

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW
FACULTY OF LAW, THE UNIVERSITY OF HONG KONG

Seminar

**The Criminalisation of Cartel
Activity: A Sensible Policy Choice?**

Dr Peter Whelan

School of Law, University of Leeds

Thursday, 21 September 2017

12:30 - 1:30 pm

**Academic Conference Room, 11/F Cheng Yu Tung Tower
The University of Hong Kong**

A global trend towards the criminalisation of cartel activity can be detected at present. What was once primarily a US phenomenon has become an international one, with countries as diverse as Israel, Brazil, and Australia pursuing a policy of cartel criminalization. The existence of criminal cartel sanctions in such countries is invariably justified as a necessity to ensure an effective competition policy. This presentation aims to explain the primary (theoretical) justification for the use of criminal cartel sanctions (namely, economic deterrence) and to evaluate some of the inherent, challenging problems associated with such sanctions when used to achieve the aim of deterrence of anticompetitive behaviour in practice. In doing so it seeks to provide some insights into how best to ensure that cartel criminalisation improves the effectiveness of a criminalised regime's competition policy. The presentation is divided into two substantive sections. The first part outlines in detail the deterrence-based theoretical justification for criminal cartel sanctions, thereby providing essential context to the discussion that follows it. The second part of the presentation critically analyses two important inherent problems that arise when criminal sanctions (i.e., custodial sentences) are used in order to deter cartel activity: the difficulty of securing efficient competition law enforcement when criminal cartel sanctions are employed; and the need for connecting the criminalised cartel activity to morally wrongful behaviour. Following the analysis of these problems, some concise observations are offered on the intersection of competition law and criminal justice.

Dr Peter Whelan is an Associate Professor in Law at the School of Law, University of Leeds. An expert in competition law and criminal law, he has published widely on cartel criminalisation and recently completed a monograph analysing the theoretical, legal and practical challenges of European cartel criminalisation, which was published by Oxford University Press.

Please register online via www.AIIFL.com to reserve a place.

Enquiries: Flora Leung at fkleung@hku.hk