BOOK REVIEWS

COMPANY DIRECTORS AND CONTROLLERS. By ALLEN B. AFTERMAN. [Melbourne: The Law Book Company Limited. 1970 xxx + 239 pp. (including index)]. A$12.50.

This work should be of some interest to local readers as it contains references (even if only by way of footnotes) to Malaysian and Singapore company legislation.

It attempts, quite admirably, to provide a comparative analysis of American and Commonwealth corporate experience in the field of director's duties. Further it suggests certain areas of reform, on the basis of the American experience and the latest Ghanaian Act as drafted by Professor L. C. B. Gower. Because of the dearth of existing Commonwealth material in certain areas, the writer has used American case-law to provide possible analogical approaches as for example in the 'fairness standard under American law' in dealing with the definition of oppressive conduct.

The first general objective as stated in the Preface is to provide a detailed analysis of English and Australian corporate problems in the field of director's duties. In this respect one glaring confusion exists in the text which makes clarification desirable. Footnote 7 of page 40 interprets section 122(2) of the Singapore Companies Act as forbidding a corporation from acting as director of another corporation. This is particularly misleading as the writer uses the terms 'company' and 'corporation' interchangeably (cf. footnote 26 of page 6). More accurately, section 122(2) of S.C.A. states that no person other than a natural person of full age and capacity shall be a director of a *company*. This allows for the situation when a corporation (as defined to include a foreign incorporated company) may under the Act be a director of a foreign incorporated company. This analysis is borne out by the fact that section 122 is only applicable to companies as defined in section 4 to mean companies incorporated under this Act or previous corresponding ordinances. The same analysis pertains to the situation in Australia. (cf. section 5. U.C.A.).

In the segment on the standard of conduct and care required of directors, the significant attempt to codify this standard as appears in paragraph 7:2:3 of the Report of the Ontario Select Committee on Company Law 1967, *viz.:*

> "Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and in connection therewith shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances;"

is another oversight which detracts from the value of this work.

In the segment on 'Disclosure by Interested Directors' *Hely-Hutchinson* v. *Brayhead Ltd.* (1967) 2 A.E.R. 14 (Q.B.D.) is cited as deciding that failure to disclose as required by the English equivalent of U.C.A. section 123 will not render a contract made with an interested director voidable at the option of the company. This fails to note Lord Denning's judgment on appeal (although the appeal was dismissed) (1967) 3 A.E.R. 98 (C.A.) where he states that:

> "If he discloses his interests, the contract is not voidable, nor is he accountable for profits. But if he does not disclose his interest, the effect of non-disclosure is as before, the contract is voidable, and he is accountable for secret profits."

The second objective as appears in the Preface is to present a comparative analysis of problems with regard to American law and other common law jurisdictions. In this respect the total absence of local case-law is regretable. Some of the cases which merit attention, in any work (which purports to deal with local material) dealing with directors duties are mentioned hereinafter by way of information to the reader of this review. *United Investment & Finance Ltd.* v. *Tee Chin Yong & Ors.* (1967) 1 M.L.J. 31 which decided that a meeting of a company could not be constituted by one member, even though he concurrently held the proxy of another shareholder. In *Shanghai Hall Ltd.* v. *Chong Mun Foo & Ors.* (1967) 1 M.L.J. 254 the court held that in the absence of a prohibition appearing in the articles of association of the company, a director of the company could become a director of a rival company. Of greater importance and perhaps the only case to date under the unique oppression provision of section 181 M.C.A. is the case of *Re Chi Liung & Son Ltd.* (1968) 1 M.L.J. 97, commented on in *Malaya Law Review* (1969), vol. 11, p. 345 where K. Polack points out an inadequacy in section 181(2) in that it omits the potentially useful power to authorise proceedings to be brought in the name of the company against a third party. Further he notes the wide powers exercised in that case involved the cancellation of the resolution complained of, deletion of the disputed transfer from the share register and the giving of instructions as to the management of the company pending settlement of the probate suit.

Considered as a whole the book presents a unique attempt to approach corporate problems via the different types of corporate structures that exist, *viz.,* small proprietary companies; large public companies; parent-subsidiary groups and joint ventures. This approach is much to be appreciated as many standard works gloss over the inherent differences involved in such types of companies.

By way of style, the approach of the writer in utilising, perhaps too many, subdivisional paragraphs prevents a cohesive framework from emerging. This is evidenced clearly in the absence of any appreciable direction emerging from the whole work, which is made conspicous by the absence of general conclusions.

Local readers must bear in mind the two pieces of legislation enacted after the date of publication i.e., The Singapore Securities Industry Act of 1970 and the Companies (Amendment) Act of 1970. Our Securities Industry Act is the result of the Ferris Report and it incorporates some of the recommendations of the Australian Eggleston Committee, which is mentioned at page 113 of this work. Under the former Act, *inter alia,* new offences are created in relation to market dealings: creating a false or misleading appearance of active trading in securities; market rigging activities; fictitious transactions to affect the stock market; and circulating false rumours with respect to securities. The latter Act deals, *inter alia,* with the disclosure by substantial shareholders of a company. A substantial shareholder, as defined, is required to give notice in writing to the company of full particulars of his holding. The company is required to keep a register of substantial shareholders which will be open to inspection by shareholders and members of the public. Section 134 of the Companies Act is amended in relation to directors' obligation to disclose their shareholdings. The shareholdings of a wife or husband or his infant son or infant daughter of a director of a company are deemed for the purposes of this section to be shareholdings of the director.

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