

Invitation/Final Registration

The Asian Institute of International Financial Law (AIIFL), University of Hong Kong,
DE CHAPEAUROUGE + PARTNERS and **ONC** Lawyers

Jointly hold a Conference on

Shareholder Engagement and Activism in Hong Kong

Join us together with leading Hong Kong and international experts

- Michael Cheng
- Victor Joffe QC (E&W) Temple Chambers
- Professor S H Goo, Hong Kong University
- Professor John Ho, City University of Hong Kong
- Sherman Yan and Dominic Wai, ONC Lawyers
- Stephen Fraidin, Pershing Square Capital Management
- Professor Jeffrey N. Gordon, Columbia Law School
- Steven Wolosky and Aneliya Crawford, Olshan Frome Wolosky
- William D. Anderson, Jr., and Amy Lissauer, Evercore
- Richard Brand, Cadwalader Wickersham & Taft
- Mark Curtis, Simmons & Simmons
- Dr. Ami de Chapeaurouge, de Chapeaurouge + Partners
- Kin Chan, Argyle Street Management
- Professor David C. Donald, Chinese University of Hong Kong
- Huen Wong, Fried Frank, and many others

Date	Venue
Friday 11 November 2016 8:30 a.m. – 6 p.m.	Conrad Hong Kong – Hennessy Room 88 Queensway, Pacific Place, Hong Kong

Please register with link at the end of the Programme - see details in the Appendix.

Programme

Shifting the Focus of Hong Kong Corporate Governance from Issuers to Shareholders - Minority Shareholder Protection – Institutional Investor Engagement – Shareholder Activism

FRIDAY November 11, 2016

08:30
Registration

Moderator Morning Session

Huen Wong

Consultant, Fried, Frank, Harris, Shriver & Jacobson LLP, Hong Kong

09:00
Welcome

Sherman Yan

Managing Partner, ONC Lawyers, Hong Kong

09:10
Shift of the Focus of the Hong Kong Corporate Governance Debate from Issuers to Institutional Shareholder Engagement and Investor Activism

Professor S H Goo

Professor of Law, University of Hong Kong

09:30
Introductory Panel – The SFC's Responsible Ownership Principles and Shareholder Activism

Professor John K.S. Ho – Panel Moderator, Michael Cheng, Dr. Kelvin Wong JP, [BlackRock N.N.], Professor S H Goo

Associate Professor, City University of Hong Kong

Solicitor HKSAR, former Research Director of the Asian Corporate Governance Association

Past Council Chairman, The Hong Kong Institute of Directors (2009-2014), - Executive Director and Deputy Managing Director of COSCO Pacific Ltd

[BlackRock, Hong Kong] to be confirmed

Professor of Law, University of Hong Kong

10:10
Empirical Evidence for Shareholder Activism in Hong Kong: A Report on 50 Activist Campaigns in the past 12 Years – Structures and Results

Frank Wong

Partner, First Class Management, Hong Kong

10:40 COFFEE BREAK

11:00
Successful Legal Strategies of Shareholder and Hedge Fund Activism in Hong Kong

Dominic Wai

Partner, ONC Lawyers, Hong Kong

11:30
The Perspective of a U.S. Activist Investor on Shareholder Activism in the U.S. and Hong Kong
Stephen Fraidin

Vice-Chairman, Pershing Square Capital Management, L.P., New York

12:00
Legal Underpinnings of Launching a U.S. Shareholder and Hedge Fund Activist Equity Campaign – Lessons for Hong Kong

Steve Wolosky

Partner, Olshan Frome Wolosky LLP, New York

12:30
Shareholder Dialogue or Legal Defense? Contrast to and Commonalities with Contested Takeover Defense Preparedness – Lessons for Hong Kong
Richard Brand

Partner, Cadwalader Wickersham & Taft LLP, New York

13:00 LUNCH

Moderator Afternoon Session

Dr. Ami de Chapeaurouge

Partner, de Chapeaurouge + Partners, Frankfurt/New York

14:00
Experience with U.S. Activism Defense from an Investment Banker's Perspective – Lessons for Hong Kong

William D. Anderson, Jr./Amy Lissauer

Senior Managing Director

Global Head of Strategic Shareholder Advisory Business

Vice President, Strategic Shareholder Advisory Business

Evercore L.L.C., New York

14:30
Shareholder and Hedge Fund Equity Activist Campaigns and Interventions in the U.K. – Lessons for Hong Kong

Mark Curtis

Partner, Simmons & Simmons LLP, London

15:00
Shareholder and Hedge Fund Activism, Governance Implications and Empirical Findings of Long-Term Effects of Activism in the United States – Lessons for Hong Kong

Professor Jeffrey N. Gordon

Richard Paul Richman Professor of Law, Columbia Law School, New York

15:30 COFFEE BREAK

15:50

**Comparative Corporate Governance Germany –
Hong Kong: Against all Odds – Fate of Activist Strategies
in Controlled or Blockholder-Influenced Companies**

Dr. Ami de Chapeaurouge

Partner, de Chapeaurouge + Partners, Frankfurt/New York

16:20

**Outlook for Shareholder Activism: Strategies of
Engagement and Shareholder Dialogue - or Legal
Strategies of Attack and Defense in Hong Kong?**

**Professor S H Goo – Panel Moderator, Aneliya S. Crawford,
Kin Chan, David M. Webb, [Elliott Advisors N.N.]**

Professor of Law, University of Hong Kong

Partner, Olshan Frome Wolosky LLP, New York

Partner and CIO, Argyle Street Management, Hong Kong

Deputy Chairman SFC Takeovers and Mergers Panel

Elliott Advisors New York [to be confirmed]

17:00

**Are Institutional Shareholder Engagement and Active Investor
Dialogue Providing more Effective Protection than Enforcing
Minority Shareholder Rights in the Hong Kong Court System?**

Victor Joffe QC (E&W)

Temple Chambers Hong Kong

17:30

Discussion

19:30

**Personal Dinner Invitation by Ami de Chapeaurouge - Foreign Correspondents' Club, Hong Kong - for all
Conference Speakers and Friends**

- **Corporate Governance in Hong Kong and China: Divergence from the Berle-Means Paradigm**

Professor David C. Donald

Chinese University of Hong Kong

**The online registration form can be found under the following link:
http://www.onc.hk/en_US/registration-form-conference-1111/**

Jointly organized by the Asian Institute of International Financial Law (AIIFL), University of Hong Kong,
DE CHAPEAUROUGE + PARTNERS (Frankfurt, Hamburg and New York) and **ONC Lawyers** (Hong Kong)

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Terms & Conditions:

Registrations will only be accepted upon full payment of the event fee and receipt of the registration form on a first-come first-served basis. Once a registration is accepted, a confirmation notice will be sent to the email address you provided in the enrolment form. Admission to the event is allowed only when a copy of the confirmation notice is presented. Successfully registered participant may transfer your booking to a replacement delegate provided that written notification is received by Ms Lydie Leung (email: lydie.leung@onc.hk) on or before 8 November 2016. Refund will only be issued if the event is cancelled by ONC Lawyers or should your registration be unsuccessful. ONC Lawyers reserves the right to alter the contents, speaker(s), attendance priority or otherwise of this event, or cancel this event.

PURPOSE OF HONG KONG ACTIVISM CONFERENCE

The Hong Kong public company universe has several distinct features, setting it apart from other stock exchanges and capital markets. For one, most Hong Kong companies are controlled by families and friends, or at least strongly influenced by blockholders exerting *de facto* control. This extends to PRC companies listed here: the SOEs are controlled by SASAC and the Communist Party; PRC privately held public companies are dominated by families. Second, investor protection, Corporate Governance rules, trading volume and sophistication of market participants taken together render it among the world's most significant, if not leading, securities markets.

- 1) With this Conference, we intend to focus on the ascertainable shift of the perspective on the Hong Kong Corporate Governance regime from companies and issuers to shareholders, i.e., **at first**, the degree of **minority shareholder protection** in view of the overwhelming market might of controlling shareholders or influential blockholders (affecting 80 – 90% of the public company population); this extends to the roughly 800 PRC companies listed on the HKSE, about half of the 1,600 (+) corporations listed altogether there. The complexity seems heightened in view of the difficulty to obtain adequate information since many of these companies are incorporated in the BVI, Bermuda or the Cayman Islands; more than 250 companies are also listed via dual listing on the NYSE, NASDAQ and LSE. Of the 200 (+) companies listed simultaneously in Hong Kong and either NYSE or NASDAQ, about 100 exhibit so-called Variable Interest Entity (VIE) structures. Certain regulatory conflicts are thereby pre-programmed, in spite of Hong Kong's exemplary regulatory framework.
- 2) **Second**, since a Corporate Governance system only works if shareholders meet their responsibilities of share ownership, we will focus on whether checks and balances provided in theory in the legislative and rule-making framework are actually enacted on the strength of institutional shareholder action. **Hong Kong is among a number of markets, notably the U.K. and Australia, that have promulgated stewardship codes related to the responsibilities of institutional investors.** We therefore focus beyond the traditional Governance norms and the Hong Kong Corporate Governance Code on the gradual shift to shareholder concerns in the Hong Kong Corporate Governance debate embodied by the SFC's 2016 Responsible Ownership Principles – a call for active shareholder engagement, with a view to exploring the perspective of global institutional investors and the degree of their portfolio company monitoring.
- 3) **Finally**, we explore to what extent such institutional investors beyond such active engagement cooperate with **activist hedge funds** to launch particular value-enhancing campaigns on underperforming Hong Kong companies where they are invested. In the past, with the exception of BlackRock's intervention in connection with G-Resources this year, institutional investors have usually not allocated the resources to become activists themselves addressing shortcomings of portfolio companies. Over time, research suggests, that they have not done a terribly effective job when focusing on specific situations. Rather, they resort to influential engagement measures (compare the letters by Vanguard, BlackRock and Fidelity to the CEOs of their portfolio companies) to set certain guidelines and increasingly seek discussions with the board. Moreover, in addition, in the face of underperforming companies, not infrequently they seek guidance from activist hedge funds on what to do, or prod them to get engaged with the aim to help restore value for their investors in particular strategically

misguided or otherwise underperforming target companies in their portfolio. Empirical evidence suggests that activist hedge funds have done a more effective and efficient job. The attached chart summarizes this approach and certain such lines of communication between institutional investors and activists.

Popular perception in Hong Kong still is that such shift from shareholder engagement to hedge fund activism be a rare exception. Nor is it as of yet accepted that international activist and local investment funds may act independently in value-campaigns in this marketplace. The generally held belief is that activist campaigns and interventions will simply be ignored by the controllers and that only in jurisdictions such as the United States and United Kingdom with shareholder populations informed by a predominance of widely held, dispersed ownership companies, activism could be effective. The presumption is that only when an activist can build a significant enough minority position in stealth fashion over time, could they begin to exercise their rights to obtain enough information and clout with management of the target company; so that they could eventually succeed in persuading the board and fellow shareholders of the superiority of their business plan compared to incumbent management, *provided, however*, they can resort to and prevail in a proxy fight in the event of a breakdown in such negotiations. The widely held dogma is that without this threat activist campaigns would inevitably fail. Even sophisticated Hong Kong market participants simply deny or dismiss the existence of this market phenomenon. They have not analyzed alternative win-win strategies beyond proxy fights and winning the requisite AGM/Special Meeting majority.

In order to correct such misperception, we have identified empirically 50 – 60 activist campaigns in Hong Kong in the past twelve years on part of international and local investors; and assume that many more situations actually exist, whereby the majority of such events only play(ed) themselves out in secrecy and outside the purview of social media, the press and interested professional circles. Strategically and tactically, we would like to go against the grain of the aforementioned denial of, or at least deep skepticism towards, value-enhancing and Governance-improving activist campaigns in the face of overwhelming odds of a public company environment characterized by controllers and dominating blockholders. The gist of this empirical backdrop to our conference on the pros and cons of economic and legal arguments as to investor activism in Hong Kong is that an informal and discreet approach seeking engagement with controlled companies works best; and that a confrontational attitude be confined to those few cases where it seems workable because of special circumstances.

In Summary - Shareholder and Hedge Fund Activism in Hong Kong:

- a) Its steady Evolution over time has been Overlooked or entirely Missed by Market Participants since years who just Cite the BEA 2015-16 Intervention by Elliott or Dismiss David Webb’s many Initiatives over the years**
- b) Shareholder Activism – in contrast to Shareholder Engagement - by Large Institutional Investors thus far has not been Efficient in terms of Outcomes**
- c) Hedge Fund Activism has proved more Efficient and Effective over Time**
- d) It has become an Umbrella of Concerns and Progress as Research over the past 30 years Confirms**
 - (i) Target Company Value and Share Price Increases for All Shareholders beyond a short-term Time Horizon**
 - (ii) Enhanced Efficiency on the Operating Level**
 - (iii) Improved and more Efficient Corporate Governance Interplay between the different Board Members, Committees and Actors**
 - (iv) Greater Decisiveness and Acumen in the Representation of Minority Shareholder Interests**

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Parties and Communication Lines or Actions Involved in a Hong Kong Equity Activist Campaign
 -- no M&A Control Play, but mostly an Influence-Seeking Minority Investment

