



## Global Corporate Governance Colloquia 2019

7-8 June 2019

House of Finance

Goethe University Frankfurt

8<sup>th</sup> June 2019

Protocol – Session 2

Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm.

Speaker: Dan W. Puchniak  
Discussant: Michael Klausner

**Dan W. Puchniak** is the Director of the National University of Singapore (NUS) Centre for Asian Legal Studies (CALs), the Editor-in-Chief of the Asian Journal of Comparative Law (Cambridge University Press), and an Associate Professor at NUS Law. He has published widely on comparative, Asian, Singapore, and Japanese corporate law and governance. Dan has received numerous domestic and international awards for his academic research and teaching and has held visiting academic positions at leading universities around the world. Prior to entering academia, Dan worked as a corporate commercial litigator at one of Canada's leading corporate law firms.

**Michael Klausner** is a Professor at Stanford Law School. He is currently writing a book entitled Deals: The Economic Foundations of Business Transactions. Recent publications include Empirical Studies of Corporate Governance: Some Steps Forward and Some Not, and The 'Corporate Contract' Today in the Oxford Handbook of Corporate Law and Governance, (forthcoming 2018). He was a White House Fellow, a law clerk for Judge David Bazelon on the D.C Circuit and Justice William Brennan on the Supreme Court. He is a graduate of the University of Pennsylvania (B.A) and Yale University (J.D. and M.A. in Economics).

## **Protocol of Session 2, Saturday 8 June (02.30 p.m. – 03.30 p.m.)**

In the first part of the session, a joint paper by Dan W. Puchniak and Umakanth Varottil was presented. In this paper, Puchniak and Varottil assert that there is a conspicuous gap between what the World Bank's related party transactions (RPT) Index which ranks 190 jurisdictions around the world on the quality of their laws regulating RPTs suggests should be occurring and what actually occurs in practice in Commonwealth Asia. They posit that this gap exists because the RPT Index fails to capture the complexity of RPTs in three respects, which they label as: (1) regulatory complexity; (2) shareholder complexity; and, (3) normative complexity. First, it appears that the RPT Index overly emphasizes the role played by a jurisdiction's formal corporate and securities laws in determining the effectiveness of its RPT regulation, and it fails to pay due regard to its corporate culture and rule of law norms in determining the efficiency of its RPT regulation. Second, the RPT Index erroneously assumes that controlling shareholders are a homogeneous group driven by similar incentives. Third, the general assumption that RPTs per se are evidence of defective corporate governance and that stricter regulation of RPTs consequently equates to "good law" is erroneous. Puchniak and Varottil claim that demonstrating the frailties of the RPT Index is important in practice because jurisdictions – especially developing ones – commonly look to it when reforming their laws. In addition, the RPT Index is built on some of the most influential research in the field of comparative corporate law, which makes their challenge to the validity of it academically significant.

During the second part of the session, the discussant, Michael Klausner first expressed his appreciation for the paper's high quality. Subsequently, he briefly summarized the shortcomings of the RPT index, putting it in the context of other poorly conceived corporate governance indices. He discussed ways in which the RPT index might be fixed and then put the question back to Puchniak and Varottil whether, with some corrections, the RPT index could be usable—either by the World Bank in which case there would be real consequences, or for research purposes.