

Comparative Takeover Regulation

Global and Asian Perspectives

**Edited by Umakanth Varottil
and Wai Yee Wan**



'Wai Yee Wan and Umakanth Varottil have done an invaluable service by collecting a comparative study of Asian takeover law as well as a volume which examines the theoretical underpinnings of takeover law itself. The essays are practical while also providing a thorough and intelligent study of the variety of Asian takeover law. Practitioners will find this volume an invaluable resource while academics in this area will find that this is the "must-read" book for use in in their research.'

Steven Davidoff Solomon, *Professor of Law, UC Berkeley School of Law*

'*Comparative Takeover Regulation: Global and Asian Perspectives* is a welcome addition to the study of comparative takeover regulation. The chapters in the collection are theoretically and empirically informed and clearly advance our understanding of takeover regulation in multiple Asian jurisdictions. In particular, the chapters in the collection provide a very useful analysis of the nature and operation of takeover regulation in the jurisdictions covered in the book, and provide real insight into varied drivers and effects of regulatory transplants in these jurisdictions. The chapters in the book will quickly find their way onto Takeover Regulation reading lists.'

David Kershaw, *Professor of Law, London School of Economics*

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Varottil and Wan

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Edited by

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and*

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COMPARATIVE TAKEOVER REGULATION

While Western economies such as the United Kingdom and the United States generally display dispersed shareholding in listed companies, Asian economies commonly have concentrated shareholding, even in publicly listed companies. The principal analysis in *Comparative Takeover Regulation* relates to the role of takeover regulation in different economies. In the Asian context, the nature of takeover regulation may necessitate a different approach, with greater emphasis on the mandatory bids and disclosure of substantial shareholding. The likelihood of hostile takeovers will be minimal. It is these differences among various jurisdictions that strike at the heart of Varotttil and Wan's new work. Ideal for educational institutions that teach corporate law, corporate governance and mergers and acquisitions, as well as law firms, corporate counsel and other practitioners, *Comparative Takeover Regulation* provides students and scholars with a brand new analysis of this increasingly important field of study.

UMAKANTH VAROTTIL is an associate professor at the Faculty of Law, National University of Singapore. He specializes in corporate law and governance, mergers and acquisitions and cross-border investments. While his work is generally comparative in nature, he focuses particularly on India and Singapore. He has co-authored two books on Singapore law and practice, published articles in international journals and founded the Indian Corporate Law Blog. Prior to his foray into academia, Umakanth was a partner at a pre-eminent law firm in India.

WAI YEE WAN is an associate professor of Law at Singapore Management University. Immediately prior to joining academia, she was a partner at a local law firm, where she practised in the areas of mergers and acquisitions and equity capital markets. Her main areas of research are in mergers and acquisitions, corporate law and securities regulation. She has published widely in journals, including the *Journal of Corporate Law Studies*, *Journal of Business Law*, *Company and Securities Law Journal* and *Lloyds' Maritime and Commercial Law Quarterly*. She has co-authored, with Umakanth Varotttil, *Mergers and Acquisitions in Singapore: Law and Practice* (2013).

ADVANCE PRAISE FOR *COMPARATIVE TAKEOVER REGULATION*

"Wai Yee Wan and Umakanth Varottil have done an invaluable service by collecting a comparative study of Asian takeover law as well as a volume which examines the theoretical underpinnings of takeover law itself. The essays are practical while also providing a thorough and intelligent study of the variety of Asian takeover law. Practitioners will find this volume an invaluable resource while academics in this area will find that this is the 'must read' book for use in their research."

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David Kershaw, Professor of Law,
London School of Economics

"A pathfinding international collaboration on a map for the uncharted territory of takeover regulation in Asia, this book demonstrates comparative corporate law scholarship at its best, displaying, with a high degree of sensitivity and sophistication, the subtle interplay among law, politics and economics. It will surely serve as an indispensable stepping stone for those who aspire to grasp regulatory issues on takeovers in major Asian jurisdictions from a global and systematic perspective."

Kon Sik Kim, Professor and Dean emeritus,
Seoul National University School of Law

"This book is bound to become a standard reference for readers interested in comparative takeover regulation, as it provides a better understanding about M&A in Asia. It poses intriguing questions for scholars and practitioners, such as how Asian countries differ from their Western peers, and how transplantation has led to a wealth of variations. This fascinating volume addresses them by delineating the takeover dynamics in eight Asian jurisdictions, and provides us with a series of compelling answers. Through joint efforts, not only are nuances and evolutions explained convincingly, but also the legal origins analysis is put under reconsideration."

Guo Li, Professor and Vice Dean,
Peking University Law School

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PREFACE

The field of mergers and acquisitions (M&A) has long captured our attention as researchers in the legal academy. A prior collaboration led to the publication of a book pertaining to the law and practice of M&A in Singapore. It was during the culmination of that book project in late 2013 that we began contemplating the possibility of embarking on a broader project relating to comparative takeover regulation. Through our previous work, which was largely jurisdiction-specific, we became fascinated by similarities and differences across countries not only in the manner in which takeover activity was regulated, but also in the ways in which transactions structures were established and market practices developed.

But then, the question arose: what would we compare? We were almost immediately predisposed towards focusing on Asia. Several leading Asian countries have been growing in might in terms of takeover activity (both inbound and outbound), thereby meriting a closer study. Moreover, the existing literature on takeover regulation has been largely situated in the Western markets, thereby leaving open a perceptible gap to be filled by Asia. Also, our physical location in the heart of Asia augurs well in undertaking such a study. At the same time, our reluctance to analyse Asia on a standalone basis led us to another layer of comparisons, i.e., that between Asia and the Western jurisdictions where takeover regulation has been the subject matter of greater analysis. What were then rather lofty aims have now moved towards realisation (at least in part) in the form of this edited volume, which documents the findings of research relating to comparative takeover regulation, both from the purview of leading Asian jurisdictions as well as the broader global trends. The results that emanated from this book have in many ways been counterintuitive and somewhat surprising as well, as detailed in the various chapters.

The laws of various jurisdictions discussed in this book are as of 31 October 2016.

The enormity of the task we undertook is such that we could not have accomplished it on our own, and there are a number of individuals and institutions we owe our gratitude to. We have been truly fortunate in that several experts around the world favourably responded to our invitation to collaborate with us by contributing individual chapters that constitute the core of this work. Several commentators provided detailed comments on draft chapters during a conference in Singapore in July 2015, which enabled the authors to incorporate various viewpoints in revised drafts. The commentators, several of whom are our colleagues, include Christopher Chen, Fu Fangjian, Christian Hofmann, Pearlie Koh, Takeshi Komatsu, Lan Luh Luh, Lin Lin, Ng Wai King, Leena Pinsler, Farhana Siddiqui, Tan Cheng Han, Hans Tjio and Wee Meng Seng. Our home institutions, the Faculty of Law, National University of Singapore (NUS Law) and the Singapore Management University School of Law (SMU Law) rendered full support to the project, with generous financial assistance coming from the Centre for Banking and Finance Law and the Centre for Law and Business (both at NUS Law), and the Centre for Cross-Border Commercial Law in Asia (at SMU Law). Wai Yee also gratefully acknowledges the funding from the Lee Foundation through the Lee Kong Chian Fund for Excellence. The administrators at the Centres, including Leanne Hwee, Finna Wong, Melissa Chang and Pamela Yap were meticulous in their planning for, and execution of, a successful conference held in Singapore in July 2015. Several student research assistants, both from NUS Law and SMU Law, provided excellent research and editorial assistance at various stages of the project. They include Bryan Ching, Loh Tian Kai, Kim-Chan Tze Kuo Wyz, Eugenia Kwong, Ng Jia Min, Claudia Tan, Xie Huiling and Yao Qinzhe. Cambridge University Press, especially Joe Ng, who was our primary point of contact, reposed faith in this project by undertaking to publish the resulting book. Finally, our respective families provided their unfailing support during the lengthy period of this book project.

Umakanth Varottil and Wai Yee Wan
Singapore

ABBREVIATIONS

ACGA	Asian Corporate Governance Association
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investment Commission
BJR	Business judgment rule
BSE	Stock Exchange, Mumbai
CARs	Cumulative abnormal returns
CEO	Chief Executive Officer
CMFIBA	Capital Market and Financial Investment Business Act (Korea)
CMS	Controlling minority shareholder
CMSA	Capital Markets and Services Act 2007 (Malaysia)
Consob	Italian Securities and Exchange Commission
CSRC	China Securities Regulatory Commission
DGCL	Delaware General Corporation Law
ETP	Economic Transformation Programme (Malaysia)
EU	European Union
FDCA	Fiduciary duty class action
FSC	Financial Supervisory Commission (Taiwan)
GDP	Gross Domestic Product
GFC	Global Financial Crisis
HSI	Hang Seng Index
IC	Investment Commission (Taiwan)
IFA	Independent financial adviser
IPO	Initial public offering
KCC	Korean Commercial Code
KFTC	Korean Fair Trade Commission
LBOs	Leveraged buy-outs
M&A	Mergers and acquisitions
MAC	Material adverse change
MAS	Monetary Authority of Singapore
MBA	Master of Business Administration
MBR	Mandatory bid rule
MOEA	Ministry of Economic Affairs (Taiwan)

MOF	Ministry of Finance (Taiwan)
MOFCOM	Ministry of Commerce of the People's Republic of China
MOM	Majority-of-the-minority
MRFTA	Monopoly Regulation and Fair Trade Act (Korea)
NDRC	National Development and Reform Commission of the People's Republic of China
NSE	National Stock Exchange of India Limited
NTA	Net tangible asset
Panel	Panel on Takeovers and Mergers (UK)
pbcb	private benefits of control
PRPs	Pre-warning Rights Plans
RBI	Reserve Bank of India
REITs	Real estate investment trusts
SASAC	State Owned Assets Supervision and Administration Committee (People's Republic of China)
SAT	Securities Appellate Tribunal (India)
SC	Special committee
SEBI	Securities and Exchange Board of India
SEC	Securities and Exchange Commission (United States)
SEHK	Stock Exchange of Hong Kong
SFA	Securities and Futures Act (Singapore)
SFC	Securities and Futures Commission (Hong Kong)
SGX	Singapore Exchange
SIC	Securities Industry Council (Singapore)
SMEs	Small and medium-sized enterprises
SOEs	State-owned enterprises
TPEX	Taipei Exchange
TSE	Tokyo Stock Exchange
TUF	Testo Unico della Finanza (Italy)
TWSE	Taiwan Stock Exchange
UK	United Kingdom
UK Code	City Code on Takeovers and Mergers (United Kingdom)
US	United States
WTO	World Trade Organization

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