

TAKE-OVERS AND MERGERS BY CHIDAMBARAM CHANDRASEGAR [Singapore: Butterworths. 1994. xliii + 553 pp (including index). Hardcover: S\$200.85 including GST]

WHILE take-over activity in Singapore, as acknowledged by the author himself, has hardly achieved the same prominence or frequency of occurrence as compared to other financial centres of the world, the usefulness and indeed, indispensability, of this book to corporate lawyers, merchant bankers and auditors is more than apparent. It is the first book which is exclusively dedicated to the legal and regulatory regime governing take-overs and mergers in Singapore. With its publication, those concerned need no longer rely on leading English texts such as *Weinberg & Blank on Take-overs and Mergers* or *Palmer's Company Law*. While these works are of the highest standards, many practitioners must have found cross-referencing of the rules in the London City Code on Take-overs and Mergers and the Yellow Book (the listing rules of the London Stock Exchange) with their Singapore equivalents, if any, to be a highly laborious and frustrating exercise. Though the Singapore Code on Take-overs and Mergers was derived from the London City Code on Take-overs and Mergers in the 1970s, more similarity now exists at the level of principle and concept rather than in terms of specific rules. The face of the Singapore Code no longer bears any substantial resemblance to that of the City Code. Furthermore, the concept of self-regulation, so important in the English model, has no role to play in Singapore, and one may expect this to have prompted at least some divergence in the attitude of both the regulators and the regulated in Singapore as opposed to their English counterparts.

The utility of a book such as this is therefore obvious. The author has capitalized on this and produced a book which not only fills the need but also stands as a worthy reference book in its own right. The focus of the book is on providing practitioners with a one-stop reference work and sourcebook on the regulation of take-overs in Singapore. With its detailed and lucid treatment of the rules and thoughtfully-compiled appendices, the book achieves this aim admirably. Not only is the book written in a clear and very readable style, the organization of the material is exemplary and the referencing to the various rules and regulations is ruthlessly comprehensive. But at the same time the book is more than a mere collection of the multitude of rules which riddle the subject. The author offers many interesting and relevant accounts of real-life take-over sagas to illustrate the effect or the basis of a particular rule; these narratives certainly make the purpose and application of the rules much easier to understand and digest. The same may be said of the author's frequent references to the experiences in other jurisdictions. Furthermore, wherever appropriate, the author proffers his insight into the commercial and policy justifications for the rules, highlights their weaknesses and suggests avenues for reform. Striking the correct balance between an intellectual study of the regulatory regime and an organized treatment of the technical rules is no small task, but the author succeeds commendably.

The book can be roughly divided into two halves. The first half comprises thirteen chapters and the second half comprises sixteen appendices.

In the first two chapters, the author sets out the legal and economic background of the regulatory scheme. The reader is introduced to the various techniques of effecting a take-over and the legal and commercial considerations underlying the choice of such techniques. The author makes a comparative study of the advantages and disadvantages of acquiring a company by a take-over offer and a scheme of arrangement under section 210 of the Companies Act. The author also addresses

the notion that take-overs tend to result in the excessive concentration of resources and describes the safeguards which the Code was designed to provide.

Chapter 3 features an overview of the regulatory scheme as contained in the Companies Act, the Code and the Listing Manual of the Singapore Stock Exchange. The treatment is comprehensive and well-organized. However, one question which this reviewer felt should have been addressed is the nature of the Code. The Code is statutorily recognized as a 'non-statutory code' which 'shall have effect in relation to take-over and merger transactions' (section 213(18) of the Companies Act). The evident contradiction in the language creates uncertainty as to whether the Code is truly non-statutory in nature or whether it is in fact subsidiary legislation expressed in non-statutory language. It may also be noted that the Code was published in the *Government Gazette* and is to be found in the *Revised Edition of Subsidiary Legislation*. The issue has more than academic significance; in some situations it may be vital to know the impact of the provisions of the Code on the parties' private rights. One instance in which the issue may be relevant is in relation to the tort of breach of statutory duty; if the Code is legislation, it is a plausible contention that it is legislation enacted for the benefit of a defined class, that is, the shareholders of the target company. If such an argument is accepted, the shareholders of the target company may be able to sue the offeror or the directors of the target company for breaches of the Code.

One equally interesting question which the author does consider in the same chapter is whether the rulings of the Securities Industry Council are amenable to judicial review. The conclusion reached, with which this reviewer would respectfully agree, is that judicial review does lie in spite of the ouster clause in section 213(18)(c) of the Companies Act. However, it is disappointing to find absent any discussion on the landmark decision of the Malaysian Supreme Court in *Petaling Tin Bhd v Lee Kian Chan* [1994] 1 MLJ 657 which would appear to confirm that this view is correct.

Chapter 4 sets out the obligations of the parties in the initial approach to the target company and the making of the offer. The author meticulously traces the steps to be taken and the time periods to be observed by an offeror in announcing and making the offer. A pertinent issue in relation to this early stage in a take-over bid is the possibility of market manipulation and insider dealing and a suggestion for future editions is that the author may want to incorporate some discussion of those offences contained in the Securities Industry Act (Cap. 289). Chapter 5 exhibits the same detail as the preceding chapter as the author turns to the terms and conditions upon which a voluntary take-over offer is required to be made.

In the next three chapters, the focus is on how the regulatory scheme endeavours to ensure that the shareholders of the target company will be given adequate information and time to decide whether to accept the offer. In Chapter 6, the various time periods applicable to the making, extension and revision of a take-over offer are catalogued in a systematic manner which is easy to follow. Chapter 7 is on the offeror's obligations to furnish full and equal access to information to the shareholders of the target company and to make announcements in certain situations, for example, where the offeror and his associates have dealt in the shares of the target company during the offer period. Chapter 8 deals with the practice of stake-building and contains an extensive discussion of the disclosure requirements in Division 4 of Part IV of the Companies Act. The author expresses the view that as long as the disclosure is made, there is no illegality or impropriety in 'warehousing' shares prior to the launch of a take-over bid. While this reviewer would agree, one may still be justifiably concerned with the insider dealing offence

in section 103 of the Securities Industry Act. The excessively wide drafting of that section may render a potential bidder (if already a substantial shareholder under Division 4 of Part IV of the Companies Act) who intends to launch a take-over bid as a person who is in possession of price-sensitive information which is not generally available and thus prohibited from dealing in the shares of the target company.

In Chapter 9, the author considers the prohibitions on dealings in the securities of both the offeror and the target company when a take-over bid is ongoing or imminent or expected. The restrictions in the Code and the Model Code on Securities Transactions in the Listing Manual are analysed but again the offences contained in the Securities Industry Act on insider dealing and other market frauds are not addressed. It is suggested that discussion of these offences in this chapter as well as the preceding chapter would not have been misplaced.

In the next chapter, attention returns to the adequacy, reliability and comprehensiveness of the information furnished to the shareholders of the target company, but this time in relation to the documents issued in connection with a take-over. Once again, the treatment is detailed and well-organized. However, it is felt that more analysis could have been devoted to the nature and extent of the duties owed by the directors of the target company and the offeror to the shareholders in relation to the furnishing of information and advice. There is a wealth of issues here worth exploring. While the received view is that in general such directors owe no fiduciary duty to the shareholders, the directors of a target company are obliged by the regulatory scheme to disclose all relevant information to the shareholders and to ensure that the information is accurate: is this a duty the breach of which entitles a shareholder to a private law remedy? Difficult conflict of interest situations may also arise in relation to the duty of a director of a target company to recommend to the shareholders whether a bid should be accepted or rejected. If there are competing bids and the director is also a shareholder or favours a particular bid succeeding, how should he advise the shareholders? Can he consider his personal interests in making the recommendation or is he obliged to sacrifice them and advise the shareholders with total objectivity? It would have been quite relevant to consider cases such as *Heron International Ltd v Associated Communications Corp* [1983] BCLC 244 and *Re a Company* [1986] BCLC 382. There is also the vexed question of the extent to which the directors of a target company can enter into binding arrangements with the offeror to recommend the offer to the shareholders (see *John Crowther Group v Carpets International* [1990] BCLC 460, *Dawson International v Coats Paton* [1991] BCC 276 and *Payne v Adelaide Steamship* (1976) 14 ACLR 252). It would have made very interesting reading indeed if the author had considered these issues in full. Another area of uncertainty which merits fuller discussion than accorded by the author is the liability of the offeree, the directors of the target company and third party professional advisers under *Hedley Byrne v Heller* [1964] AC 465 (see for example *Columbia Coffee & Tea Pty Ltd v Churchill* (1992) 29 NSWLR 141 which indicates that *Caparo Industries plc v Dickman* [1990] 2 AC 605 may not be beyond challenge).

Chapter 11 contains a very good discussion of the use of defensive measures against hostile take-overs. Pre-bid measures such as interlocking shareholdings, pyramiding, voting agreements, special voting rights, the issue of convertible securities and the use of long-term management contracts as well as the more restrictive post-bid tactics like disclosure of favourable information and open market purchases are considered. The author also examines the common law doctrine of improper use of the power to issue shares and the statutory prohibition against side payments to directors in connection with loss of office in section 168 of the

Companies Act (readers should note that since the publication of the book the leading Privy Council decision in *Taupo Totara Timber v Rowe* [1978] AC 537 has been distinguished in Singapore in *Britannia Brands (Singapore) Pte Ltd v Sushil Premchand* [1995] 1 SLR 128). In Chapter 12, mandatory offers and partial offers come under the author's scrutiny. The technical rules are, as in the rest of the book, competently dealt with but what is more engaging are the various unsatisfactory features of the two types of offers highlighted by the author. The author provides valuable insight into the weaknesses of the present scheme in this respect and builds up a strong case for reform. Finally, in the last chapter, the author discusses the compulsory acquisition mechanism in section 215 of the Companies Act.

The sixteen appendices which make up the second half of the book will certainly come in very handy. The first eight appendices set out all the rules which are applicable to take-overs in Singapore: the Code, the relevant provisions of the Companies Act and the Listing Manual are all to be found here. The next ten appendices comprise mainly precedents. Included are precedents of an offer document, an offeree board circular, a statutory notice of take-over offer and a Part C statement as well as specimen press announcements and director's responsibility letters. Very helpful tables such as a timetable for a typical hostile take-over, a preliminary checklist and a list of principal documents and the persons responsible for their preparation are to be found in the other appendices.

All in all, this book is recommended whether one requires a competent sourcebook or a stimulating text or something in between. The main complaint of this reviewer is that the book tends to concentrate solely on the effect and observance of the applicable rules and should have incorporated fuller discussion of the civil and criminal liabilities of the parties to the take-over under the general law and the Securities Industry Act. In this connection, the juridical nature of the Code is one of the fundamental questions which ought to have been addressed. One probable reason for these omissions may be that the book is primarily intended for the corporate law practitioner rather than the litigator or the academic, though no doubt those in the latter category would also have ample reason to use it. However, the reviewer would stress that these omissions do not detract greatly from the indisputable practical value and scholarship of the book.