15 - 21:15 (HKT -13hrs)</p> <p>Commentator Prof Gerard McCORMACK <i>University of Leeds, School of Law</i> local time 2:15 - 3:15 (HKT -7hrs)</p>
10:15 - 10:30	Tea Break
10:30 - 11:30	<p>Keynote Presentation: Developments on the Reorganization of distressed companies and cross-border bankruptcy in China Prof LI Shuguang <i>China University of Political Science and Law, School of Law and Economics</i> (HKT +0hrs)</p>

	<p>Commentator Dr Charles QU <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p>
11:30 - 12:30	<p>Cross-Border Insolvency Law in Hong Kong – Recognition of Foreign Schemes of Arrangement Assoc Prof Andrew GODWIN <i>The University of Melbourne, Melbourne Law School</i> local time 13:30 - 14:30 (HKT +2hrs)</p> <p>Dr Charles QU <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p> <p>Commentator Dr Emily LEE <i>University of Hong Kong, Faculty of Law</i> (HKT +0hrs)</p>
12:30 - 13:30	Lunch Break
13:30 - 14:30	<p>Firm performance when banks receive forbearance while restructuring debt Ms Susan THOMAS <i>Indria Gandhi Institute of Development Research</i> local time 11:00 - 12:00 (HKT -2.5hrs)</p> <p>Commentator Mr Terry KAN <i>Partner, ShineWing Hong Kong</i> (HKT +0hrs)</p>
14:30 - 15:30	<p>Trends in Restructuring and Insolvency in the ASEAN Region Dr Paul OMAR <i>De Montfort University, Law School</i> local time 7:30 - 8:30 (HKT -7hrs)</p> <p>Commentator Prof Alexander LOKE <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p>
15:30 - 15:45	Tea Break
15:45 - 16:45	<p>A General Theory of the Law of Corporate Debt Dr Felix STEFFEK <i>University of Cambridge, Faculty of Law</i> local time 8:45 - 9:45 (HKT -7hrs)</p>

	<p>Commentator Ms Susan THOMAS <i>Indria Gandhi Institute of Development Research</i> local time 13:15 - 14:15 (HKT -2.5hrs)</p>
16:45 - 17:45	<p>Relative Priority and the European Restructuring Directive Prof Gerard McCORMACK <i>University of Leeds, School of Law</i> local time 9:45 - 10:45 (HKT -7hrs)</p> <p>Commentator Dr Felix STEFFEK <i>University of Cambridge, Faculty of Law</i> local time 9:45 - 10:45 (HKT -7hrs)</p>

Day 2 - 11 June 2020, Thursday	
9:00 - 9:10	<p>Welcome Address Prof Alexander LOKE Director <i>Hong Kong Commercial and Maritime Law Centre</i> <i>City University of Hong Kong, School of Law</i></p>
9:10 - 10:10	<p>A Tale of Two States: The Cramdown, Reorganization Bargaining and the Inefficient Markets of U.S. and China Dr Simin GAO <i>Tsinghua University, Law School</i> (HKT +0hrs)</p> <p>Commentator Prof Anthony J. Casey <i>The University of Chicago, Law School</i> (HKT +0hrs)</p>
10:10 - 11:10	<p>預重整的制度構建及中國實踐 The Construction of the Prepacked Reorganization System and the Practice of Prepacks in China Judge WANG Fang <i>Shenzhen Intermediate People's Court</i> (HKT +0hrs)</p> <p>Commentator Assoc Prof Andrew GODWIN <i>The University of Melbourne, Melbourne Law School</i> local time 12:10 - 13:10 (HKT +2hrs)</p>
11:10 - 11:25	Tea Break

11:25 - 12:25	<p>Mandatory Disclosure in Corporate Debt Restructuring: A Comparative Approach</p> <p>Prof Wai Yee WAN <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p> <p>Commentator Dr Aurelio GURREA-MARTINEZ <i>Singapore Management University, School of Law</i> (HKT +0hrs)</p>
12:25 - 13:25	<p>Does a solvent winding-up constitute a "foreign proceeding" for the purposes of Model Law: a matter of statutory interpretation</p> <p>Charles QU <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p> <p>Commentator Dr WEE Meng Seng <i>Faculty of Law, National University of Singapore</i> (HKT +0hrs)</p>
13:25 - 14:25	Lunch Break
14:25 - 15:25	<p>The Proposed Statutory Corporate Rescue Procedure in Hong Kong: Provisional Supervision</p> <p>Dr Stefan LO <i>HKSAR, Department of Justice</i> (HKT +0hrs)</p> <p>Commentator Ms Lillian CHOW <i>HKSAR, Official Receiver's Office</i> (HKT +0hrs)</p>
15:25 - 16:25	<p>Insolvency Law in Emerging Markets</p> <p>Dr Aurelio GURREA-MARTINEZ <i>Singapore Management University, School of Law</i> (HKT +0hrs)</p> <p>Commentator Assoc Professor Stacey STEELE <i>The University of Melbourne, Melbourne Law School</i> local time 17:25 - 18:25 (HKT +2hrs)</p>
16:25 - 16:40	Tea Break
16:40 - 17:40	Panel Discussion - Impact of COVID 19 on bankruptcy law reforms

	<p>Panel Chair</p> <p>Prof Wai Yee WAN <i>City University of Hong Kong, School of Law</i> (HKT +0hrs)</p> <p>Prof Christian KOLLER <i>University of Innsbruck, Institute for Civil Procedure</i> local time 10:40 - 11:40 (HKT -6hrs)</p> <p>Assoc Professor Stacey STEELE <i>The University of Melbourne, Melbourne Law School</i> local time 18:40 - 19:40 (HKT +2hrs)</p> <p>Dr Felix STEFFEK <i>University of Cambridge, Faculty of Law</i> local time 9:40 - 10:40 (HKT -7hrs)</p> <p>Dr Aurelio GURREA MARTINEZ <i>Singapore Management University, School of Law</i> (HKT +0hrs)</p>
17:40 - 17:55	Closing Address

Restructurings of Companies in Financial Distress: Global and Asian Perspectives

Dates: 10-11 June 2020

School of Law Conference Room, 5/F, Yeung Kin Man Academic Building,
City University of Hong Kong

BIOGRAPHICAL DETAILS OF SPEAKERS

In Alphabetical Order by Last Name

Prof Anthony J. CASEY

The University of Chicago, Law School

Tony Casey is Professor of Law and the Faculty Director of the Center on Law and Finance at The University of Chicago Law School. He is also the Robert Braucher Visiting Professor of Law at Harvard Law School. His research examines the intersection of finance and law, with a focus on corporate bankruptcy. He has written about topics including asset valuation, creditor priority, the constitutionality of bankruptcy courts, and intercreditor agreements. His broader projects explore business organization, civil procedure, and complex business disputes.

Before entering academics, Professor Casey was a partner at Kirkland & Ellis LLP. His legal practice focused on corporate bankruptcy, merger litigation, white-collar investigations, and securities litigation.

Professor Casey received his JD, with High Honors in 2002 from The University of Chicago Law School. After law school, Casey clerked for Chief Judge Joel M. Flaum of the United States Court of Appeals for the Seventh Circuit.

Ms Lillian CHOW

HKSAR, Official Receiver's Office

Lillian Chow LLB, LLM is the Assistant Official Receiver (Ag.) of the Official Receiver's Office. Her main duties include advising and reviewing legislative proposals relating to the purview of the Official Receiver's Office and assisting in the legislative exercise on the proposed corporate rescue procedure. She has also worked in the Lands Department before taking up work with the Official Receiver's Office.

Before joining the public service, Lillian has worked in private practice at Messrs. Johnson, Stokes and Master for over 10 years. She is experienced in the fields of commercial law, joint ventures, mergers and acquisition as well as in real estate practices.

Dr Simin GAO

Tsinghua University, Law School

Simin Gao is Associate Professor at the Law School of Tsinghua University. She received her doctorate degree in law from the University of Pennsylvania Law School and was a former Russell Ackoff Fellow (2011–2012) at Penn's Wharton School of Business. She brings interdisciplinary perspective to a wide range of emerging issues that encompass bankruptcy law, corporation law, financial law, law and economic and comparative law. She has authored several publications on bankruptcy Law, financial law and regulation which appeared on law journals in U.S. and EU, like American Bankruptcy Law Journal, European Business Organization Law Review, American Business Law Journal, Texas International Law Review, Banking law Journal, Manchester Journal of International Economic Law, and International Corporate Rescue. She was the only winner majoring in social science to receive the Extraordinary Excellent Prize of Chinese Government Award for Outstanding Self-financing Student Abroad in 2012. She received the Peking Excellent Junior Scholar grant and several start-up grants from Department of Justice, Department of Education and Tsinghua University.

Assoc Prof Andrew GODWIN

The University of Melbourne, Melbourne Law School

Andrew Godwin is Associate Professor; Director of Transactional Law; Director of Studies for the Graduate Program in Banking and Finance Law and Associate Director (Asian Commercial Law) of the Asian Law Centre, Melbourne Law School. Andrew researches in the area of finance and insolvency law, financial regulation, property law and the regulation of the legal profession. Andrew has published extensively in both academic and professional journals and is a co-author of Sackville & Neave *Australian Property Law* (10th edition, 2016). Andrew has acted as a consultant to a broad range of organisations, including the World Bank, the 2018 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and financial regulators in Australia and abroad. He is a co-editor of *The Research Handbook on Asian Financial Law* (Edward Elgar) and is co-editing *The Cambridge Handbook of Twin Peaks Financial Regulation* (forthcoming, Cambridge University Press).

Dr Aurelio GURREA-MARTINEZ

Singapore Management University, School of Law

Aurelio Gurrea-Martínez is an Assistant Professor of Law at Singapore Management University where he teaches company law, financial and securities regulation, and comparative and international insolvency law. He is also the head of the Singapore Global Restructuring Initiative and co-chair of the SMU-3CL Cambridge Roundtable on Corporate Insolvency. He has taught, studied and/or conducted research at various institutions in the United States, the United Kingdom, Continental Europe, Asia and Latin America, including Harvard Law School, Yale Law School, Columbia Law School, Stanford University and Oxford University. He is a member of the Steering Committee of INSOL International's Academic Group, as well as a member of the European Corporate Governance Institute, the American Law and Economics Association, and the International Insolvency Institute's NextGen Group. Aurelio is also the director of the Ibero-American Institute for Law and Finance and head of the research group on fintech at the SMU Centre for AI and Data Governance. He has received several scholarships and awards, including the Talentia Fellowship to conduct his studies in law and finance at the University of Oxford, the Class Prize for Best Paper in Law and Economics at Stanford Law School, the Dean's Teaching Excellence Award at Singapore Management University, and the Silver Medal in International Insolvency Studies given by the International Insolvency Institute. In 2016, he also received the Rising Star of Corporate Governance Award by the Millstein Center for Global Markets and Corporate Ownership at Columbia Law School. His research interest lies in the intersection of law and finance, with particular emphasis on corporate governance, financial regulation, corporate finance and corporate insolvency law, and how legal and institutional reforms may promote entrepreneurship, innovation, access to finance and economic growth.

Mr. Terry KAN

Partner of SHINEWING Specialist Advisory Services

Terry has over 2 decades of experience in corporate restructuring, dispute resolutions, cross-border investigations, formal insolvency and trustee appointments. Recent appointments in listed issuers incorporated in Offshore or Hong Kong jurisdictions involving Schemes of Arrangements (for Reverse Take-Over; Debt-For-Equity Swap and Debts Composition); provisional liquidator's appointment of listed company with fraud allegations and the high profile fitness brand - California Fitness group; debt restructuring for a Chairman of listed company; and advisor to founders of the Oasis Airlines; formal insolvency appointments with cross-border asset tracing and recoveries in India and other countries.

Terry is a co-author of "The Hong Kong Corporate Insolvency Manual (4th Ed)" jointly published by LexisNexis and the HKICPA in 2018. He commented on consultation papers of "HKEx Delisting and Other Rule Amendments", "Review of Corporate Rescue Procedure Legislative Proposals" and "Improvement of Corporate Insolvency Law Legislative Proposals". He has contributed to the World Bank Group – Doing Business Report for many years. Over the years, he provided training for HKICPA Professional Diploma In Insolvency and seminars for professional bodies in Hong Kong and INSOL India. Terry previously worked in KPMG (Hong Kong and London) and Grant Thornton.

Prof Christian KOLLER

University of Innsbruck, Institute for Civil Procedure

Christian Koller is a full professor at the University of Innsbruck, where he lectures on international insolvency law, the enforcement of cross-border judgements and arbitral awards as well as on resolving complex disputes. As of October 2020, Professor Koller will hold a chair for European and International Civil Procedure Law at the University of Vienna. He specializes in international restructuring and insolvency law, international litigation, and international commercial arbitration. Professor Koller regularly acts as policy advisor for national governments and expert on issues of national and international insolvency law. He has published extensively in this field, e.g. he co-authored a chapter of the Heidelberg-Luxembourg-Vienna Report on the European Insolvency Regulation and co-edited and authored a commentary on Austrian and European insolvency law.

Dr Emily LEE

University of Hong Kong, Faculty of Law

Emily Lee (LLB, LLM, PhD) is associate professor at the Faculty of Law of the University of Hong Kong. Her research interests are in the fields of financial law, corporate insolvency law, cross-border insolvency law and comparative law (comparative financial law and comparative corporate insolvency law). In the article titled “Judicial diplomacy in the Asia-Pacific: theory and evidence from the Singapore-initiated transnational judicial insolvency network” (*Journal of Corporate Law Studies*, 2020), she and her co-author undertook the original contribution of examining the Judicial Insolvency Network (JIN) Guidelines in light of the overall need for participating jurisdictions to craft a transnational insolvency framework. It used Hong Kong as a test case to illustrate trends of likely future convergence. She holds a Public Policy Research grant funded by the Policy Innovation and Co-ordination Office of the Government of the Hong Kong Special Administration Region. The project consists of interdisciplinary research on law and technology, focusing especially on FinTech and RegTech and their intricacies in AML/CFT law and regulation compliance. Her research work has been published by leading peer-reviewed journals such as the *American Journal of Comparative Law*, *Journal of Corporate Law Studies* and *Journal of Business Law*.

Professor LI Shuguang

China University of Political Science and Law, School of Law and Economics

Professor Li Shuguang is the founder and the director of the Bankruptcy Law and Restructuring Research Center, the Dean of the Graduate School of the China University of Political Science and Law. A member of the Academic Degrees Committee of the State Council.

Prof. Li is a Senior Research Fellow of Legislative Application Institute of the Supreme People’s Court of China. He is a Senior Research Fellow of the China Institute for Restructuring Economic System and a council member of China Law Society. He was a member of the Issuance Examination Committee of the China Main Board of China Securities Regulatory Commission from 2012 to 2015.

Prof. Li is the current President of INSOL China, a fellow of 19th Class of American College of Bankruptcy, a member of the International Insolvency Institute, and former director of INSOL.

Li is a pioneer in China in the field of insolvency and restructuring. Since the early 1990s, he has been involved in drafting a series of new laws and regulations of National People’s Congress, including the Enterprise Bankruptcy Law, the Enterprise State-owned Assets Law.

Prof. Li published Bankruptcy Law Review (Vol. 1, 2018), Law Review of Corporate Reorganization & Restructuring (Vol. 1-5, 2012), The Transition of Bankruptcy Law in China (2013), Economic Law (2012), My Thought on Law (2007), Bankruptcy and Restructuring of Chinese Enterprise (1996), and hundreds of articles.

Dr Stefan LO

HKSAR, Department of Justice

Stefan Lo, Deputy Principal Government Counsel (Ag), Department of Justice, Hong Kong (BA/LLB (Hons I), LLM, PhD, University of Sydney). Dr Lo has worked in the Civil Division of the Department of Justice since 2009, predominantly advising the government on company and insolvency law reform. He has published widely in the area of corporate law, including research on accountability of directors and corporate controllers. Before joining the Department of Justice, Dr Lo was Assistant Professor in the School of Law, City University of Hong Kong.

Prof Alexander LOKE

City University of Hong Kong, School of Law

Alexander Loke JSD, LLM (Columbia), LLB (Hons)(NUS) is Professor at the City University of Hong Kong School of Law, and Director of the Hong Kong Commercial & Maritime Law Centre. Loke was the founding chief editor of the *Asian Journal of Contract Law* and was also one of the founders of the NUS Centre for Banking & Finance Law launched in 2014. Loke publishes widely in contract law, corporate and securities law, and international finance. He was a co-editor in vol. 1 (Remedies for Breach of Contract) and vol. 2 (Formation and Third Party Beneficiaries) in the series *Studies in the Contract Laws of Asia* (Oxford University Press). Representative publications include: "Excusable Consent in Duress" (2017) 37 *Legal Studies* 418, "Rethinking the transplantation of *TSC Industries v Northway* in Singapore" (2013) 28 *Aus J Corp Law* 253, and "From the Fiduciary Theory to Information Abuse: The Changing Fabric of Insider Trading Law in the U.K., Australia and Singapore" 54 *Am J Comp L* 123 (2006).

Prof Gerard McCORMACK

University of Leeds, School of Law

Gerard McCormack is Professor of International Business Law at the University of Leeds in the UK and also a Visting Professor at the University of Vaasa in Finland.

He is the author of a number of publications particularly in the areas of Corporate Insolvency and Secured Financing Law. This includes publications and work on the comparative and international/Cross Border dimension of the subjects.

He has carried a number of externally commissioned works. This includes work for the European Commission on Insolvency and Restructuring Law in the EU Member States. This work was part of the process that led ultimately to the European Preventive Restructuring and Insolvency Directive - Directive 2019/1023.

Dr Paul OMAR

De Montfort University, Law School

Paul is an academic lawyer working in the British HE sector and serving also as Consultant to a number of international institutions active in the insolvency sector.

Paul has worked in mainstream British academia for 20 years, principally at Sussex University and also in Wales and the East Midlands. At present, he is a Senior Lecturer in Land Law at De Montfort University Leicester. He has also had visiting appointments at the University of Pretoria, University College London and the Jersey Institute of Law, St. Helier. His research interests encompass insolvency, corporate and property law and he has published over 230 books, edited collections, chapters and articles.

Paul has served as Secretary of the INSOL Europe Academic Forum and as a member of the Steering Committee of the INSOL International Academic Group, the INSOL Europe Joint Academic-Practitioner Project on Cooperation and Communications, the Academic Advisory Group on the INSOL International Diploma Project, the Course Committee of the INSOL International Global Insolvency Practice Course and, more recently, as a member of the European Commission's Experts Group on Restructuring and Insolvency, which helped inform the drafting of the Preventive Restructuring Directive. Paul is at present a Consultant to the European Bank of Reconstruction and Developments working on projects in Armenia and external adviser to the Indian Graduate Diploma in Insolvency course. He is also the Technical Research Coordinator for INSOL Europe.

Dr. Charles QU

City University of Hong Kong, School of Law

Charles Qu is an Associate Professor of the School of Law, City University of Hong Kong. He holds a LLB and a LLM from the University of New South Wales, as well as a PhD from the Australian National University. He was admitted as a Legal Practitioner at the New South Wales Supreme Court in 1998. His research interests are in the areas of corporate law, corporate insolvency law, as well as Chinese corporate law. His teaching responsibilities include Company Law I, Company Law II, and Equity and Trusts.

Professor Stacey STEELE

The University of Melbourne, Melbourne Law School

Professor Stacey Steele is the Director (Japan) at the Asian Law Centre, University of Melbourne. Stacey's extensive knowledge of Asian legal systems and comparative insolvency law is demonstrated by her wide-ranging publications and thought leadership commentaries including three co-edited books and many peer-reviewed journal articles. Recent articles include:

- 'The 'Safe Harbour' Reform of Directors' Insolvent Trading Liability in Australia: Insolvency Professionals' Views', *Australian Business Law Review* (forthcoming 2020, with Ian Ramsay);
- 'Insolvent Trading in Australia: A Study of Court Judgments from 2004 to 2017', *Insolvency Law Journal* (27(3) 2019, with Ian Ramsay); and
- 'Insolvency Law Reform in Australia & Singapore: Directors' Liability for Insolvent Trading & Wrongful Trading', *International Insolvency Review* (28(3) 2019, with Ian Ramsay and Miranda Webster).

Stacey has taught Insolvency Law, Corporate Banking and Finance Law, Issues in Japanese Law and in graduate subjects offered by the Centre. Stacey is also Deputy Chief Privacy Officer at a multi-national company with over 20,000 employees in over 30 locations. Stacey's global advisory role involves developing and implementing programs and strategies to support compliance with privacy, data protection and cybersecurity requirements. Her previous role at the company saw Stacey provide strategic and technical legal advice to the credit ratings business. Prior to joining the company, Stacey was a senior associate at a leading Australian commercial law firm.

Dr Felix STEFFEK

University of Cambridge, Faculty of Law

Felix Steffek is a University Senior Lecturer at the Faculty of Law of the University of Cambridge and a Senior Member of Newnham College. He serves as Director of the Centre for Corporate and Commercial Law (3CL) and Director of Studies for undergraduate and graduate students. His research interests cover corporate law, insolvency law, commercial law, dispute resolution law and technology & law.

Felix Steffek is a Member of the Editorial Board of the *Journal of Corporate Law Studies*, the *Cambridge Yearbook of European Legal Studies* and other academic journals. He is a Member of the Education Taskforce of the UK LawTech Delivery Panel.

He has acted as policy advisor and expert for the European Commission, the European Parliament, the World Bank, the OECD, national governments, courts, parliaments and science foundations. He received his education at Cambridge (LLM), Heidelberg (PhD, undergraduate) and Hamburg (Habilitation, court clerkship).

Ms. Susan THOMAS

Indira Gandhi Institute of Development Research

Susan Thomas holds degrees in civil engineering and economics from IIT, Bombay and University of Southern California, Los Angeles, respectively. She is faculty at the Indira Gandhi Institute for Development Research, Bombay. Her research is in financial econometrics and market microstructure in India. Her engagement with markets include designing the stock market index, real-time risk management system for the clearing corporation, and the use of call auctions. She has worked on projects with the World Bank, IFC, ADB, securities and commodity derivatives exchanges in India, and the Government of India. Recent policy engagements include being a member of the Standing Council of the competitiveness of the Indian Financial Sector and the Bankruptcy Legislative Reforms Committee of the Ministry of Finance. This committee submitted a draft Insolvency and Bankruptcy Code to the Indian Parliament which was enacted as law in May 2016. Her work can be accessed at <http://www.ifrogs.org>

Prof Wai Yee WAN

City University of Hong Kong, School of Law

Wai Yee WAN is Associate Dean and Professor, School of Law, City University of Hong Kong. Prior to joining City University of Hong Kong in January 2020, she was at Singapore Management University (SMU), where she last held the positions of Dean of Post-graduate Research Programmes and Professor of Law.

Immediately prior to joining academia in late 2005, she was a partner at Allen & Gledhill in Singapore, where she practised in mergers and acquisitions and equity capital markets. Her main areas of research are in corporate law, mergers and acquisitions, securities regulation, financial consumer regulation and global restructuring and insolvency. Her research work centres on the optimal legal institutions and governance framework in order for securities markets to flourish. She has a particular interest in Asian securities markets and why the solutions to corporate governance issues, securities market integration and reorganisation of distressed companies in the West (the United Kingdom (UK) and the United States (US)) may not be ideal as a basis of global best practice or may not work as intended in Asia.

Judge WANG Fang

Shenzhen Intermediate People's Court

Ms. Wang Fang LLB (SFSU), LLM (HKU), is a judge of the Corporate Insolvency and Restructuring Division, Shenzhen Intermediate People's Court. She joined the Corporate Insolvency and Restructuring Division in 2010. Among cases Judge Wang was involved in is *Jade Cargo International Airline Co Ltd* (2013) Shen Zhong Fa Pozi No. 45, where the main assets of Jade Cargo were auctioned online.

Dr WEE Meng Seng

Faculty of Law, National University of Singapore

Dr Wee Meng Seng is an Associate Professor and the Deputy Director and Director (Corporate Law) of the EW Barker Centre for Law & Business at the Faculty of Law, National University of Singapore (NUS), and an editorial member of the Singapore Journal of Legal Studies. He obtained his LLB from NUS, BCL (First Class) and DPhil from Oxford. He teaches and researches on corporate insolvency law and company law. He has published articles in flagship journals in the UK and Singapore such as the Law Quarterly Review, Lloyd's Maritime and Commercial Law Quarterly, Journal of Business Law and Singapore Journal of Legal Studies, and chapters in OUP and CUP books. His writings have been cited by fellow academics and the courts, including the Singapore Court of Appeal and the Australian Federal Court. He has been invited regularly to speak at local and international conferences. He was a visiting professor at the China University of Political Science and Law and the Capital University of Economics and Business, and has delivered public lectures and given seminars at various universities, including Oxford University, Tsinghua University, Shanghai Jiaotong University and Xian Jiaotong University. He was a member of the Insolvency Law Review Committee appointed by the Singapore government to make recommendations to reform Singapore's personal and corporate insolvency laws, and has served as a consultant to government bodies, local and international law firms.

Restructurings of Companies in Financial Distress: Global and Asian Perspectives

Dates: 10-11 June 2020

School of Law Conference Room, 5/F, Yeung Kin Man Academic Building,
City University of Hong Kong

ABSTRACT OF PAPERS

Abstract listed in Presentations Order

Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy

Prof Anthony J. CASEY

The University of Chicago, Law School

Abstract

A fundamental question for bankruptcy law is why it exists in the first place. Why do we have special rules that apply only in financial distress? The conventional answer—the Creditors' Bargain Theory—identifies two core purposes of bankruptcy law: recreating a hypothetical ex ante bargain and respecting creditors' nonbankruptcy entitlements.

This Article challenges the Creditors' Bargain Theory and presents an alternative: The sole purpose of corporate bankruptcy law is to solve the incomplete contracting problem that accompanies financial distress. Because financial distress is difficult to contract over, relationships involving a distressed firm are governed by incomplete contracts that allow parties to hold each other up. All distressed firms face this same hold-up problem, and so pressure arises for a uniform solution. The purpose of corporate bankruptcy law is to provide that solution.

In the United States, the system takes the form of a structured framework for renegotiation of incomplete contracts. Chapter 11 imposes judicial oversight and allocates bargaining power to allow parties room to bargain while keeping them from taking positions that veer toward extreme hold up. This framework is the fundamental attribute of Chapter 11, and its sole purpose is to solve the incomplete contracting problem.

Developments on the reorganization of distressed companies and cross-border bankruptcy in China

Professor Li Shuguang

China University of Political Science and Law

Abstract

The paper discusses the five markets for non-performing assets in China: (1) the market for general claims; (2) the market for non-performing loans; (3) the market for real estate; (4) the market for default bonds, and (5) the auction market. The paper then discusses the recent reforms of bankruptcy law relating to the reorganization of distressed assets, including a series of policies issued by the Chinese government and judicial opinions to speed up the implementation and reform of bankruptcy law. Finally, the paper discusses the recent developments on dealing with cross-border bankruptcy cases.

Cross-Border Insolvency Law in Hong Kong – Recognition of Foreign Schemes of Arrangement

Assoc Prof Andrew GODWIN

The University of Melbourne, Melbourne Law School

Dr. Charles QU

City University of Hong Kong, School of Law

Abstract

Hong Kong has no statutory cross-border insolvency regime. Hong Kong courts have to resort to common law principles in circumstances where they are requested to recognise foreign insolvency proceedings and grant assistance. The nature and scope of these principles have been the subject of extensive debate in the UK and elsewhere.

In *Re CW Advanced Technologies Ltd* [2018] HKCFI 1705, Harris J identified the uncertainties associated with the common law position in Hong Kong. These uncertainties include whether a Hong Kong court may recognise a Singapore moratorium granted to facilitate a scheme of arrangement and, if so, whether the court may grant recognition where Singapore (i.e. the foreign jurisdiction) is not the country of incorporation. Harris J also noted the ‘urgent need to enact a statutory cross-border insolvency regime.’

This paper examines the scope of the common law powers in Hong Kong and seeks to clarify the possibility for members within a corporate group located outside Singapore, where the holding company has its centre of main interests in Singapore or is otherwise eligible to use the Singapore scheme regime, to obtain recognition and assistance in Hong Kong.

Firm performance when banks receive forbearance while restructuring debt

Ms. Susan Thomas

Indria Gandhi Institute of Development Research

Abstract

During times of systemic banking stress, regulators encourage banks to restructure stressed debt contracts by offering forbearance in declaring these as non performing assets. This paper studies the impact of such restructuring on the performance of firms in India, when such forbearance was permitted. The analysis uses a matched difference-in-difference study with 135 firms between 2003 and 2015 whose loans were restructured against a control sample of firms with similar levels of stress but whose debt was not restructured. The results indicate that the treated sample did not perform better, even up to five years after the restructuring. This suggests that banks used restructuring to postpone the recognition of impaired assets rather than to preserve economic value of the enterprise in distress.

Trends in Restructuring and Insolvency in the ASEAN Region

Dr Paul Omar

De Montfort University, Law School

Abstract

This paper explores more recent trends in restructuring and insolvency in the ASEAN Region revealed by the survey carried out through the ABLI-III joint project between 2018-2020. Many of the countries within the region had inherited colonial laws of limited suitability and application, but had also allowed these laws to continue to apply without major amendments until prompted by the 1998-1999 Asian Financial Crisis. Since that time, reform initiatives have become more frequent and focused in some jurisdictions, but not in others till more recently, spurred on by the Global Financial Crisis, episodes of economic instability and increasing integration into international markets. This paper charts movements towards introducing more comprehensive insolvency laws in these jurisdictions, including the introduction of (for many) novel concepts of rescue and restructuring (extending also to out-of-court and upstream variants), as well as ancillary considerations of capacity building and regulation of insolvency practitioners.

A General Theory of the Law of Corporate Debt

Dr Felix STEFFEK

University of Cambridge, Faculty of Law

Abstract

This paper aims to develop a theory for the positive law of corporate debt: the multitude of statutory and judge-made legal mechanisms that augment or amend credit arrangements between corporate debtors and their creditors. It will be argued that the role of the law of corporate debt is to reduce the competence and the conflict costs of debt. Competence costs result from lack of information of creditors, their lack of expertise and their coordination problems. The conflict costs of debt are a consequence of the conflicts of interests produced by the structure of debt claims. This structure induces both corporate debtors and creditors to engage in value-destroying misconduct they would not undertake if the corporation was only funded with equity. Different firm structures come with different competence and conflict costs. It follows that the law of corporate debt needs to provide a flexible framework that allows the corporation and its creditors to minimise the sum of these costs.

Relative Priority and the European Restructuring Directive

Prof Gerard McCORMACK

University of Leeds, School of Law

Abstract

In 2019 the European Union (EU) adopted a Preventive Restructuring Directive which EU Member States are obliged to implement within 2, or exceptionally 3, years. The Directive is designed to assist financially distressed businesses that are not yet insolvent on a 'cash flow' test but which are likely to become insolvent if preventive steps are not taken.

The Directive mimics some features contained in restructuring and insolvency laws across the globe including Chapter 11 of the US Bankruptcy Code. It provides for a stay on creditor enforcement actions, debtor-in-possession and forces dissenting creditors to accept a restructuring plan against their wishes ('cram-down'). The Directive envisage the cram-down of creditors within a class and also the cram-down of whole classes of creditors ('cross-class cramdown').

Somewhat controversially, the Directive departs from foreign precedents in its value allocation rules under a restructuring plan. In the US Chapter 11, unsecured creditors are protected by the 'absolute priority principle' which means that shareholders cannot, in principle, be allocated value before the creditors unless the creditors consent or the shareholders are providing some new or additional value. Liquidation priorities should be respected. The Directive, however, allows 'relative' rather than 'absolute' priority. Senior claimants need not be paid in full before junior claimants receive anything. All that is required is that they should receive more than junior claimants.

This paper will critically examine the provisions of the Directive in their political and economic context and focus in particular on the reasons for adoption of the 'relative priority' principle.

A Tale of Two States: The Cramdown, Reorganization Bargaining and the Inefficient Markets of U.S. and China

Dr Simin GAO

Tsinghua University, Law School

Abstract

The cramdown rule (11 U.S.C. § 1129(b)) is originated from U.S. 1978 Bankruptcy Code as an innovative mechanism. With the legal basis of equity, the purpose of the cramdown is to provide different creditors with the fair and equitable treatment, without the interference of the handout by the bad faith or unreasonable voting. The cramdown is rarely used in judicial practice, but is widely transplanted into the other jurisdictions. This research explores the relationship of cramdown and bargaining game in the inefficient markets with in-depth comparison of different regimes in the U.S. and China via the lens of law and economics. This research observes that the cramdown provision can only effectively function with the essential conditions and elements, such as the creditor's best interest test, the good faith and feasibility test of the plan, fair and equitable test, and absolute priority. Therefore, the partial transplantation of the cramdown provision might not be effective. Based on the findings, this research provides implications and solutions for the policy makers.

The Construction of the Prepacked Reorganization System and the Practice of Prepacks in China

Judge WANG Fang

Shenzhen Intermediate People's Court

Abstract

China's Supreme People's Court has recently promulgated a rule on the effect of pre-filing agreement between a corporate debtor and (some of) its creditors on the reorganization of the debtor carried out under PRC Enterprise Bankruptcy Law. This rule is announced in the Minutes of the National Courts' Civil and Commercial Trial Work Conference (the Minutes). This rule states that where the debtor and part of its creditors have reached an agreement on the reorganization of the debtor, where the terms of the agreement are identical to those of the draft reorganization plan, the consent of a creditor is taken as a vote for the draft reorganization plan. The enactment of this rule, however, did not mark the beginning of the prepack practice in China. The intermediate People's Court (IPC) of Shenzhen, for example, has, in the past decade or so, confirmed the pre-packaged reorganization plans of a number of stumbling corporations. This paper considers the significance of prepacked reorganization in China, outlines the legal framework governing prepacked reorganization, examines the ways in which prepacks are carried out in the Shenzhen IPC, and discusses the roles of Shenzhen bankruptcy judges in the development of prepacked reorganization.

Mandatory Disclosure in Corporate Debt Restructuring: A Comparative Approach

Prof Wai Yee WAN

City University of Hong Kong, School of Law

Abstract

In the United States and the United Kingdom, mandatory disclosure is a central tenet of corporate debt restructuring laws. Large listed companies restructuring their debts involving judicial-sanctioned cram-downs must disclose material information to enable the creditors to make an informed decision as to how to exercise their votes in meetings and are either prohibited from, or subject to severe restrictions to, entering into selective compromises with creditors. Anglo-American law on restructurings has been transplanted in Asia. Yet, given the differences in the shareholding structures and the kinds of creditors, this transplantation gives rise to the issue as to whether the regime compels disclosure of relevant and quality information for the creditors to make an informed decision when voting. Draw from the experiences of Singapore Hong Kong, we argue that there are three principal situations where the gaps have arisen: how the companies present their liquidation analysis to inform the creditors; how companies disclose the fees of the advisers; and how related party debts are dealt with.

We argue that any debt restructuring framework has to address the twin risks that are present in Asia and which are not present to the same extent under Anglo-American law: (1) lack of incentives of the controlling shareholders to reduce information asymmetry and their incentives in pushing through restructurings even if they may not be economically viable; and (2) the presence of widely-held debt and retail creditors in debt restructuring.

Does a solvent winding-up constitute a "foreign proceeding" for the purposes of Model Law: a matter of statutory interpretation

Dr. Charles QU

City University of Hong Kong, School of Law

Abstract

This paper debates the reasons why solvent just and equitable winding-ups should not be recognised as a “foreign proceeding” for the purposes of the United Nations Commission on International Trade Law Model Law on Cross Border Insolvency. The aim of the Model Law is to facilitate timely recognition and assistance to foreign proceedings. The concept of “foreign proceeding” is therefore crucial for triggering the application of the Model Law. One of the definitional requirements of “foreign proceeding” is that the proceeding must be one “pursuant to a law relating insolvency”. An issue that the court facing a recognition application confronts is, where the entity subject to the proceeding is solvent, whether the proceeding in question satisfies the insolvency element of “foreign proceeding”. Until a review decision by Briggs J earlier this year, the answer given by courts, including a 2019 UK CA decision, has been affirmative. This paper considers why Briggs J’s decision is justifiable from the perspective of statutory interpretation. Given that a decision of this class of cases invariably involves an interpretation of the Model Law, it is hoped that my discussion will provide an insight on how Model Law should be interpreted for not only resolving the issue raised but also for answering other questions the answers to which are also based on an interpretation of the Model Law.

The Proposed Statutory Corporate Rescue Procedure in Hong Kong: Provisional Supervision

Dr Stefan LO

HKSAR, Department of Justice

Abstract

It has been over two decades since the Law Reform Commission of Hong Kong had recommended introduction of a statutory corporate rescue procedure, referred to as provisional supervision. Under the proposal, a company in financial difficulties may enter into provisional supervision, during which time an external insolvency practitioner (the provisional supervisor) takes control of the company and considers whether a restructuring proposal is viable. If so, the proposal (a voluntary arrangement) is to be put to the vote of creditors. The Hong Kong government had earlier attempted to legislate for the reforms in 2000 and 2001 but the relevant bills were not passed since consensus could not be reached amongst legislators and stakeholders on the details of the reforms. Following the global financial crisis in 2008, the government proposed to introduce the reforms again. It has taken some time, in part because the government focused on completion of the Companies Ordinance Rewrite project first. A new Companies (Corporate Rescue) Bill is now being drafted and the government proposes to introduce the Bill into the Legislative Council in the 2020-21 legislative council session. The presentation will examine the core features of the proposed statutory corporate rescue procedure.

Insolvency Law in Emerging Markets

Dr Aurelio Gurrea-Martinez

Singapore Management University, School of Law

Abstract

Insolvency law plays a major role in the real economy. On the one hand, a properly designed insolvency framework may serve as a powerful tool to promote innovation, entrepreneurship, and the reorganization of viable companies facing financial trouble. On the other hand, a well-functioning insolvency system can help minimize the costs associated with a situation of financial distress for the benefit of debtors, creditors and society as a whole. Moreover, if insolvency law plays a major role for any economy, it becomes even more critical in emerging markets due to their greater problems of financial exclusion, firm competitiveness, and poverty. This article argues that, while insolvency law seeks to solve similar economic problems across jurisdictions, the intensity of these problems varies depending on a variety of local factors, including the type and size of companies prevailing in the country, the existence of concentrated or dispersed corporate ownership structures, the existence of a bank-based or market-based financial systems, the level of sophistication and independence of the judiciary, and level of expertise provided by the industry of insolvency practitioners. Likewise, it will be also argued that, even if insolvency law employs similar legal strategies to address the economic problems generated in a situation of financial distress, the particular features of emerging markets justify a deviation from some of the insolvency practices generally observed in developed economies. On the basis of this exercise, this article suggests some policy recommendations to enhance the design and well-functioning of corporate insolvency law in emerging markets.
