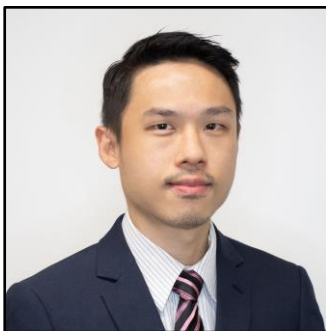




Sek Lun Cheong
**FROM INVESTOR DUE DILIGENCE TO HUMAN RIGHTS DUE DILIGENCE IN INTERNATIONAL
INVESTMENT LAW**
MPIL Agora
18 October 2023, 15:00-16:00, Room 037

International investment law ('IIL') has been going through a legitimacy crisis, partly attributable to the lack of accountability of foreign investors (the majority of whom are corporations). Host-state communities adversely impacted by an investment often face obstacles in gaining access to justice as the investment regime has been characterised by a pro-investor bias and a rigid adherence to the assumed virtues of investment protection. In recent times, however, arbitral tribunals have begun to more frequently and explicitly articulate an expectation of due diligence on the part of investors in the context of the investment disputes on renewable energy. Tribunals have in fact also considered the role of investor due diligence in other contexts, albeit only occasionally. In all these instances, the investor's lack of due diligence has undermined the strength of its claims and in some instances has even led to the dismissal of these claims on grounds of jurisdiction or admissibility.

An aspect of investor due diligence (as articulated by investment tribunals) that has not been sufficiently explored is its connection with the business and human rights ('BHR') concept of corporate human rights due diligence ('HRDD'). There is a stark contrast between the proliferation of the corporate HRDD agenda in the BHR discourse and the lack of investor accountability in IIL, including with respect to the diligence of investors. Given the normative force of the HRDD agenda, Sek Lun Cheong argues that exploring the potential trajectory of investor due diligence through the framework of HRDD (as businesses' responsibility) under the UN Guiding Principles on Business and Human Rights offers ameliorative value in addressing the governance gap in IIL. He will examine the current state of the law and scholarly literature on the extent to which investor due diligence intersects with HRDD in IIL to conclude that the discourse in this liminal space straddling the fields of IIL and BHR is limited and underdeveloped. He will advance some reasons for expanding this discourse, demonstrating that this endeavour is legally and normatively justified.



About the Speaker

Sek Lun Cheong is a PhD Candidate at Melbourne Law School and currently a guest researcher at the Max Planck Institute for Comparative Public Law and International Law. He researches at the intersection of international investment law and business and human rights. He has a general interest in the discourse on corporate obligations in the contexts of domestic law and public international law as well as broader questions of international law relating to the corporate actor. Sek Lun holds a Bachelor of Laws

(Honours) from the University of London and a Master of Laws from the University of Melbourne. He is a former advocate and solicitor and has also previously taught modules on UK business law, company law and corporate governance.

For all enquiries regarding MPIL Agora coordination please contact:
Dr. Malcolm Jorgensen jorgensen@mpil.de