



ILF Guest Lecture

Professor David C. Donald
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David C. Donald is a Professor in the Law Faculty of The Chinese University of Hong Kong. David previously taught at the ILF of the Goethe-University of Frankfurt and worked as a commercial lawyer in the US and Europe. His publications include *A Financial Centre for Two Empires: Hong Kong's Corporate, Securities and Tax Laws in its Transition from Britain to China* (Cambridge, 2014), *The Hong Kong Stock and Futures Exchanges – Law and Microstructure* (Sweet & Maxwell 2012), and (with Andreas Cahn), *Comparative Company Law: Texts and Cases on the Laws Governing Corporations in Germany, the UK and the USA* (Cambridge 2010). He is participating with scholars from other universities on a Hong Kong funded research project, “Enhancing the Future of Hong Kong as a Leading International Financial Centre.” David is currently a member of Hong Kong’s Standing Committee for Company Law Reform and its Financial Policy Research Committee, as well as a member of the Hong Kong Institute of Chartered Secretaries Academic Advisory Panel.

TOPIC: FINANCIALIZATION OF THE BUSINESS CORPORATION AND ITS DISTORTION OF PRODUCTIVE ACTIVITY

DATE AND TIME: MONDAY, 22 MAY 2017, 6.30 P.M.

Location: Room “Deutsche Bank”, House of Finance, Goethe-University, Campus Westend, Theodor-W.-Adorno-Platz 3, 60323 Frankfurt am Main

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<http://anmeldung.ilf-frankfurt.de>

Financialization of the business corporation and its distortion of productive activity

David C. Donald

Abstract

Since its inception in the 19th century, the modern stock corporation form has been understood primarily as a structure through which entrepreneurial activity can connect to external financing. As the stock corporation became the dominant form for the operation of business and the financial system moved to the heart of Western economies, the internal dynamics of the productive enterprise have been increasingly re-configured to serve the needs of financial investment and trading.

While significant changes to the corporate structure and its operation have been understood as necessary to meet the needs of financial investors, very few accommodations have been made available to the groups of people who generate the productive activity underlying a stock's value. This has led to a number of very significant distortions in business organizations, including: (i) a division between 'beneficial' and 'registered' shareholders for the purpose of settling exchange trades in securities, (ii) extravagant executive compensation created to align management with financial investors, (iii) the neglect and marginalization of labour as fungible units of cost, (iv) conceiving companies as objects to be transferred in the market for corporate control, (v) suspicious treatment of the family organizational unit although it initiates well over half of businesses in Europe and the US, and (vi) the introduction of defensive, dual class shareholding structures in major companies (e.g., Google, Facebook and Alibaba) listed after 2000.

Building on my recent paper examining the basic structure of the company and how it has been altered to meet the needs of the financial system even when family and state firms dominate an economy ("Conceiving Corporate Governance for an Asian Environment," forthcoming in University of Pennsylvania East Asia Law Review), this paper analyzes at a more general level the distorting impact of financializing the company. In the context of US corporate law, it investigates the distortions listed in points (i) – (vi), above, against the background of the financial system's growth in size and importance. The paper concludes by discussing ways in which modern technology may allow business to fund itself while eschewing the distorting effects of financialization.