Mergers and Acquisitions in Singapore: Law and Practice BY **WAN** WAI YEE AND UMAKANTH **VAROTTIL** [Singapore: LexisNexis, 2013, lx + 792 pp. Hardcover: S$267.50]

This eagerly-anticipated book provides an excellent introduction to the world of mergers and acquisitions ("M&A"), which is perhaps a more high value-added form of corporate practice, and one in which lawyers must understand the nature of deals in general. Whereas initial public offerings, and even general corporate work, are usually directly correlated with the health of the economy, public M&A work—like insolvency workouts—can sometimes be countercyclical in that it comes to the fore when the securities markets are weak and the need for companies to consolidate strong.

From the very outset, the book sets the law in its context. Chapter 1 provides a financial perspective of the M&A market and explains why some transactions involving takeovers or amalgamations of companies have failed in practice due to managerial hubris and the winner's curse. There is often value destruction associated with a merger. Both law and business students will find most useful the case studies at the end of the chapter on the successes/failures of recent prominent transactions in Singapore involving Natsteel Holdings Pte Ltd, Fraser and Neave, Limited and the Singapore Exchange Limited. This would be most helpful to those new to the subject who are trying to visualise how takeovers occur in Singapore, as they usually have a strong cross-border flavour.

Chapter 2 builds on this by adding momentum to what eventually is a book concerned mainly with public M&A. It first looks at asset or business acquisitions, the focus of private M&As, and this is followed by amalgamations and schemes of arrangement, and then finally the typical public takeover offers that are fully governed by the *Singapore Code on Takeovers and Mergers* ("the *Code*"), which is administered by the Securities Industry Council ("the SIC"). What is most interesting here is the discussion of the differing shareholder and creditor protection in the various M&A forms. It is a theme that is expanded on in later chapters that look more closely at schemes of arrangement and squeeze outs and whether substantive unfairness is a consideration for such, which the authors suggest is the case in Hong Kong and Australia, and which is perhaps seen more with compulsory acquisitions under s. 215 of the *Companies Act* (Cap. 50, 2006 Rev. Ed. Sing.) (cc. 13 and 14).

Introducing a topic early on and then coming back to examine it in greater depth (sometimes more than once) is typical of the book, much like how science is taught as students go through the Singapore schooling system. Again, because it takes a transactional focus, there would be issues concerning deal protection devices, conditions and pre-conditions discussed in an initial chapter on pre-transactional preparations that are then fully taken up in a later chapter (*e.g.*, where the important issue of material adverse change clauses is closely examined in Chapter 5, with the typical provisions reproduced at notes 45-54, and comparisons with how these are treated in the United States and Australia at para. 5.60). But this is perhaps how learning should be, as it builds layers upon layers of knowledge—though this does presuppose that the reader will invest the time to actually go through the entire book at least once, as opposed to simply using it as a resource for specific areas. There is profit in both, as the book is a treasure trove to be slowly mined, with many hidden seams not to be missed.

What perhaps is most novel and interesting is the commentary provided on a number of chapters by leading corporate M&A practitioners in Singapore. Valuable insights are provided here on both law and practice, such as that of Gary Pryke at para. 2.111 where he wonders if the s. 210 scheme of arrangement requiring court sanction may actually be preferred to newer methods of amalgamation, as "[t]he need for court sanction forces the parties to address the issues that must be brought to the attention of the court… that the court's sanction has been obtained may give a greater sense of certainty." This may be something for many of us to think about, given the smorgasbord of corporate actions now available that impact both shareholders and creditors, which do not require the approval of the court but which may unfairly prejudice some minority constituency.

If the book has to be described in a word, it is "encyclopaedic". It paints a varied landscape that involves the *Companies Act*, *Securities and Futures Act* (Cap. 289, 2006 Rev. Ed. Sing.), *Competition Act* (Cap. 50B, 2006 Rev. Ed. Sing.) and most of all the *Code*, which is the centrepiece of the book in its focus, as well as how the book is presented visually. But there are parts that even pertain to the entire financial services industry, such as in the case of Chapter 10, which deals with the duties of professional advisers in M&A transactions, but that is also applicable generally. This is an extremely well planned chapter as it deals with various duties, such as fiduciary duties and duties of care and skill, and places them in the context of

particular requirements that arise in the *Code* as well as under professional rules like the *Legal Profession (Professional Conduct) Rules* (Cap. 161, R. 1, 2010 Rev. Ed. Sing.).

That much thought and organisation went into the book is also evidenced by the excellent use of tables and diagrams, such as the one on the use of structural subordination in arranging for finance in a leveraged buy-out ("LBO") transaction at Figure 15.3. Indeed the whole of Chapter 15 is very user-friendly in that it sets out the various issues (and how to deal with them) in an LBO or management buy-out. As the authors show, there is nothing mythical about these terms—they are just standard takeover structures seen in a particular financing or bidder context. If a basic company law book is science, this book is applied science.

The book can also be seen as part of the second phase of the development of Singapore law—specialist topics with inter-disciplinary insights. In a sense, the beginnings of this second phase can be traced back to the bold move by the Singapore Academy of Law to promote Singapore law in 2007. As with all forms of creative or artistic work, it is post-modern in the sense in that it seeks to break away from the more doctrinal earlier generation corporate law works. The practical nature of this book can be seen in the discussion at paras. 4.23-4.25 on the setting up of data rooms, including "virtual data rooms" (Lee Suet Fern at para. 4.126) in order to facilitate due diligence, and the recent coming into effect of the *Personal Data Protection Act 2012* (No. 26 of 2012). The authors shun no issues, and discuss, for example, the difficult areas of non-reliance and entire agreement clauses at para. 5.95 *et seq*. With these ancillary matters, it is more to surface the issues but the book does an invaluable service to the M&A practitioner in providing a one-stop shop. To some, however, the book may be seen to overreach into areas of unrelated law. There is some of that, such as in the fairly detailed discussion in Chapter 6 about the law of defamation when looking at civil liabilities associated with deal documentation (at para. 6.130 *et seq.*). But this is consistent with all that is good about the book discussed above.

A reviewer has to try his utmost to find something negative to say about a book, if only to earn his keep—a copy of the book. But only one thing appears to have been missed (if at all). In light of the contentious takeover of Cadbury Limited by Kraft Foods Group, Inc. (which is followed at various points in the book), the United Kingdom ("U.K.") Takeover Panel (their equivalent of the SIC) was consulted on raising the minimum acceptance condition in mandatory takeovers to 60% from the present 50%. But this never became a concrete proposal, and at para. 9.82, the authors state that "it does not appear to have caught the attention of the regulators in any significant manner." If anything, this attests to the comprehensive nature of the book, which brings up every facet of existing takeover law and possible future reform. Given the rapid developments in the area, however, it may be that future editions of this book would adopt a looseleaf form, much like its English equivalent, *Weinberg and Blank on Takeovers and Mergers* (looseleaf, 2013), has under the editorship of Laurence Rabinowitz. It is, for example, anticipated that there would be changes to the English takeover rules following the acceptance of the 2012 Final Report of *The Kay Review of UK Equity Markets and Long-Term Decision Making*, the overall philosophy of which appears directed at disenfranchising short-term shareholders. Developments in Europe at the same time appear to be focused on giving long-term

shareholders more rights. Some of these might soon find their way onto the agenda of the SIC.

While some may feel that the *Code* is just a form of soft law and not something that is accorded the fullest legal effect, it was said of the U.K. Takeover Panel by Chan C.J. in *Comptroller of Income Tax v. ACC* [2010] 2 S.L.R. 1189 at para. 19 (C.A.), that while the U.K. Takeover Panel had no statutory or contractual powers, it had "immense *de facto* power because a ruling by it that there had been a violation of the Code would have led to other sanctions, such as exclusion from the London Stock Exchange and investigation by the Department of Trade and Industry". The flexibility of the *Code* is its strength, but that also requires lawyers practicing in the area to know its subtle nuances. There are none more qualified in that sense than Wai Yee and Umakanth, who have both had successful practice and teaching careers in the field, and introduced this subject into the curriculum of both the Singapore Management University and National University of Singapore respectively. The book goes a long way in democratising Singapore corporate law practice in that it will reduce entry costs for new players in the M&A arena. The practitioners who have contributed extremely useful insights are also to be commended for sharing their knowledge when previously it may have been that this information was kept within the practice "bibles" of the leading law firms.

HANS **TJIO**
Professor
Faculty of Law, National University of Singapore