

# Dechert

LLP

## Private Equity and Venture Capital Investing in Asia

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# Contents

“Private Equity and Venture Capital Investing in Asia,” Business Law Asia 2008 .....	1
Dechert’s Hong Kong Office .....	2
Private Fund Practice .....	3
Dechert Has a Leading Private Funds Practice - Representative Rankings .....	4
Attorney Profile: Basil H. Hwang .....	5

# BUSINESS LAW ASIA 2008

## Private Equity and Venture Capital Investing in Asia

*Presented by:*  
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Dechert LLP

Dechert

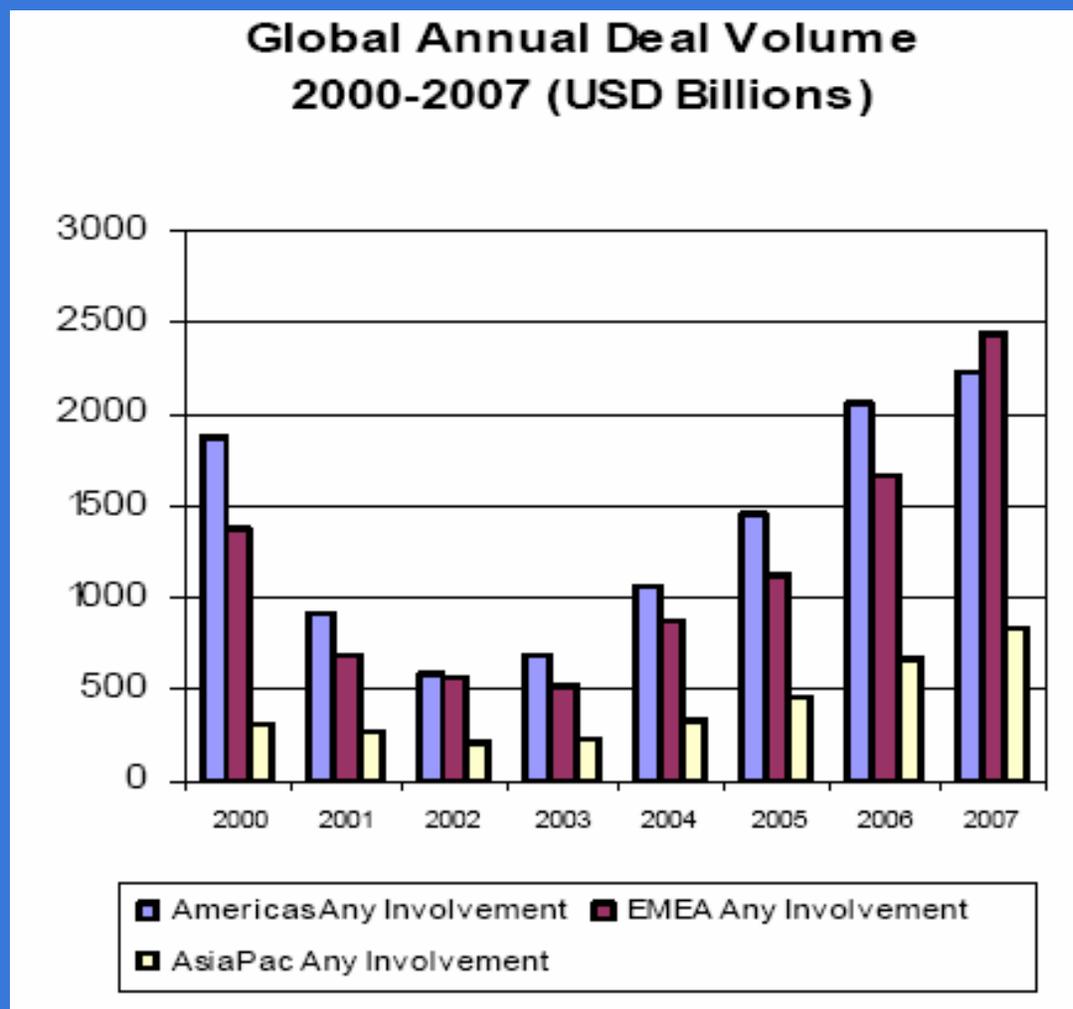
# Global and Asian Private Equity/ Venture Capital Landscape

# 2007 Status of Venture Capital/Private Equity

- Mergers and Acquisitions in 2007:
  - \$4 trillion in announced deals, which shattered all previous deal volume records
  - 32,662 deals announced, a 14% increase over last year's announced deals
- Private Equity Deals in 2007:
  - Accounted for 19% of the deals announced globally in 2007
  - In 2007, the market turned unfavorable for private equity funds and only 26% of the private deals announced globally were announced in the second half of the year
    - For example, in North America, of the \$493 billion that was invested in 2007, \$383 billion was invested in the first two quarters
    - Currently there are limited debt sources available (i.e., almost no new issue high yield bonds and bank loans are available on a limited basis) and those that are available are at much higher prices

Source: *Bloomberg*, 2007 Year-End Global Mergers and Acquisitions Rankings

# 2007 Private Equity Transactions by Region



Source: *Bloomberg*, 2007 Year-End Global Mergers and Acquisitions Rankings

# 2007 Largest Private Equity Firms

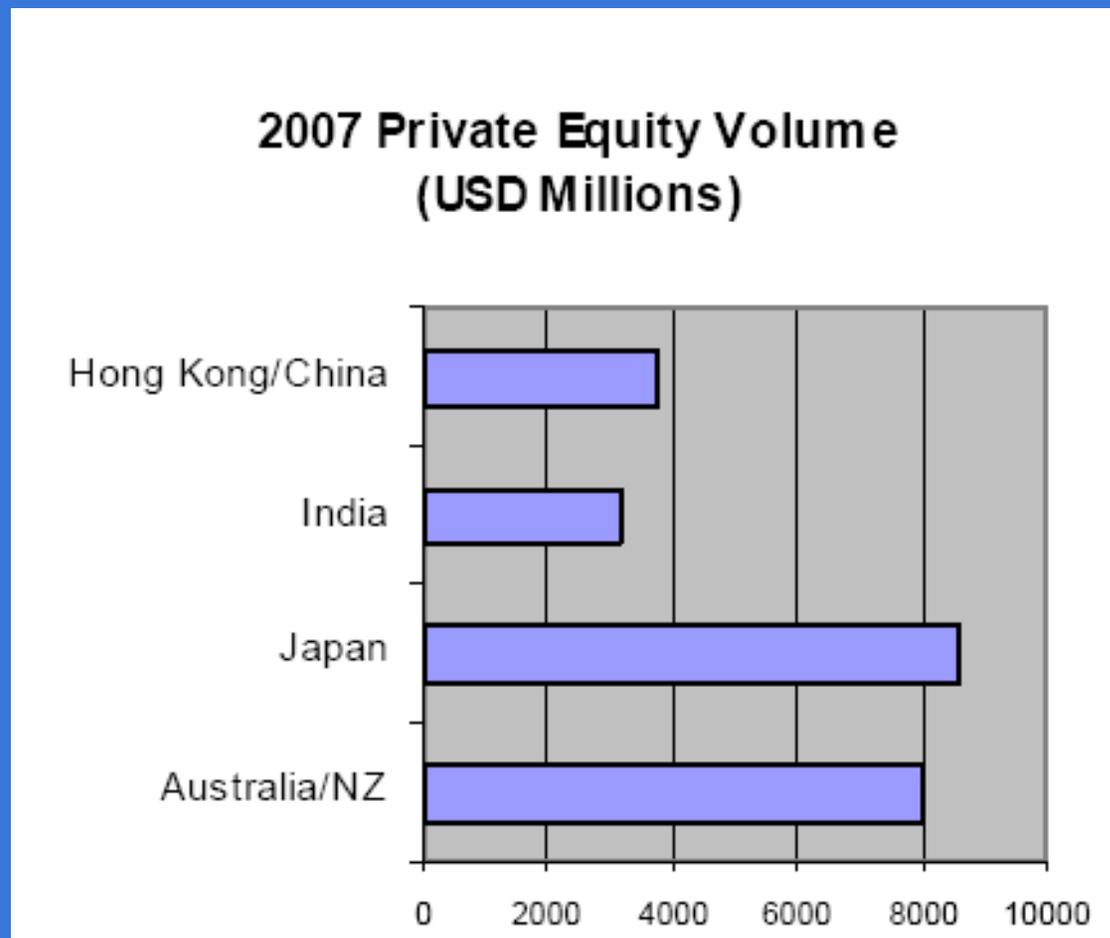
- In May 2008, *Private Equity International* released its second annual PEI 50, which ranks the largest private equity funds in the world, based on the private equity direct-investment capital raised by each firm over the past 5 years
- The top ten private equity firms are:
  - The Carlyle Group
  - Goldman Sachs Principal Investment Area
  - TPG
  - Kohlberg Kravis Roberts
  - CVC Capital Partners
  - Apollo Management
  - Bain Capital
  - Permira
  - Apax Partners
  - The Blackstone Group

# 2007 Asian Market Overview

- 2007 Mergers & Acquisition Statistics:
  - \$779 billion worth of deals were announced in 2007, which is a 16% increase from 2006
  - Market activity increased 27%, with a total of 12,030 deals announced
  - Despite the U.S. credit crisis, Asia M&A activity peaked during the third quarter
- Asia Private Equity Deals in 2007:
  - Private equity in Asia increased by 37%, driven by Japan and India, which witnessed a growth of 80% and 32%, respectively, in deal activity from 2006 to 2007
  - Japan and Australia had the highest contribution in private equity transactions with 50% of the deals announced

Source: *Bloomberg*, 2007 Year-End Global Mergers and Acquisitions Rankings

# 2007 Asian Private Equity Volume



Source: *Bloomberg*, 2007 Year-End Global Mergers and Acquisitions Rankings

# 2007/2008 Venture Capital Statistics

- 2007 Fundraising
  - Largest Venture Capital Fundraisers in 2007 were:
    - Insight Venture Partners - \$931 million
    - Bessemer Ventures - \$625 million
    - Carlyle Venture Partners - \$605 million
    - Institutional Venture Partners - \$600 million
- First Quarter 2008:
  - Venture Capitalists invested \$7.1 billion in 922 deals, a decline from the fourth quarter of 2007, but well within recent quarterly investment levels
  - Most Active Venture Investors in the first quarter of 2008:
    - Kleiner Perkins Caufield & Byers – 26 deals
    - New Enterprise Associates – 26 deals
    - Draper Fisher Jurvetson – 19 deals
    - Polaris Venture Partners – 19 deals

# Current State of Global Private Equity

- Post-credit crunch the future for large scale leveraged buyouts globally is extremely unclear. Financing concerns and the price of financing are reducing the ability of private equity firms to conduct large new leveraged buyouts
- The mid market appears to be the safest realm for private equity firms. If the market does not recuperate from the 2007 credit crunch, private equity could move more into the mid market for the medium to long term

# Current State of Asian Private Equity

- Large amount of deal flow in Asia
  - Traditional financing less available, banks are cautious
  - Valuation expectations have come down
- At the same time, real growth remains strong and sustained in many parts of Asia and cash flows and balance sheets are generally robust
  - Is it becoming a buyer's market?
  - The right time to invest in good companies?
- New investment geography – Vietnam, Taiwan, Hong Kong deals versus China as the only story
  - But China is starting to look cheap again and owners are becoming easier to negotiate with

# Private Equity or Venture Capital?

# Features of Private Equity Investments

Key elements of private equity and venture capital:

- investments in unquoted companies
- equity capital by nature (or contains a significant equity risk/reward element)
- medium to long term
- targeted at companies with growth potential

# Range of Private Equity Investments

- Angel/Seed Funds
  - Invests US\$100K – US\$1 million
  - Some seed funds also double as advisers
  - Some are simply individuals with money
- Venture Capital
  - Early Stage (< \$8 million)
  - Expansion and Growth Capital (US\$8 million or more, usually up to around US\$50 million)
- Mezzanine
- Buyout Funds
- Distressed Debt/Equity Turnaround

# Venture Capital Versus Private Equity/Buyout — Investment Focus

## Venture Capital

- Minority stake
- Technology, niche markets, new product lines
- Early stage investment
- Preferred stock purchase
- Anticipated period of investment:  
3 – 5 years

## PE/Buyout

- Controlling (at least 30%) stake
- Business combinations, operating efficiencies, increasing revenues
- More mature issuer and larger investments
- Acquisition by merger, stock purchase, or asset purchase
- Anticipated period of investment:  
2 – 4 years

# Venture Capital Versus Private Equity/Buyout — Role of The Fund

## Venture Capital Investments

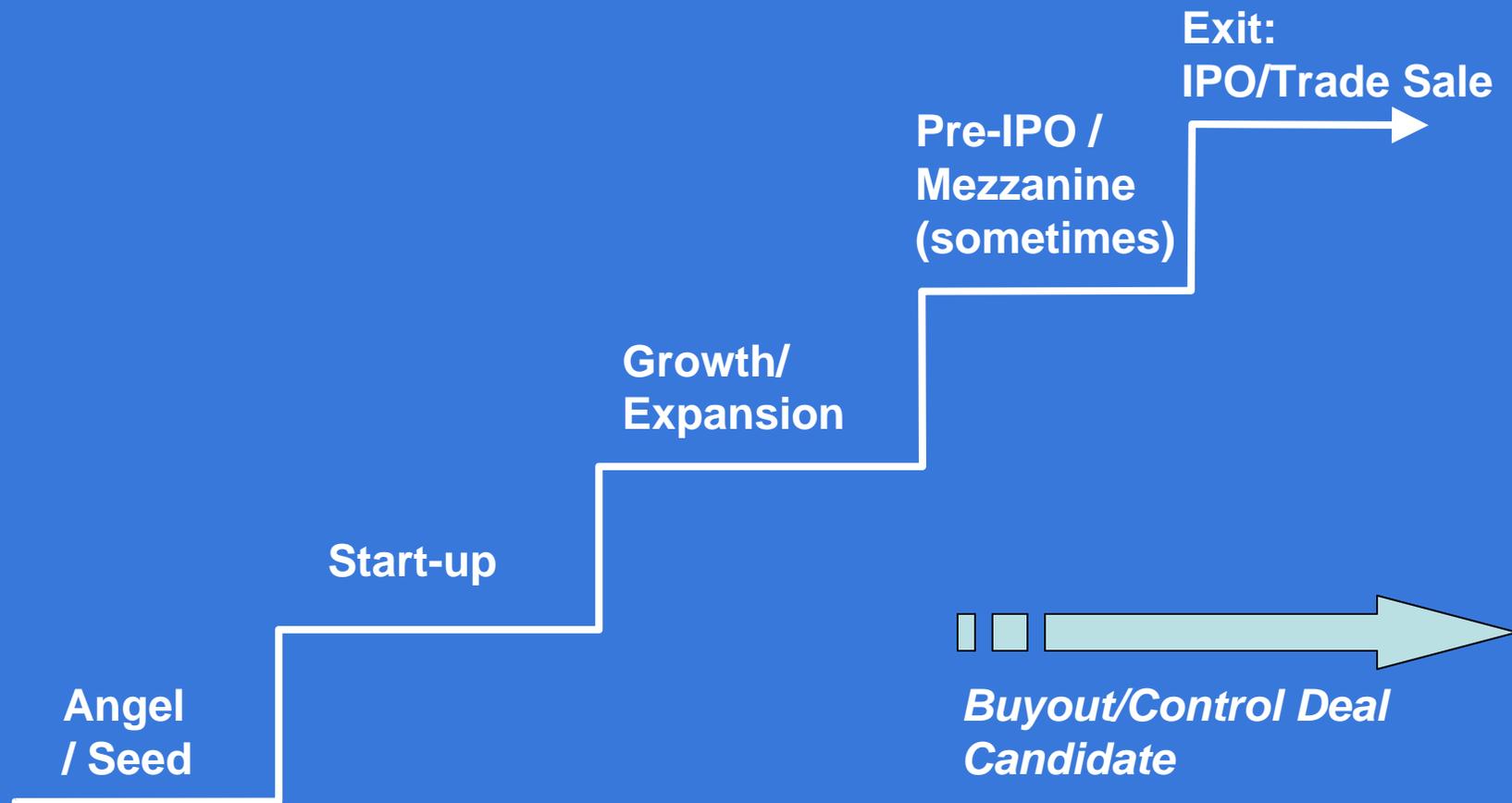
- Fund provides capital, expertise in maturation from development to revenue-focus, access to additional capital and industry relationships. Exit is linked to the maturation of the investment entity

## PE/Buyout Investments

- Fund management expertise seeks to enhance existing revenue, rationalize resources, and improve the investment through specific restructurings, business combinations and capitalizations. Exit event is linked to public floatation, sale or business combination upon implementation of new business model, or new valuation of the portfolio entity

# Private Equity Financing Cycle

# The Private Equity Financing Stepladder



# Equity Financing Cycle

## SEED STAGE

- Often a part-time venture, founders have day jobs
- Founders are the only employees
- Initial business concepts being formulated and developed
- Working models of products and services being researched and developed
- Small funding requirements
- Sources of funds:
  - Often self-financed
  - Friends & family
  - Government grants
  - Angel Investors

# Equity Financing Cycle

## START-UP STAGE

- Company has been incorporated
- Formal operations are underway
- Product or service being developed or prototyped (“alpha-test”)
- VCs normally expect founders to be working full-time
- Some employees
- Funding requirements depend on industry – e.g. services or software vs. manufacturing
- Ordinary share financing or possible Series A preferred share financing
- Sources of funding:
  - Early-stage VCs
  - Suppliers and Customers
  - Angel Investors

# Equity Financing Cycle

## START-UP STAGE

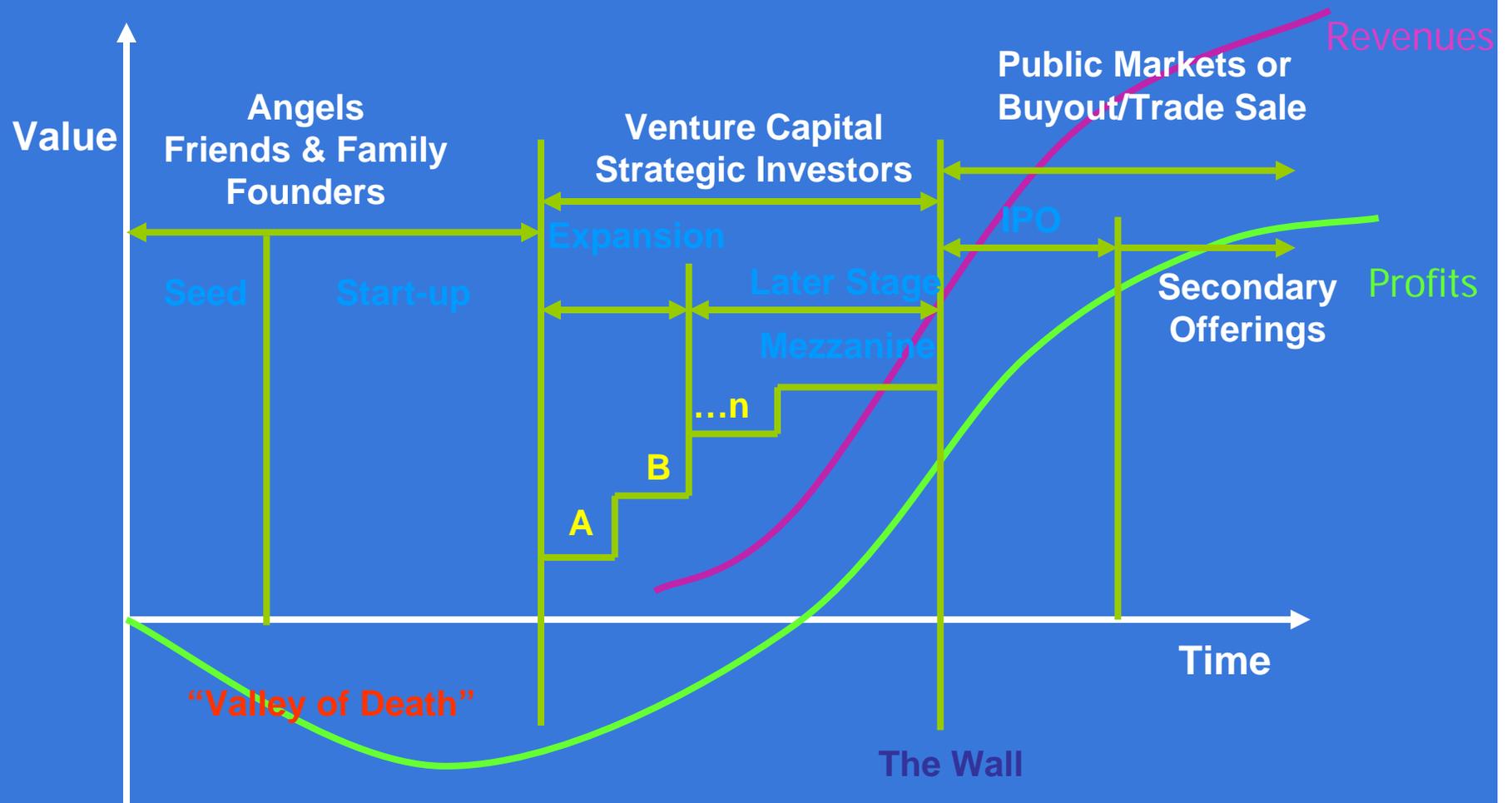
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# Equity Financing Cycle

## PRE-IPO/MEZZANINE STAGE

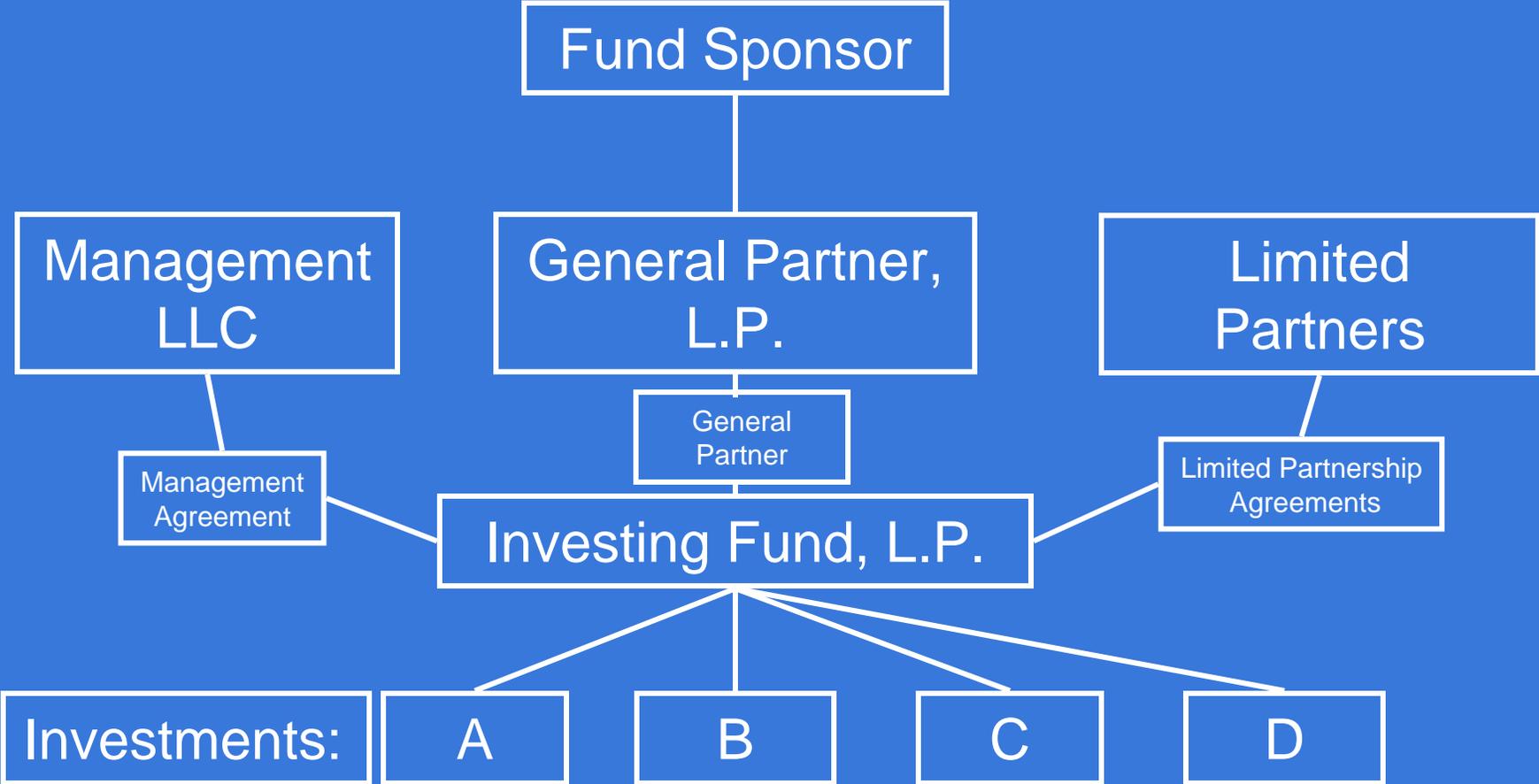
- Usually the last stage of private financing before an IPO
- Established corporate culture and workplace structures
- Stable revenue and growth
- Funds required for working capital, pre-IPO capital reorganization, repayment of debt, and related party liabilities
- Sources of funding:
  - Private equity funds (including hedge funds, increasingly)
  - Corporate and strategic investors
  - Mezzanine funds (debt financing)

# Time/Value Graph (or the way it's supposed to be)



# Basic Structure of Private Equity Funds

# Basic Fund Structure



# Structuring and Documenting Venture Capital Transactions

# Overview of Preferred Share Investment Terms

- Liquidation Preference
  - Establishing a priority for the preferred stock with respect to the common stock upon liquidations (or deemed liquidations, such as an exit transaction)
- Dividend Preference
  - Precluding any distribution upon the common stock until distributions (cumulative or non-cumulative) have been made upon the preferred stock
- Redemption
  - Redemption of the preferred stock (at face, premium or liquidation preference amount) by the issuer or the holder upon specified events or at their option

# Overview of Preferred Share Investment Terms

- Conversion Rights and Anti-dilution
  - Conversion rights specify conditions and conversion ratio for the conversion into common stock:
    - Upon an IPO and for calculations of voting rights, among other factors
    - Anti-dilution protection (protecting the investor against future equity purchases at lower valuations) will typically be built in to the conversion mechanics
- Registration Rights
  - Investors will negotiate for registration rights that permit them future liquidity. These may be:
    - “demand” rights
    - “piggy-back” rights
    - the right to cause a “shelf” registration

# Overview of Preferred Share Investment Terms

- Preemptive Rights
  - In the event that the company proposes to offer new securities, these will first be offered to the investors, pro-rata with their investment
- Right of First Refusal
  - The company and the investors may have a right of first refusal with respect to the sale of any shares by a stockholder, permitting them to purchase such shares
- Co-Sale (Tag-Along Rights)
  - Investors may have the right to participate, typically on a pro-rata basis, in a sale of stock by a shareholder to a third party

# Overview of Preferred Share Investment Terms

- Approved/Forced Sale (Drag-Along Rights)
  - Drag-along rights: as a means of increasing liquidity, investors may have the right to require the participation of other shareholders and each other in a sale of stock
  - Forced Sale rights: grant to the holder the ability to cause the company and its shareholders to sell the company, thereby forcing an exit event
- Redomestication
  - Facilitation of restructuring into a jurisdiction more appropriate for desired exit
- Voting Agreements / Board Representation
  - The shareholders may agree to vote their shares in support of the nominees of certain investors

# Overview of Preferred Share Investment Terms

- Additional Protective Provisions
  - Investors typically obtain an effective veto against certain corporate actions, including the following:
    - Organic transactions (e.g., sale or merger of the company or its assets or other liquidation events, changes to the articles or bylaws, and changes to the capitalization of the company or the terms of its existing stock)
    - Incurrence of debt, employment of executives, changes in the board of directors
    - Changes in the line of business

# Documenting Venture Capital Deals

- **Term Sheet**
  - Purpose: Outlines the principal terms of the transaction
  - Issues: Term sheets are non-binding and subject to due diligence
- **Corporate Organizational Documents**
  - Purpose: Sets for the terms of the capital securities of the company
  - Issues: Amount of authorized capital and negotiation of the specific terms of the Company's capital securities
- **Stock Purchase Agreement**
  - Purpose: Provides the terms and conditions of the Venture Capital investment
  - Issues: Negotiation of the terms (i.e., closing conditions, indemnification, and representations and warranties)
- **Stockholders Agreement**
  - Purpose: To establish the rights of the respective shareholders
  - Issues: Negotiation of the terms (i.e., preemptive rights, transfer restrictions, and board representation)

# Documenting Venture Capital Deals

- Investor Rights Agreement
  - Purpose: Establish certain ongoing rights between the company and key stockholders
  - Issues: Negotiation of the terms (i.e., registration rights and information rights)
- Registration Rights Agreement
  - Purpose: Enables stockholders to require and/or participate in a public offering
  - Issues: Negotiation of the terms (i.e., how many demand registrations, whether to include piggyback and F-3/S-3 registrations, underwriter cutbacks)
- Stock Incentive Plan
  - Purpose: Establishes the terms of stock grants to employees and other individuals
  - Issues: How much stock to include, the terms of the grant and accounting for these grants
  - Alternatives: These come in various flavors (e.g., restricted stock plan, phantom stock plan, stock appreciation rights etc.)

# Other Models for Venture Capital Investments

- Convertible Debt Financing

- Providing debt financing to a company which will convert into equity of the company upon the happening of a specified event allowing the company to eliminate debt payments. Convertible debt financing dilutes the equity of the company at a certain later date and the company may or may not have any control over when an investor converts their debt

- Leveraged Buyouts

- A financial sponsor acquires a controlling interest in the company's equity and a significant portion of the purchase price is financed through borrowings. Critics of leveraged buyouts argue that such transactions cause a reduction in employees, require the company to bear the debt burden and create a short term strategy with a view to exit

# Other Models for Venture Capital Investments

- Short Term Bridge Financing
  - Pre-preferred bridge financing, often with equity kicker in the form of warrants or free shares, but not always
- Venture Capital Loans
  - These loans typically are entitled to interest (which is usually higher than bank term loans) and are usually, though not necessarily repayable. These loans may be secured or unsecured. In addition, the loan typically has a warrant attached to it which provides the holder with the right to subscribe for equity of the company
- Mezzanine Financing
  - Loans that are between equity and secured debt. These loans generally rank second to a secured loan or are unsecured and due to this risk these loans carry a higher interest rate and sometimes contain an equity component through options or warrants

***“But... where’s the Equity in this?”***

# Private Equity/Buyout Transactions

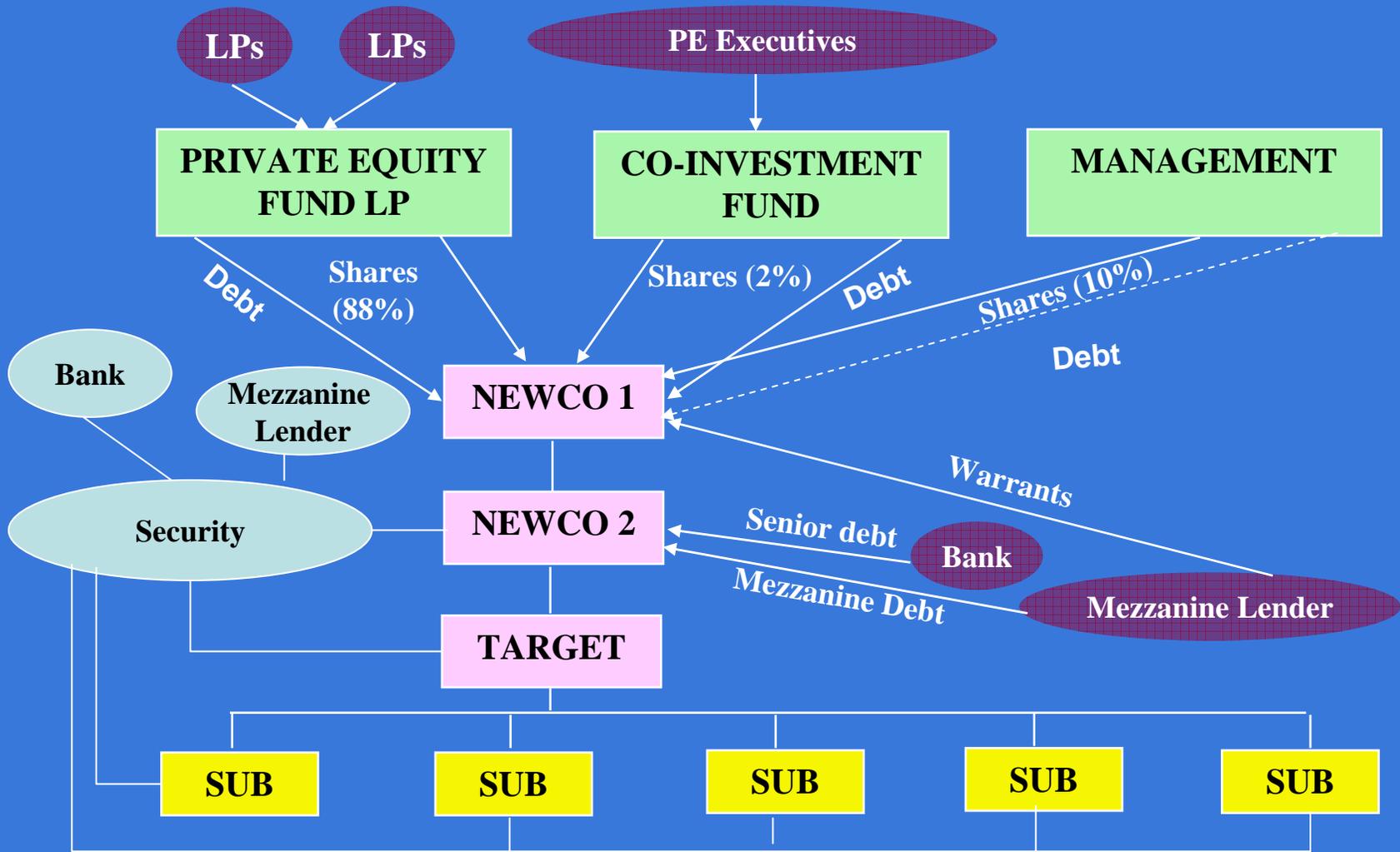
# Private Equity Model

- Buy Private Company (or PTP) with your own money and third party money
- Incentivise – Alignment of interests with Management
- Grow/Add Value
- Sell/Exit
- Not interested in ‘running yield’ of dividends or interest (other than recapitalisation)

# Structure –Three Elements

- **Acquisition**
- **Bank Debt**
  - Senior Debt
  - Mezzanine Debt
- **Equity**
  - Private Equity Fund
  - Management

# Overall Structure



# The Power of Leverage

## A Tale of Two Brothers

- Each Brother inherits \$1 million
- Brother 1 (Dogged David) buys a company for \$1 million
- 4 years pass and share prices have surged 95%
- Brother 1 has therefore made a profit of 95% or \$950,000
- Brother 1 calls up Brother 2 to celebrate over champagne. Brother 2 says ‘Let’s make it a joint celebration’

# The Power of Leverage

- Compare and contrast with Private Equity Brother 2
- Private Equity Brother 2 (Perfect Peter) uses his \$1 million and borrows a further \$4 million from banks and financial institutions who are very keen to lend
- Private Equity Brother 2 is then able to buy a bigger company for \$5 million
- Assuming the same 4 year period and 95% share price surge, Private Equity Brother 2's company has risen 95% in value, from \$5 million to \$9.75 million
- Assume the debt has an interest rate of 10%. Over 4 years the interest payments total \$1,600,000

# The Power of Leverage

- Time to open the Krug



- After the business has been sold and the debt and interest has been paid back, \$4.15 million is left. A \$1 million investment has ballooned into \$4.15 million. Instead of a 95% profit like Dogged David Brother 1, Perfect Peter Private Equity Brother 2 has made a 315% profit
- The maths is simple. If you buy a company with 20% equity and 80% debt, then you only need to increase its value by a fifth to double your investment
- Many millions of homeowners who have taken out mortgages to buy their homes are beneficiaries of the power of leverage

# A Tale of Two Brothers

BROTHER 1		PRIVATE EQUITY BROTHER 2	
Inherits	\$1,000,000	Inherits	\$1,000,000
		Borrows	\$4,000,000
Buys Company	\$1,000,000	Buys Company	\$5,000,000
Sells Company	\$1,950,000	Sells Company	\$9,750,000
		Repays Bank Debt and Interest	\$5,600,000
<b>PROFIT</b>	<b>\$950,000</b>	<b>PROFIT</b>	<b>\$4,150,000</b>
<b>%RETURN</b>	<b>95%</b>	<b>% RETURN</b>	<b>315%</b>

# Investment Exits

# Typical Exit Types

- Proper planning on the entry into an investment is critical
- Principal means for exiting a private equity investment, whether venture or buyout, include:
  - Initial public offerings (“IPOs”)
  - Trade sales of the portfolio company to third-party acquirors through buyout transactions (equity purchase, asset purchase, or acquisition by merger)

# IPO into the U.S. Market

- Restructuring
- Sarbanes Oxley requirements
  - Adoption of a Board with a majority of independent directors
  - Adoption of compensation, audit, and nominations committees
  - Conformity with accounting and financial statement preparation and control requirements
  - Establishing disclosure controls and procedures
  - Prohibition against personal loans to executives

# IPO into the U.S. Market

- Publicity Issues
  - No “gun-jumping”
  - Establish effective publicity controls
- Registration requirements
  - Form F-1 and the SEC comment process
- Ongoing U.S. securities laws disclosure requirements
- Stock exchange listing requirements

# IPO into the U.S. Market

- Other Common Issues
  - Cheap stock
  - Prior transactions in unregistered company stock
  - Foreign private issuer status
  - Audited financial statements and interim unaudited financial statement requirements, including reporting of recent material acquisitions
  - Management discussion and analysis (“MD&A”)
  - Related party transactions
  - Litigation
  - Executive searches

# IPO into the Hong Kong Market

- Qualification
  - Hong Kong, Bermuda, Cayman Islands, or PRC companies only
  - Track Record Period profits
  - Management Continuity and Shareholder Control
- Initial and Ongoing Regulatory Compliance
  - Vetting process with the Hong Kong Stock Exchange
  - Prospectus requirements
  - Accountants report and financial reporting requirements
  - Corporate governance issues (including matters of board composition, qualification of officers, audit committees)
  - Rules applicable to ongoing transactions

# IPO into the Hong Kong Market

- Other Issues:
  - Pre- and post-IPO share option scheme
  - Non-disposal of shares restriction upon listing
  - Disclosure of interest in shares
  - Extended listing application process

# American Depository Receipts

- An issuer may register and list its ordinary shares in Hong Kong or on another non-U.S. exchange while also taking advantage of the U.S. stock markets through the use of American Depository Receipts (“ADR’s”)
- The bank issuing the ADR’s onto the U.S. market is deemed to be the “issuer” for purposes of registration under the Securities Act
- The actual issuer of the underlying shares is required to comply with Exchange Act reporting requirements

# Other Alternatives and Scenarios

- SPACs – U.S. and London
- Reverse Mergers
- Unhappy Endings

# Trade Sales

- A trade sale may permit an efficient exit event, even when capital markets windows are closed or investment performance would not permit a successful public offering
- Trade sales may implement the same structures and provisions as discussed in connection with the PE/Buyout acquisition
- Trade sales may be accomplished via:
  - PE/Buyout transaction with financial buyers
  - Strategic sales to or combinations with industry participants

# Management Incentivisation

# Management Incentivisation – Carrot and Stick

- Subscription and Shareholders Agreement
  - Warranties
  - Liability
  - Restrictive Covenant
  - Veto Items
  - Share Transfer Restrictions
  - Information
- Good Leaver/Bad Leaver
  - Definitions
    - The easy ones
      - death
      - permanent incapacity

# Management Incentivisation – Carrot and Stick

- Good Leaver/Bad Leaver
  - retirement at normal retirement age
  - dismissal for a reason justifying summary dismissal
  - voluntary resignation
- The hard ones
  - constructive dismissal
  - redundancy
  - underperformance
  - personal/family reasons
- Drag Along
- Dilution

# About Dechert LLP

# Dechert – A Leading Firm with Top-Ranked Practices

## **Ranked among “Firms with the Most Top-Ten Rankings” in league tables**

– Source: *The American Lawyer Corporate Scorecard, 2006*

## **A “go to” law firm for litigation, labor and employment, corporate transactions, and intellectual property**

– Source: *Corporate Counsel*,  
“Who Represents America’s Biggest Companies,” 2008

## **One of the top-ranked firms in the Blue Chip and Growth Indices**

– Source: *The American Lawyer, 2007*

## **74 leading lawyers and 26 standout practices recognized**

– Source: *Chambers USA, 2007*

## **“One of the largest and best established” London offices of any U.S. law firm**

– Source: *The Legal 500 UK, 2007*

- Founded in 1875 with largest offices in New York and London
- More than 1,000 lawyers in offices in the United States, United Kingdom, Continental Europe, and Asia
- Practical legal advice to clients involved in business transactions, financial services, litigation, tax, government, and other matters
- Commitment to client service and satisfaction across all practice areas and industries
- Experienced Asia team

# Dechert Is Internationally Recognized for Its Leading Private Equity Practice



2007

Dechert ranked among the top law firms for global private equity buyouts and for both North American buyout and exits



2007

Dechert ranked among the top law firms for PIPEs



2007

Recognized among the top law firms for M&A, Private Equity Buyouts, and Private Equity Fund Formation in the U.S. and for corporate/commercial in Germany, France, Brussels, and Luxembourg and M&A in London



2007

Dechert ranked among the top ten law firms for total value of private equity buyouts

DOW JONES

Private Equity Analyst

2007

Dechert ranked among the “most active law firms” for number of private equity/VC deals closed and for number of private equity/VC funds structured and closed



2007

Dechert is recommended for private equity in Germany



2007

Ranked among the top firms for Acquisition Financing and High Yield Debt in the United States



2007

“This classy and internationally diverse...firm wins acclaim for its ability to handle large money, high profile transactions”



2007

Dechert ranked among the top issuer's and manager's counsel for U.S. debt/ equity/equity related offerings

# Our Lawyers' Private Equity Experience in Asia

- Over US\$1 billion invested in successful deals since 2003
- Our lawyers have represented:
  - AIG Global Investment Group
  - Citigroup Venture Capital Equity Partners, L.P.
  - Court Square Capital Partners
  - Granite Global Ventures
  - IDG Technology Venture Investment LP
  - Investor AB
  - JAFCO Asia Technology Fund
  - Kleiner Perkins Caufield & Byers
  - Oaktree Capital
  - One Equity Partners
  - Orchid Asia
  - Sequoia Capital China
  - Susquehanna International Group, LLP

# CONTACT

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## Dechert's Hong Kong Office

Dechert is an international law firm first established in the United States in 1875 that now has more than 1,000 lawyers in 17 offices in the United States, United Kingdom, continental Europe, and Asia. Dechert is top ranked across its core practice areas of corporate and securities, financial services and asset management, real estate and structured finance, and arbitration and litigation. Specifically, Dechert's private equity and investment funds practices are internationally recognized and have been consistently top ranked in the most prominent legal directories and annual league tables, including *Chambers*, *The Legal 500*, *CogentHedge*, *The American Lawyer Corporate Scorecard*, *Private Equity Analyst*, *Corporate Control Alert*, *Thomson Financial*, *Bloomberg*, *mergermarket*, and *Mergerstat*.

For many years, Dechert has represented clients in matters involving Asia. As an outgrowth of our commitment to this region and our effectiveness in serving clients in this market, Dechert established an office in Hong Kong in January 2008. Many of our Hong Kong lawyers have been on the ground serving clients for close to a decade and are qualified in multiple jurisdictions and fluent in several languages, including Mandarin and Cantonese as well as English. As a result, we advise clients in China with a deep understanding of the local government, and the economic and political systems that govern them.

Our capabilities in Hong Kong include, without limitation: Hong Kong corporate, regulatory, and financial services advice; U.S. corporate, regulatory, and financial services advice; investment adviser and broker-dealer licensing and regulation; fund formation and authorization; hedge funds, private equity and venture capital; M&A and IPO advice; and access to Mainland China.

We provide legal guidance to local Hong Kong and Chinese companies as well as global firms doing business in the region as part of our integrated and dominant financial services and private equity practices. This global integration allows our clients to have full access to the firm's international resources, such as U.S., UK, and European regulatory advice; corporate transactional representation; and U.S. and international tax counsel.

## Private Equity

Dechert's Hong Kong private equity team advises on the full investment lifecycle. We form private equity and venture capital funds investing in Asia and structure domestic and international transactions involving Asia, including minority investments, such as venture capital financings, leveraged buyouts, private placements, such as PIPEs and registered direct offerings, and acquisition financings. We also execute follow-on M&A and capital raising transactions for the portfolio companies of our private fund clients and ready them for exits, including IPOs and company sales.

Dechert's Hong Kong private equity practice is part of a global and interdisciplinary team of 200 deal savvy lawyers deployed in 13 offices and seven countries. We provide creative solutions to the most complex issues in evaluating, structuring, negotiating, and consummating private equity transactions. Our goal is to attain our clients' objectives, which may mean speeding investments, handling risk allocation provisions, arranging optimal bid packages, conducting due diligence and contract negotiations, and getting the best terms for buyers and sellers in competitive auctions.

## Representative Clients

Representative private equity funds that Dechert lawyers have advised in connection with transactions in Asia include:

- AIG Global Investment Group
- Citigroup Venture Capital Equity Partners, L.P.
- Court Square Capital Partners
- Granite Global Ventures
- IDG Technology Venture Investment LP
- Investor AB
- Investor Group Asia L.P
- Investor Investments Asia Limited
- JAFSCO Asia Technology Fund
- Key Principal Partners
- Kleiner Perkins Caufield & Byers
- Oaktree Capital
- One Equity Partners
- Orchid Asia
- PreIPO Capital Partners Limited
- Sequoia Capital China Growth Fund

- Susquehanna International Group
- Susquehanna Ireland Limited
- Walden International

## Representative Private Equity Transactions in Asia

Representative private equity transactions involving Asia on which Dechert lawyers have advised include:

- SIG China Investments One, Ltd., Walden International, Sequoia Capital China Growth Fund I, LP, and PreIPO Capital Partners Limited in their \$24 million Series B investment in China Linong International Limited
- Susquehanna International Group in its \$10 million Series B investment in Topone Car Rental Holdings Limited
- Granite Global Ventures, Mobius Venture Capital, Bessemer Venture Partners and Softbank in their equity investment in Bokee.com
- IDG Accel Fund in its \$10 million equity investment in China Communications Services
- Citicorp Venture Capital in its \$525 million acquisition, with Francisco Partners, of AMI Semiconductors from Japan Energy Corporation
- Susquehanna International Group and Sequoia Capital in their equity investment in Little Swan Restaurant Chain
- One Equity Partners in its \$100 million equity and bond investment in Korea-based DC Chemical Co., Ltd
- JAFCO Asia Technology Fund, WI Harper, and IDG in their equity investment in 3G Portal
- Citigroup Venture Capital Equity Partners, LP in its \$822 million acquisition of non-memory chip business from South Korea-based Hynix Semiconductor
- Investor AB in its \$10 million equity investment in Funmobile Holdings
- Susquehanna International Group in its \$11 million investment, with Carlyle Asia, in Zcom
- Key Principal Partners in its acquisition of 18 Chinese automotive businesses
- Softbank in its equity investment in Advanced Communication Technology Company

**Dechert's Hong Kong Office**

- JAFCO Asia Technology Fund in its equity investment in Pollex Mobile
- Mitsubishi UFJ Securities in its equity investment in Any 8
- TDF Capital, Susquehana International Group and Sequoia Capital in their \$15 million investment in Time Media
- AIG Global Investment Group in its \$30 million pre-IPO investment in a towel manufacturer
- Susquehana International Group and Sequoia Capital in their \$8 million preferred share investment (and bridge loan) in Polybona Films
- Spinnaker Capital in its investment in CIG Ports
- An investor consortium on their investment of up to approximately US\$24 million in Series B Preferred Shares in a company engaged in the production and sales of various vegetables and other agricultural products in China
- CCMPA Capital Asia in its \$250 million buyout of Air Pollution Control Corporation
- Oaktree Capital in its investment with Lotus Capital in Lot Software systems
- Pilkington plc in its pre-IPO investment in China Glass Holdings
- Darby Asia Investors in its investment in and subsequent sell down of interests and IPO preparations for Meiya Power
- Susquehana International Group in its \$6 million equity investment in Ocean Butterflies
- Investor AB in its \$8 million preferred share investment in 800 TeleServices
- A leading private equity firm, as part of an investor consortium, in a US\$10 million investment of Series B Preferred Shares in a holding company that provides car rental services in China
- IDG-Accel Fund in its Series A investment in Ocean Butterflies
- Mitsubishi UFJ Securities in its Series A investment in Heal Force
- Susquehana International Group and Sequoia Capital in its \$13 million preferred share investment in Country Style Cooking
- Citigroup Venture Capital in its \$593 million sale of 41% stake in Mumbai-based i-flex solutions to Oracle

## Fund Management

Dechert's ever-expanding global financial services/fund management group advises regulated investment funds, private funds, investment advisers, banks, insurance companies, broker-dealers, commodity trading advisers, futures brokers, and other clients in the financial services industry, on a wide range of matters. We have a proven track record of innovative, sophisticated advice and service to clients involved in cutting edge projects.

The financial services lawyers in Hong Kong are part of a group of more than 150 lawyers working across 14 cities in 7 countries. They provide advice, counseling, and assistance on a full spectrum of legal services, including investment company regulation; investment adviser regulation; regulatory compliance; fund formation and offerings, both public and private; fund governance; fund restructuring transactions and consolidations; new product development; broker-dealer regulation; insurance product regulation; and counseling with respect to administrative proceedings and enforcement actions.

## Representative Fund Management Matters in Asia

The following are representative work matters that we have handled for clients doing business in Hong Kong/Asia.

- For a Hong Kong based funds management firm specializing in Hong Kong/China equities, we have formed several U.S. hedge funds and advised on creation and offering of offshore funds to U.S. investors. We also have prepared a U.S. supplement for offshore funds, and provided advice regarding U.S. and offshore feeder funds and offshore master funds as part of creating a “master-feeder” fund management, and prepared a U.S. supplement for an offshore fund not otherwise offered to U.S. investors. We also provide ongoing U.S. and global regulatory advice and guidance.
- For a large financial services firm we are assisting with the registration of Luxembourg UCITS fund for public offer and sale in Hong Kong.
- For a global investment management organization, we are providing tax and corporate advice relating to new private equity fund.
- For an investment management company, we are providing advice regarding public and private offerings and pension investment issues, as well as regional advice regarding ETF operations and Asian cross-listings of U.S. funds.
- For a Hong Kong investment management adviser, we are assisting with U.S. placement agent relationships.
- Providing U.S. commodity regulation compliance advice to Hong Kong manager.

## Dechert's Hong Kong Office

- Advising a major investor in relation to an investment in Trophy Property Fund II.
- We advise several clients on Hong Kong advertising rules, offering restrictions and Internet compliance advice.
- For a large hedge fund firm, we provide ongoing advice with respect to existing funds, specialized international tax advice, advice with respect to a European permanent capital vehicle, investment activities in Korea, and the formation joint ventures to invest in Japan and China and to organize a Guernsey domiciled insurance company.
- For a large private equity firm, we have formed and provide ongoing advice with respect to several funds, including the formation of a unit trust feeder for Japanese investors and creation of separate share classes for distribution partners. We also advise on a variety of compliance issues.
- We represent numerous funds sold in Japan on a public or private basis. We have advised a multi-national manager on compliance procedures related to side-by-side management of hedge funds with other products, reviewed the compliance programs for various private fund managers, and are advising various multi-national groups on the registration requirements applicable to their operations.
- Assisted a variety of clients with the offer and sale of foreign investments funds to institutional and retail clients on both a public and private basis throughout Asia.
- Assisted a variety of clients with beneficial shareholder reporting issues as well as investment advisor issues.
- Representing an investment and fund of funds in the launch of a new private equity fund investing in the Chinese market.
- We represent several Hong Kong based hedge fund operators.
- For various firms, we are assisting them with their securities dealings, investment advice, corporate finance advice and asset management licensing obligations.

## Private Fund Practice

Dechert's highly ranked private fund practice is recognized for its:

- *Breadth* — We represent more than 700 private funds across all fund types and asset classes, and we advise managers running a full range of strategies.
- *Depth* — Our private fund lawyers dedicate their practices to private fund formation, and collaborate with Dechert lawyers in related disciplines as needed.
- *Global Reach* — We are well positioned to represent private funds that are seeking to establish global footprints and leverage Dechert's cross-border and international strength in both developed and emerging markets.

We advise clients on the formation of all types of private investment funds from real estate funds, private equity funds and hedge funds with limited liquidity to institutional investment pools that are highly liquid. Our work for managers is equally extensive, ranging from advising recently formed, closely held managers who are unregistered and are managing a limited number of strategies to representing publicly traded global financial institutions and their affiliates, all of which are engaged in a variety of financial services and are managing a broad range of products and strategies.

Our private fund lawyers focus their practices on the representation of private funds and therefore have a solid command of the critical issues that surface in the formation of new private funds, including those pertaining to structuring, disclosure, reporting obligations, and taxation. Working in a highly collaborative atmosphere, we ensure that each client benefits from the experience of our interdisciplinary private fund team as the client's business grows and evolves.

Our lawyers operate in offices throughout the United States, the United Kingdom, continental Europe, and Asia, and have a deep understanding of the practices and laws that govern their respective local markets. In addition, we represent funds investing in diverse, emerging markets, including Africa, Australia, France, Israel, Japan, Latin America, Poland, and Russia, among others. In countries where Dechert does not have offices, we maintain a network of relationships with trusted law firms to provide our clients with the representation that best meets the scope and complexity of their legal needs.

## A Highly Ranked Practice

Dechert has been recognized by leading publications and directories for having one of the top private fund practices. For example, *Private Equity Analyst* consistently recognizes Dechert as one of the “most active law firms” based on the number of private equity and venture capital funds structured and closed, and we have been ranked among the top law firms for private equity fund formation by *The Legal 500*. Our hedge fund practice was rated as one of the top three onshore legal counsel globally serving hedge funds by *CogentHedge*, and *The American Lawyer* identified Dechert as one of a small group of law firms “dominating” the hedge fund industry. *Chambers* and *The UK Legal 500* have also recognized Dechert as a leading law firm for Hedge Funds and both *The UK Legal 500* and *Europe, Middle East, and Africa Legal 500* have recognized Dechert as a leading law firm for Investment Funds.

## A Broad Practice

Our private fund group has extensive experience structuring domestic and offshore funds across various asset classes, including leveraged buyout, venture capital, mezzanine securities, distressed debt, bank loans, middle market loans, real estate equity and debt, and collateralized debt and loan obligations (CDOs and CLOs). In addition, we form a range of alternative investment funds, including long/short equity funds, fixed income hedge funds, relative value funds, statistical arbitrage funds, global macro funds, large cap funds, index funds, and commodity pools. We advise hedge funds that engage in private equity activity through the use of tailored fund structures such as side pocket funds, hybrid funds, and co-investment funds, and represent private equity firms in establishing hedge fund arms. We also advise fund sponsors and managers on the formation of real estate funds, the formation of REITs by funds, acquisitions of REITs and real estate assets by funds, and capital raising transactions.

We help clients consider the merits of a variety of fund structures, including limited partnerships, limited liability companies, corporations, offshore vehicles, and collective trusts. Furthermore, we are experienced in devising innovative structures that give clients the flexibility to access assets and new investors that might otherwise be unavailable to them.

We approach each private fund assignment as an interdisciplinary team, working seamlessly with lawyers in our regulatory, tax, and ERISA groups who focus their practices on the private fund industry.

## Regulatory Counsel

Today’s regulatory climate calls for greater sophistication than ever before when it comes to anticipating the impact of regulatory developments on fund formation. Our team includes former senior officials and staff members of the U.S. Securities and Exchange Commission (SEC), as well as former regulators from the Commodity Futures Trading

Commission (CFTC) and the Financial Industry Regulatory Authority (FINRA). We also have lawyers with extensive Luxembourg and U.K. regulatory experience and a good working relationship with the Financial Services Authority (FSA) in the United Kingdom and the Hong Kong Securities and Futures Commission (HKSF).

## Tax Guidance

As the tax consequences related to even the most favorable jurisdictions become more complex, the skills of Dechert's private fund tax lawyers become increasingly critical. Our lawyers are immersed in domestic and international private fund formation techniques and vehicles, and advise clients on the benefits of each jurisdiction and structure, including foreign tax issues that confront foreign investors in U.S.-sponsored funds.

## ERISA Advice

The ERISA lawyers on the team focus on investment management-related pension fund law, with extensive experience in designing and advising private funds to operate using alternative investment strategies, and in structuring fund investments and portfolio transactions for funds with significant participation by retirement investors.

## Unparalleled Depth

### Market Knowledge

Dechert advises institutional and corporate investors in reviewing their proposed investments in the full range of private funds, including private equity funds, hedge funds, and real estate funds. We have significant experience negotiating investment terms and documentation.

Over the last several years, we have represented investors in negotiations with numerous leveraged buyout, venture capital, mezzanine and distressed debt, hedge funds, and real estate funds ranging in size from \$150 million to over \$10 billion.

Our institutional clients include the large private retirement trusts of several *Fortune* 500 companies, and several of the country's largest charitable foundations with several billion dollars in assets.

## Related Disciplines

Extending beyond the services of our private fund group, we have specialists in various practice areas that assist private funds clients.

- Our corporate and capital markets lawyers regularly structure a broad range of transactions for our private fund clients.

## Private Fund Practice

- Our regulated fund lawyers assist private fund managers move into a registered type of product.
- Our securitization lawyers evaluate investments in distressed and impaired asset backed securities and advise managers in structuring and launching CDOs and CLOs.
- Our litigators recover assets in numerous countries to realize value on defaulted sovereign securities.
- Our enforcement lawyers counsel on regulatory inquiries and enforcement proceedings.
- Our intellectual property lawyers help clients protect their trademarks and proprietary trading strategies.
- Our structured debt lawyers evaluate purchases of various components of the capital stock and sophisticated documentation related to those components.

## A Proven Track Record

### Selected Private Equity Fund Formation Matters – Sponsor Representations

Representative funds that we have formed on behalf of private equity fund sponsors include:

- **TCW/Crescent Mezzanine** in the formation of a **\$3.5 billion** private fund to invest in mezzanine debt and equity securities.
- **Jefferies Capital Partners** in the formation of a **\$600 million** targeted middle-market buyout fund and related leveraged employee fund.
- **Globis Capital Partners** in the formation of Globis Fund III, L.P., a **JPY 20 billion** venture capital fund.
- **Apax Partners SA** in the formation of Apax France VII, a **€700 million** buy-out fund. In addition, we continue to represent Apax Partners in co-investment transactions with investors in the fund.
- **TCW Special Credit Mortgage Fund** in the formation of a **\$1.6 billion** fund to invest opportunistically in distressed mortgage-backed securities.

## Selected Real Estate Fund Formation Matters – Sponsor Representations

Examples of real estate funds that we have formed on behalf of fund sponsors are:

- **Capmark Investments** in the formation of a \$650 million real estate fund that utilized a parallel fund structure with a REIT to accommodate tax exempt investors.
- **Cheyne Capital Management** on the launch and establishment of property fund structures including the Cheyne Real Estate Opportunities Fund LP & Inc. focused on a pan European real estate portfolio.
- **Glenmede Real Estate Fund** in the formation of a fund of funds investing in real estate limited partnerships and other entities.
- **Wafra Pan-European Fund** in the formation of the *Shari'ah*-compliant fund and, to date, acquisition financings in Luxembourg, England, Poland and Portugal pursuant to a cross-collateralized forward financing facility.

## Selected Hedge Fund Formation Matters – Sponsor Representations

The following are representative hedge fund matters on which we have recently advised in connection with fund formation and general legal advice:

- Represent a leading fixed income investment manager develop and launch a range of funds employing a number of different portable alpha strategies.
- For a large publicly traded REIT, we have launched domestic and offshore hybrid funds that will focus on distressed and stressed RMBS assets.
- We have assisted several clients with the formation of leveraged funds.

## Selected Private Fund Formation Matters – Limited Partner/Institutional Investor Representations

We have represented institutional investors in their investments in numerous private funds, including:

- Apollo Investment Fund VII, L.P.
- Blackstone Capital Partners V, L.P.; Blackstone Real Estate Partners V

## Private Fund Practice

- Flexpoint Ford Fund II, L.P.
- Hamilton Lane Private Equity Fund VI
- KSL Capital Partners Supplemental II, L.P.
- Madrona Venture Fund III, L.P.
- Praedium Fund VII
- TPG Partners V

## Selected Institutional Investment Pools

We have represented numerous institutional investment pools organized as private funds, including:

- Modified money market funds organized as 3(c)(7) funds.
- Investment trusts organized as tax-exempt "group trusts" for investment by qualified retirement plans, structured as 3(c)(7) funds or 3(c)(11) funds.
- Bank collective investment funds structured as 3(c)(11) funds.

## Selected Hybrid Fund Formation Matters

Asset classes are undoubtedly converging: major hedge funds invest in illiquid assets through "side pockets," private equity firms invest in liquid assets by creating hedge fund arms, and private fund sponsors are registering closed-end funds and other permanent capital vehicles. The following are examples of recent hybrid fund matters on which we have advised or are in the process of advising:

- **ValueAct Capital Partners** in the formation of a **\$400 million** "crossover" fund investing in public and private companies.
- **NewStar Financial, Inc.** in the formation of a **\$150 million** credit opportunities fund.
- **A leading global financial services firm** in connection with the offering of one of its largest, **multi-billion AUM offshore investment funds** to U.S. investors through the formation and structuring of a special-purpose feeder fund.

## Private Fund Practice

The following partners and counsel are in our private funds group and devote a significant portion of their practices to private funds. They are supported by many associates and lawyers in related fields.

<b>New York</b>	<b>London</b>
Carl A. de Brito Daniel M. Dunn Robert M. Friedman Michael Hirschfeld George J. Mazin Roger Mulvihill James H. Nix Kevin P. Scanlan David A. Vaughan	Karen L. Anderberg Peter D. Astleford Jennifer O. Epstein Andrew M. Hougie Stuart Martin Mark Stapleton
<b>Boston</b>	<b>Luxembourg</b>
Adrienne M. Baker Susan M. Camillo Christopher D. Christian Geoffrey R.T. Kenyon Cynthia J. Williams	Marc Seimetz
<b>Philadelphia</b>	<b>Paris</b>
Richard D. Jones Brian S. Vargo Jay Zagoren Kathleen Ziga	Jonathan A. Schur
<b>Washington</b>	<b>Munich</b>
Susan C. Ervin Thomas Friedmann David J. Harris Robert W. Helm	Thomas Gierath Angelo Lercara Federico G. Pappalardo
<b>Hong Kong</b>	<b>Newport Beach</b>
Basil H. Hwang Keith T. Robinson	Douglas P. Dick

## Dechert Has a Leading Private Funds Practice — Representative Rankings



One of the “most active law firms” for number of private equity funds structured and closed

Source: *Private Equity Analyst*, 2007

One of the “most active law firms” for number of private equity and venture capital deals closed

Source: *Private Equity Analyst*, 2007



Recognized as a leading law firm for private equity fund formation and private equity buyouts and ranked #1 for investment funds

Source: *Legal 500 USA*, 2007

“Dechert’s fund team has a market-leading reputation for hedge funds. The firm has a vast client list from across the spectrum, and advises on launches, reorganizations and registrations for a full range of offshore and domestic funds.”

Source: *The Legal 500 (UK)*, 2007



Ranked among the top law firms for total value of global private equity buyouts

Source: *mergermarket*, 2007

Ranked among the top law firms for both value and volume of North American private equity buyouts and value and volume of North American private equity exits

Source: *mergermarket*, 2007



Ranked among the top ten law firms for private equity buyouts in 2007

Source: *The American Lawyer* “2008 Corporate Scorecard”

Recognized for being one of the few law firms that dominate the hedge fund industry

Source: *The American Lawyer*, 2006



Dechert is recognized as a top law firm for Corporate/M&A and the “quintessential businessman’s law firm” and “the firm of choice for sophisticated, high-level transactions”

Source: *Chambers USA*, 2006

Dechert is a “prime choice for transatlantic instructions”

Source: *Chambers & Partners Guide to the UK Legal Profession*

Ranked among the top investment funds practices in the United Kingdom, and recognized for being “one of the country’s leading practices” and “an impressive practice... (with a) solid reputation in hedge fund and offshore work”

Source: *Chambers (UK)*, 2006



Recognized for private equity in Germany

Source: *JUVE*, 2006



Rated one of the top three onshore legal counsel globally serving hedge funds

Source: *CogentHedge*, 2008



**BASIL H. HWANG**

*Hong Kong  
Partner*

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Basil H. Hwang is a corporate and securities partner in the Hong Kong office and the head of Dechert's Asia corporate and securities practice. He is also the founding partner of Dechert's Asia practice. Mr. Hwang's practice is focused on advising on private equity and growth capital transactions in Greater China. He also advises portfolio companies and their investors and shareholders on IPOs and listings in Hong Kong and the United States, Hong Kong corporate law and Stock Exchange matters, buyouts and divestitures through trade sales, and financial and securities regulation in Hong Kong.

Mr. Hwang is recognized by clients for his business insight and the quality of his advice, his familiarity with regulations and business practices in China and Hong Kong, and his ability to reliably and successfully execute transactions.

Mr. Hwang's private equity and venture capital practice includes structuring and executing over 50 successful investments and buyouts in China and elsewhere in Asia. He also counsels strategic buyers and sellers in mergers, acquisitions, and divestitures. He advises some of the most successful investment funds in Greater China with their activities, including:

- Investor Growth Capital
- Susquehanna International Group
- Granite Global Ventures
- IDG Technology Ventures
- TDF Capital (now known as KPCB China)
- JAFCO Asia Investment Fund
- Sequoia Capital China

## **Basil H. Hwang**

Mr. Hwang has advised on numerous buyout and M&A transactions, including:

- \$120 million sale of 3721.com to Yahoo! Inc.
- Sale of by Time Warner of its Hong Kong-based Time Life publishing business to Ripplewood Holdings

In addition, Mr. Hwang has advised on numerous high-profile securities offerings, including Shanda Interactive Entertainment's market-leading IPO and listing on Nasdaq, China Finance Online's IPO and listing on Nasdaq, ST Assembly Test Services' and Chartered Semiconductor Manufacturing's IPOs and dual Nasdaq and Singapore listings, Star Cruises' Hong Kong listing and other ongoing flotations on the Hong Kong Stock Exchange. Mr. Hwang has also advised on other significant securities offerings and private placements, including representing the Government of Singapore in its Rule 144A and Regulation S offering of \$1 billion of privatization exchangeable notes, the underwriters in Neptune Orient Lines' \$500 million Rule 144A and international share offering, Jurong Town Corporation in its \$4 billion medium term note program, DBS in the private placement of covered warrants over ordinary shares of Keppel TatLee Bank, and Asia Pulp & Paper Company in its exchange offer of \$600 million floating rate notes.

### **Publications and Lectures**

"Private Equity and Venture Capital Investing in Asia," Business Law Asia 2008, Singapore (June 19-20, 2008)

### **Education**

Mr. Hwang received his education in Singapore, Canada and England. He is a graduate of the National University of Singapore and a postgraduate of the Board of Legal Education. He graduated in the top tenth of his law school class. Mr. Hwang is fluent in Mandarin.

### **Bar Admissions**

Admitted to practice in Hong Kong, Singapore, and England and Wales