BUYING AND SELLING BUSINESSES AND COMPANIES. By D. MAGAREY. [Sydney: Butterworths. 1989. xxxiii + 283 (incuding index). Hardcover: S$55.00.]

THIS book is written strictly from a legal viewpoint. If you are interested in why takeovers occur or whether a company should be valued on a net tangible asset basis, an earnings basis, or a dividend yield basis, you will find this book heavily deficient. On the other hand, if you want to know the legal considerations relevant to the purchase of companies and businesses, you could do much worse than start here. This area is covered not at a detailed level but at a level sufficient to start the Singaporean reader thinking about the local position. A new lawyer will be forgiven for thinking that purchasing a company is essentially a matter of contract law. The author shows that stamp duties, income tax, stock exchanges rules, trade practices legislation relating to deceptive business practices, restraints of trade and market dominance all come into play.

One useful point that the book makes in relation to warranties given by the seller of a company to a buyer, is that in relation to the taxation of the company while under the control of the seller, the contract of sale normally provides that the seller will indemnify the buyer against any tax claims. The reason for this divergence from normal practice as regards other liabilities is that revenue legislation requires that tax be paid first in full and any contesting of the tax authorities' claim is only done later. The position in Singapore is similar and has been described as a case of "pay now, protest later". In addition, the buyer will not want to become involved in matters regarding which he has scant knowledge.

Restraint of trade clauses are often used to protect the purchaser of a business from unfair competition from the vendor of the business. Readers should be aware of the divergence of Australian law from Singapore law. In relation to clauses in restraint of trade, Australian law is interesting in that it contains a provision that eliminates the operation of the blue pencil test. Under English common law principles, an excessively wide restraint of trade clause is void but the blue pencil test can be used to save the inoffensive parts although the courts will not rewrite the clause to save it. This makes the drafting of restrictions a bit of a hit or miss affair because it will be impossible to predict the maximum restriction that will be regarded as reasonable. In Australia, the power is now given to judges to rewrite clauses so as to make the restraint reasonable. Perhaps similar legislation ought to be considered in Singapore.

One American development that as far as can be ascertained has not found its way to Singapore is the use of closing opinions. These are opinions from the other party's lawyers as to the legality and effectiveness of the transactions entered into. In the context of the

takeover of companies, these opinions are designed to give additional assurance to the purchaser that no unforeseen legal problems are likely to arise. The use of closing opinions has spread to Australia and accordingly, the book provides both a short discussion of their use as well as a few samples. Perhaps, in time to come these will be used in Singapore as well.

The appendices are thorough and contain a checklist for the purchase of a business, an agreement for sale and purchase of a business, a completion agenda for the sale and purchase of a business, a checklist for the purchase of a company, an agreement for the sale and purchase of shares, a completion agenda for the sale and purchase of a company and sample closing opinions.

All in all, despite the difference in law between Australia and Singapore, this book is useful and informative in providing practical advice and indicating the possible difficulties that might be encountered.

TERENCE TAN

THE M & A HANDBOOK: STATEGIES OF THE MAJOR EXPONENTS. By MARC Bosc, PHILIPPE GALLICE AND MARIE-PIERRE JEUX. [London: IFR Publishing Ltd. 1990. 174pp. (including index). Softcover.]

SOME "handbooks" today are not very handy unless one is born with grossly oversized hands. Calling this publication a handbook, however, is not a misnomer. The authors' style is succinct, sometimes, unfortunately, to the point of being a little abrupt.

The book starts off with four very impressive "Contents" pages whetting the appetite of any avid follower of merger and acquisition ("M & A") activity. The first chapter presents some statistics on M & A activity in several countries. The following chapters deal with topics like the motives for M & A activity, the financing of M & A activity, how target companies are valued, the procedures and regulations governing M & A activity in France and the United States of America, the parties involved in M & A activity and the consequences of M & A activity. The book then closes with case studies on the M & A climate in the United Kingdom and Japan. For a book of its size, the extensive and perhaps somewhat ambitious contents listing results in an overproliferation of headings and sub-headings in the text itself. It is, therefore, not uncommon to see headings followed by two to three short lines of text below them. This affects the overall flow of the work.

Despite the impressive listing of contents at the start of the book, any reader who is seeking a detailed discussion of takeover techniques and strategies will be sorely disappointed. For instance, while the book discusses briefly the economies of scale that could result from the acquisition of a company (in the course of discussing some of the possible motivations behind M & A activity), it