SOURCEBOOK OF SINGAPORE AND MALAYSIAN COMPANY LAW. By PHILIP N. PILLAI. [Singapore: Singapore University Press. 1975. xlvii + 1248 pp. S$150.00]

The legal fraternity is a small one. Within it the circle of legal scholars is even smaller. When one is called upon to pass judgement upon the handiwork of a peer there is thrust upon one an invidious task of horrendous proportions. Never have the subjective elements of a trial by jury been more meaningfully brought home to the juror, as well as the colleague "on trial". Yet a colleague has to publish or perish, and another from this small circle called upon to pass a review.

This is a voluminous book — due, in part, to the subject-matter and, in part, to the way in which this Sourcebook has treated the source materials. The learned author announced two objectives in having the book published. One is to serve the practising company lawyer and the other, to serve the law student:

> for the practising company lawyer there does not exist a comprehensive digest or sourcebook of local company law cases; for the student there does not exist in a single volume materials from the various parent common law jurisdictions which form the basis of our company law.

In view of the paucity of existing publications this volume is timely and most welcome. There does, as a matter of fact, presently exist a rather comprehensive digest of company law cases — Mallal's *Digest of Malaysian/Singapore Case Law*,[1] which practitioners in these parts make frequent use of and which the Sourcebook, in its making, must probably have relied upon for references to a large number of the local cases. However, this volume puts together the cases (court judgements, rather than headnotes in a conventional digest) in a logical systematic fashion, together with introductory notes and references to selected articles and other relevant materials. Herein lies the valuable contribution of the Sourcebook to all who have to concern themselves with company law.

The volume also carries a useful comparative tabulation of the provisions of Singapore, Malaysian, United Kingdom and Australian companies legislation. The Singapore Companies Act is modelled after the Australian State legislation which in turn has looked to

[1] Mallal's *Digest of Malaysian and Singapore Case Law,* Vols. I, II and III. See cases digested under "Companies", "Contracts" and "Agencies".

British and American models. The compilation of the volume consists primarily of cases adjudicated by the local Courts. These are supplemented, as could be expected, by English, Australian, American, Indian and even a sprinkling of South African cases. Some reliance has been placed by the author on the commentary contained in the Ghanaian Report on Company Law prepared by Professor L.C.B. Gower. In this passing connection, it is to be observed that although the Draft Code as contained in Gower's Report was substantially enacted in 1963, references by the learned author in the text of the Sourcebook should have been made to the enacted Ghanaian Companies Code, 1963 [2] instead of the Draft Code. Evaluating the volume as a whole on the choice and use of materials, it must also be observed that there is a conspicuous absence of local legislative materials, even though the Companies Bill 1967 was put to Committee stage before it was eventually passed by Parliament. The speeches made by the Minister for Finance during the second readings of the various Companies (Amendment) Bills would also seem pertinent to provide the necessary background to government legislation, and their inclusion would further enhance the value of the volume.

On the collection itself, one of the first impressions that strikes the reader is the absence of convenient summaries of facts for the various cases. Although the expressed intention of the learned author, as indicated in the Preface, is to emphasise the "convoluted facts" as contained in a judgement reproduced, the soundness of this approach must, with due respect, be seriously called in question. The facts in the case of *Texas Gulf Sulphur*,[3] for example, could have been summarised without material loss, instead of merely reproducing the judgement of Waterman, Circuit Judge, together with the long footnotes on the various dates and other minute details regarding share purchases. To have a full grasp of the convoluted facts of a case, nothing short of reading the original law report itself would suffice. And this would have to include a reading of dissenting judgements. There also does appear to be consistency by the learned author in carrying out his intention of presenting convoluted facts. The case of *Public Prosecutor* v. *Measor & Fraser and* Co.[4] is reproduced without a statement of what exactly were the facts. The inferred reason for this glaring omission is probably the length of that part of the judgement of Mr. T.S. Sinnathuray, District Judge, dealing with the facts. It ran into more than 100 type-written pages![5] It could, of course, be argued that those facts and their detailed discussion by the learned District Judge would not serve much purpose to be reproduced. Admittedly, this may be so. But this is a precise example where a convenient summary of facts would have been put to good use, and the reader enlightened as to how section 366 of the Companies Act applied in an actual case. A case book by its very purpose is to serve the convenience of the user, and a summary giving the essence of the factual setting is something to be desired. This suggestion would undoubtedly involve additional labour. However, it would not only be in the tradition of source or case books, but would also certainly reduce the bulk of the book considerably.

[2] See Commercial Law Service, *Commercial Laws of the World,* Book Six, "Ghana".
[3] 401 F 2d 833 (1968).
[4] Summons Nos. 870/1971, 117/1972 and 118/192, unreported judgment.
[5] The total length of the judgement was 125 type-written pages.

Quite apart from the above, a number of the cases, especially on "Purchase and Sale of Shares" and "Transfer and Transmission of Shares" seem to have overlapping utility. Some of these cases could be eliminated and their references noted without material loss to the practitioner or student. In this connection, Chapter 15 on forms and specimen documents covering a total of about 110 pages of small print could likewise be pruned. A large number of the forms are in fact already available as prescribed forms in the Companies Regulations which the practitioner is bound, and the student ought, to possess. It could be argued that the reproduction of these various documents would serve the purpose of convenience. This argument, of course, has merit and the whole matter must be weighed on a cost/benefit basis.

On the substance of the subject-matter dealt with in this source-book, a review can do not more than bring into close scrutiny selected topics in a rather random manner, although this kind of a focus may result in an unfair impression on the book.

Firstly, a rather minor point in Chapter IV, on the "Memorandum of Association", calls for a brief comment. In the discussion of the powers of directors of the company, the learned author referred to section 19A, introduced by Act No. 10 of 1974, which confers power on a company to provide for employees on the cessation of business or any part of its business. This, the learned author pointed out, is a partial statutory reversal of *Parke* v. *Daily News Limited*[6] which held that the employees' interests are unavailable as a consideration in the course of the exercise of directors' powers. For completeness' sake, reference should further be made to section 132B, which was also brought into force by Act No. 10 of 1974. This provision states that directors, in the exercise of their powers, are entitled to have regard to, *inter alia,* "the interest of the company's employees generally, as well as the interest of its members". Section 132B would appear to be the complete reversal of the decision in *Parke's* case.

Secondly, two related topics in Chapter XI — the Securities Industry Act and the Securities Industry Council, both of which are of recent developments — require some extended comments. On the Securities Industry Act, the learned author stated, at page 859:

> ...the philosophy of self-regulation effectively came to an end in 1973 with the passing of the Singapore Securities Industry Act....

and, on the Securities Industry Council, at page 863:

> The creation in Singapore of the Securities Industry Council with the following functions is a harbinger of an SEC type of body in the future ....

The Securities Industry Act was first passed in 1970, but it was never brought into force as the Singapore Government was planning to co-ordinate its implementation with the Malaysian Government which was contemplating the enactment of parallel legislation. The delay in retrospect proved fortuitous as it gave the Government opportunity to improve upon the Act. The 1970 Act was replaced by the present Securities Industry Act in 1973. This 1973 Act does not effectively bring to an end the philosophy of self-regulation in

[6] [1962] Ch. 297.

Singapore. As a matter of fact, the Act expressly preserves self-regulation by the Stock Exchange of Singapore, although in the same stroke it also introduces a legislative framework for government regulation over the securities market as a whole, especially in the following areas:

(i) the establishment of a stock exchange requires ministerial approval;

(ii) the making of stock exchange rules and bye-laws also requires ministerial approval;

(iii) dealers and investment advisers, and their respective representatives, are required to be licensed;

(iv) dealers in securities are required to maintain proper accounts, including trust accounts which will be subject to audit;

(v) dealers and investment advisers and their representatives, financial journalists, are required to keep a register of securities in which they have an interest;

(vi) a fidelity fund is to be established and administered according to Part IX of the Act;

(vii) forms of unfair trading such as wash sales, matched orders, insider trading and market rigging are prohibited by Part X of the Act.

It is a common mistake to assume that prior to the Securities Industry Act 1973, there was no government regulation and that the securities market was entirely self-regulatory. There was in fact government regulation, although this was exercised on an *ad hoc* administrative basis without any proper legislative framework — which by its very nature varied in scope and effectiveness from time to time. Initially, such government administrative control was directly exercised by the Ministry of Finance and subsequently by the Monetary Authority of Singapore. What the Securities Industry Act has achieved is to place government regulation (which pre-dated the Act) on a proper legal footing. The Act also recognised self-regulation as a legitimate and, indeed, desirable form of control. The Explanatory Statement to the 1973 Bill categorically stated as follows:

> The Bill like its predecessor doess not propose to change the existing system of self-regulation by the Stock Exchange.

There is without doubt a large area of self-regulation which is exercised by the Stock Exchange. The Rules, Bye-laws, Listing Manual and Corporate Disclosure Policy are all administered by the Stock Exchange, although their enactment must now receive the approval of the Minister for Finance. In the second reading of the Bill in Parliament the Minister for Finance, Mr. Hon Sui Sen, unequivocally said:

> However, I would like to emphasise again that *the Bill does not merely pay lip-service to, but acknowledges, the principle of self-regulation of the Exchange by the Committee and is not intended to interfere with the day-to-day control by the Committee of normal share trading on the Exchange, nor with the traditional form of control that the Committee exercises over members of the Exchange* except on such matters as the licensing of dealers in securities, the reduction to statutory form of existing Stock Exchange Rules with regard to the maintenance of brokers'

> trust funds and the fidelity fund, together with the keeping of records and the conduct of securities business to which I have referred.[7]

In the United States where government regulation is commonly acknowledged to be most extensive and detailed, there still exists a large area of genuine self-regulation in the securities markets.[8] It must therefore be stressed that self-regulation and government regulation are *not* necessarily mutually exclusive categories. Indeed, they are complementary and mutually supporting. It would be a serious mistake to deem otherwise.

Although the terms of reference of the Securities Industry Council (SIC) have been made public, there have been and still persist, many mis-conceptions concerning its role, perhaps because of its initials "SIC", which resemble quite closely those of the formidable Securities and Exchange Commission (SEC) of the United States of America. But the SIC, unlike the SEC, is primarily an advisory body set up under section 3 of the Securities Industry Act by the Minister for Finance. It is an advisory body in all its functions, except for the administration of the Singapore Code on Take-overs and Mergers. This additional function, which is regulatory in nature, was conferred upon the SIC by section 179 of the Companies Act in 1974. The SIC, although set up under the powers of the statute is *not* a statutorily incorporated body. At the time when the formation of the SIC was announced, there was much misunderstanding about its role, in the press. The Minister for Finance in his inaugural speech took pains to correct the mistakes:

> From subsequent press reports and comments, it is clear that there are a number of misconceptions about the nature of the Securities Industry Council. The creation of this Council will not in itself cool an overheated stock market, neither will it provide a panacea to all stock exchange ills. The responsibility of the Council will not be an easy one to discharge, especially with the present market sentiment.
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> From its terms of reference, you will note that the Council is an advisory and consultative body. It is not intended that the Council should become involved in disputes between stockbrokers and client. The proper authority to deal with such matters will still be the Committee of the Stock Exchange, which will also continue to manage its own affairs and carry on the day-to-day business of the Exchange without interference.

The main functions of SIC are to provide the government and the various institutions in the securities industry with an advisory and consultative body. As mentioned, the SIC has regulatory powers only with reference to the Singapore Code on Take-overs and Mergers, which is modelled after the London City Code on Take-overs and Mergers, with such modifications as are necessary to suit Singapore legislation and conditions. One of these modifications includes the promulgation of the Singapore Code by the Minister for Finance, under powers of statute. Thus, the Singapore Code has the "backing" of statutory authority. Otherwise, the Singapore Code like the London City Code is essentially in the tradition of voluntarism and self-regulation.[9]

[7] *Singapore Parliamentary Debates,* 7 March 1973, cols. 551 and 552. Emphasis supplied.

[8] See R. Jennings, "Self-Regulation in the Securities Industry: The Role of the Securities and Exchange Commission" (1964) 29 *Law and Contemporary Problems* 663.

[9] See "Introduction" to *Singapore Code on Takeovers and Mergers.*

The learned author, of course, does not state that the SIC *is* an SEC type of body. He merely stated that "it is the harbinger" of the SEC type. It is an expression of an opinion of a possible future development, and to that extent it must be granted that the statement is a legitimate opinion of a probability. This would certainly be in order, *provided* any implied notion that the SIC is the first deliberate measure in a programmed step-by-step move towards the SEC type of regulation is dispelled. Although future events may bring about a decision on the part of the government that an SEC type of body is desirable, the SIC as established by the government at present is never intended to be anything more than what its terms of reference described it to be. It may be appropriate here, therefore, to call into assistance a recent speech made by the Attorney-General, Mr. Tan Boon Teik, which gave an excellent summary of the various considerations that influenced the government's decision on the form of control to be exercised over the securities market:

> The major policy decision that had to be made by the Singapore Government when considering the forms of control to be exercised over the securities industry was whether to have a centralised form of control in the shape of an independent regulatory body along the lines of the SEC in the USA, or to rely upon the principle of self-regulation by the stock exchange, subject to appropriate forms of control over dealers, including stockbrokers, the establishment of fidelity funds to protect investors and the prohibition of certain forms of dishonest trading. In making its decision it took into account a Report on the study of the Securities Market in Singapore that was made by Mr. G. Ferris — a Governor of the New York Stock Exchange. This study concluded that self-regulation could never be effectively replaced by Government supervision. The practical objection that Mr. Ferris saw to governmental control in Singapore was that there was a scarcity of people with adequate knowledge of the workings of brokers and the Stock Exchange to effectively administer control. But there were other equally cogent reasons.
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> These were:
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> (1) Since there was only one securities market operating in Singapore, the Stock Exchange here was in a position to exercise effective control whereas in the United States there are a number of securities markets operating;
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> (2) The vast size of the United States, its scattered markets, the existence of 50 separate states and the history of the securities market there, prior to 1933, made strong centralised control in Washington important;
>
> (3) This was a vital consideration from our point of view: the SEC in America has very considerable resources of commercial, financial and stock market expertise, whereas in Singapore we lacked persons who had this expertise which would make for effective control.
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> In accepting the Ferris recommendations the Minister emphasised that the Government had no wish to get involved in any attempt to regulate and supervise the Stock Exchange and dealings thereon. He, accordingly, indicated that Government had decided to adopt the principle of self-regulation of the Stock Exchange, subject to certain forms of control....

It is clear that there was a deliberate rejection of the SEC type of regulation. To summarise, the Securities Industry Act, 1973, does not signal the demise of self-regulation in Singapore, nor is the Securities Industry Council a harbinger of an SEC type of body.

[10] Tan Boon Teik, "Forms of Control Exercised over the Securities Industry — A Comparative View" (1974) 2 *Singapore Stock Exchange Journal* 4.

In conclusion, practitioners and students will find this a useful volume to possess. This review, instead of offering the usual platitudes, has taken the opportunity to strike a meaningful dialogue on a few issues concerning the form and content of the book. The learned author may wish to consider the incorporation of the suggestions which have been forwarded. None of the suggestions should be taken as detracting from the value of this volume. Should any have doubt as to this work, the reviewer would suggest that he take a look at the first editions of a number of publications which are today considered "standard texts". Company law is a rapidly changing and developing subject. There will be ample opportunity for a future edition. The reviewer is confident that this work, with such improvements as suggested here and those which the learned author himself would undoubtedly have as a result of further research and reflection, will take its place in the literature on companies of this region.

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